

University of Louisville
457(b) Plan

INTRODUCTION

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 October 1, 2010, the University of Louisville 457(b) Plan.

PURPOSE AND APPLICABILITY OF PLAN

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.

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 of Effective Date as applicable.

**ARTICLE I
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:

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.

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.

1.01 Account. The word “Account” means the account or accumulation maintained for the benefit of any Participant or Beneficiary.

1.02 Account Balance. The account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant’s Elective Deferrals, any Compensation deferred under the Plan by non-

elective Employer contribution (either matching contributions or non-elective contributions), the earnings or loss of the investment options held in the Investment Options (net of investment option expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. The Account Balance includes any account established under Section 3.11 for rollover contributions and transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee, as defined in Section 414(p)(8) of the Code.

- 1.03 Adoption Agreement.** The term "Adoption Agreement" means the separate agreement that is executed by the Employer that sets forth the elective provisions of the Plan. The Adoption Agreement and this Plan document collectively constitute the Plan.
- 1.04 Alternate Payee.** The term "Alternate Payee" means an individual who is entitled to payment from a Participant's Account pursuant to a Qualified Domestic Relations Order as described in Treas. Reg. Section 1.457-10(c), or any successor regulation or guidance.
- 1.05 Beneficiary.** The term "Beneficiary" means the individual, trustee, estate or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death.
- 1.06 Benefit Commencement Date.** The term "Benefit Commencement Date" means the date selected by the Participant or Beneficiary to receive: (a) a single-sum distribution of the fair market value of his or her Account or (b) the first in a series of scheduled payments made with respect to his or her Account.
- 1.07 Benefit Payment Option.** The term "Benefit Payment Option" means one of the optional forms in which benefits may be paid to a Participant and/or Beneficiary under this plan.
- 1.08 Board of Trustees.** The term "Board of Trustees" means the Board of Trustees of the University.
- 1.09 Code.** The "Code" means the Internal Revenue Code of 1986, as amended. Referenced to a specific section of the Code includes not only the section but any comparable section or sections of any future legislation that amends, supplements or supersedes the section.
- 1.10 Compensation.** The word "Compensation" means an Employee's base annual salary paid by the University of a Plan Year, including amounts deferred by such Employee pursuant to an election made under sections 125, 132(f)(4), 402(g), 403(b) or 457(b) 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 plans or employee welfare benefit plan. Compensation is defined by W-2 wages.

- 1.11 Contributions.** The word “Contributions” may refer to Elective Deferrals, as the context requires.
- 1.12 Custodial Account.** The term “Custodial Account” means the group or individual custodial account or accounts, as deferred in section 457(b) of the Code, established for a Participant by the Employer, or by a Participant individually, to hold assets of the Plan.
- 1.13 Deferred Compensation.** The term “Deferred Compensation” means all remuneration paid or payable to a Participant by the Sponsor for services rendered.
- 1.14 Deferred Compensation Agreement.** The term “Deferred Compensation Agreement” means the written, electronic or other binding and legally valid form of agreement between a Participant and the Sponsor pursuant to which the Participant agrees to accept a reduction in Compensation and the Sponsor agrees to contribute the amount of such reduction to the Participant’s Account under this Plan.
- 1.16 Differential Wage Payment.** The term “Differential Wage Payment” means any payment which is made by the Employer to an Employee with respect to any period during which is performing service in the uniformed services (as defined in Chapter 43 of title 38 of the Code) while on active duty for a period of more than thirty (30) days, and such payment represents all or a portion of the wages the Employee would have received from the Employer if the Employee were performing service for the Employer.
- 1.17 Disabled or Disability.** The term “Disabled or Disability” is determined by the definition in Section 72(m)(7) of the Code, to be determined by the Employer.
- 1.18 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 or she attains the age 70-1/2 (or retires, if later).
- 1.19 Effective Date.** The term “Effective Date” means the effective date of this Plan, which is October 1, 2010.
- 1.20 Elective Deferral.** The term “Elective Deferral” means the annual amount of Compensation that a Participant elects to defer.
- 1.21 Eligible Governmental Deferred Compensation Plan or Eligible Plan.** The term “Eligible Governmental Deferred Compensation Plan or Eligible Plan” means a plan that

constitutes an eligible governmental deferred compensation plan within the meaning of Section 457 of the Code.

- 1.22 Eligible Employee.** The term “Eligible Employee” means, for purposes of establishing eligibility to make Elective Deferrals under Article 3, 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.**
- 1.23 Employee.** The term “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 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.
- 1.24 Employer.** The term “Employer” means the University of Louisville, the entity that has adopted this Plan and is named in the Adoption Agreement.
- 1.25 Entry Date.** The term “Entry Date” means the first day of the pay period coinciding with, or if later next following, completion of Eligibility Period.
- 1.26 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.
- 1.27 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.
- 1.28 Investment Options.** The term “Investment options” means the annuity contracts, custodial accounts, and other investment options offered by Fidelity Investments and TIAA-CREF, selected by the Plan Administrator as investment options to be offered to Participants and Beneficiaries under the Plan. Investment Options shall also include any other investment alternatives made available by any other Investment Sponsor and designated pursuant to the terms of this Plan document and the Adoption Agreement as being available for the purpose of allocating contributions, rollovers and/or transfers under this plan.
- 1.29 Investment Sponsors.** The term “Investment Sponsors” means Fidelity Investments and TIAA-CREF and any other insurance company, regulated investment company, or other entity providing Investment Options under the Plan.

- 1.30 Normal Retirement Age.** The term “Normal Retirement Age” means age 65 unless otherwise provided in the Adoption Agreement, provided that in no event shall Normal Retirement Age be earlier than the earliest date on which a Participant may retire under the Employer’s basic retirement plan, if any without the Employer’s consent, and receive immediate retirement benefits without incurring an actuarial or similar reduction in benefits.
- 1.31 Participant.** The term “Participant” means an individual for whom Elective Deferrals 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.
- 1.32 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.
- 1.33 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.
- 1.34 Plan.** The term “Plan” means the University of Louisville 457(b) Plan as set forth herein, and as it may be amended from time to time.
- 1.35 Plan Year.** The term “Plan Year” means the calendar year. The initial Plan Year is a short Plan Year beginning on 10/1/10 ending on 12/13/10. Thereafter, the Plan Year will be the twelve (12) month calendar year.
- 1.36 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.
- 1.37 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.
- 1.38 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.
- 1.39 Rollover Amount.** The term “Rollover Amount” means that portion of an Eligible Rollover Distribution from this Plan, that by election of the prospective distribute is transferred directly or indirectly to an Eligible Retirement Plan.
- 1.40 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 (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).

- 1.41 Sponsor.** The term “Sponsor” means the State, political subdivision of a State, or agency or instrumentality of a State or political subdivision of a State set forth in the Introduction that has established this plan. The Sponsor is, and shall remain during its sponsorship of the Plan, an “eligible employer” as is defined in IRC Section 457(e)(I)(A).
- 1.42 State Law.** The term “State Law” means any statutes, court decisions, executive orders, administrative rulings, regulations or other proclamations having the force of law in the state in which Sponsor is located and which is set forth in the Introduction.
- 1.43 University.** The word “University” means the University of Louisville.
- 1.44 Vendor.** The term “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.
- 1.45 Valuation Date.** The term “Valuation Date” means each business day of the Plan Year.

ARTICLE II PARTICIPATION IN THE PLAN

- 2.01 Eligibility.** (a) 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. Any employee who is classified as an Eligible Employee as of the date of the effective date shall be eligible to participate in the Plan on the effective date. The Plan specifically excludes leased employees, Trustees of the Employer, independent contractors and student employees

(b) Any Employee who is not eligible to participate in the Plan as of the effective date pursuant to paragraph (a) above, shall be eligible to participate in the Plan upon classification as an eligible employee.
- 2.02 Enrollment In Plan.** To participate in the Plan, each Eligible Employee shall complete and return the applicable forms, including a Voluntary Salary Deferral Agreement, and submit them to the Employer or its designee. Enrollment shall be effective on or after the first day of the month following the date the enrollment forms are properly completed by the Employee and accepted by the Employer or its designee.
- 2.03 Information Provided by the Participant.** Each Employee enrolling in the Plan should provide to the Investment Sponsor or the Plan Administrator, as required, at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Investment Sponsor or Administrator, as appropriate, to administer the

Plan, including without limitation, whether the Employee is a participant in any other Eligible Plan under Code Section 457(b).

- 2.04 Contributions Made Promptly.** Elective Deferrals under the Plan shall be transferred to the applicable Investment Option within a period that is not longer than is reasonable for the proper administration of the Plan. In no event shall any Elective Deferrals be transferred to the applicable Investment Option later than fifteen (15) days following the end of the month in which the amount would otherwise have been paid to the Participant.
- 2.05 Form of Contributions.** All contributions shall be made in cash.
- 2.06 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.

ARTICLE III DEFERRAL OF COMPENSATION

- 3.01 Elective Deferrals.** If elected pursuant to the terms of the Adoption Agreement, an Eligible Employee may elect to make Elective Deferrals to the Plan pursuant to a Voluntary Salary Deferral Agreement with the Employer. Any such Elective Deferrals may be made up to the amount set forth in the Adoption Agreement. Subject to the rules of the applicable Investment Sponsor, each Eligible Employee who elects to contribute to the Plan pursuant to a Voluntary Salary Deferral Agreement must agree to voluntarily defer a minimum amount per pay period per terms pre-established by the Investment Sponsor.
- 3.02 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.
- 3.03 Change in Elective Deferral Elections.** 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.
- 3.04 Deferral of Special Pay.** A Participant may elect to defer accumulated sick pay, vacation pay, or back pay. These amounts may be deferred for any calendar month only if an agreement providing for the Elective Deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available.

3.05 Termination of Deferral. A Participant may terminate his or her election to have Compensation deferred by so notifying the Investment Vendor and Employer or its designee in writing. Such termination shall take effect as soon as administratively practicable, but not earlier than the first pay period commencing with or during the first month following receipt by the Employer or its designee of satisfactory written notice of such revocation.

3.06 Maximum Deferral.

(a) **Primary Limitation.** Effective January 1, 2002, the maximum amount that may be contributed to the Plan pursuant to Sections 3.1, hereof on behalf of any Participant, other than by means of a rollover or transfer, year shall not exceed the lesser of:

- (1) The applicable dollar amount, as set forth in Code Section 457(e)(15) or
- (2) 100% of the Participant's Includible Compensation for the taxable year.

(b) **General Catch-up Limitations.** For one or more of the last three taxable years ending before a Participant's attainment of Normal Retirement Age, the maximum amount that may be contributed to the Plan pursuant to Sections 3.01, hereof on behalf of a Participant, other than by means of a rollover or transfer, shall be the lesser of X or Y. X shall be, for any taxable year beginning on or after January 1, 2002, twice the applicable dollar amount in effect under Code Section 457(b)(2)(A) for such year. Y shall be the sum of (i) the primary limitation amount determined under Section 3.01 above for the year, and (ii) that portion of the primary limitation amount determined under Section 3.6(a) above not utilized by the Participant in prior taxable years (beginning after 1978) in which the Participant was eligible to participate in the Plan.

(c) **Catch-up Limitations for Individuals Age 50 or Over.** Effective January 1, 2002, to the extent permitted by law and elected in the Adoption Agreement, in the case of any individual who has attained the age of 50 before the close of the taxable year, the maximum Elective Deferral amount that may be contributed pursuant to Section 3.1 hereof for such taxable year shall be increased by the applicable amount set forth in Section 414(v) of the Code. Notwithstanding the immediately preceding sentence, contributions shall not be made in accordance with this Section 3.06(b) hereof provides a higher limitation.

(d) **Coordination with Other Plans.** If a participant participates in more than one Code Section 457(b) plan, the maximum deferral under all such plans shall not exceed the applicable limit as described in Section 3.06(a) above (subject to modification by the catch-up limitation described in Section 3.06(b) or (c) above). For years beginning

before January 1, 2002, if a participant participates in a plan described in Sections 403(b), 401(k), 408(k) or 501(c)(18) of the Code, amounts deferred by the Participant to any such plan or plans and excluded from his or her gross income in any such taxable year under such plan or plans shall reduce the primary limitation amount described in Section 3.08(b) hereof.

(e) **Distribution of Excess Deferrals.** To the extent that any amount deferred under the Plan for any taxable year exceeds the limitations of this Section 3.6, any excess deferrals will be distributed to the Participant with allocable net income, as soon as administratively practicable after the Employer determines that there is an excess deferral and the amount of the excess deferral. Such excess shall first be deemed to be attributable to contributions made pursuant to a Voluntary Salary Deferral Agreement or its equivalent under Section 3.01 hereof.

- (1) An Employee who is a Participant who will attain the 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.
- (2) The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5,500 for 2010, and is adjusted for the cost-of-living after 2010 to the extent provided under the Code.

3.07 Employer Non-Elective Contributions. The Employer will not make non-elective contributions to the Plan.

3.08 Employer Matching Contributions. The Employer will not make matching contributions to the Plan

3.09 Vesting. A participant shall be fully vested at all times in his or her accrued benefits under this Plan. Such accrued benefits shall be non-forfeitable at all times.

3.10 Plan to Plan Transfers. A participant may elect to make, and each Investment Sponsor shall accept, subject to the rules of such Investment Sponsor, contributions that are transferred directly from any other eligible Government Deferred Compensation Plan under Section 457(b) of the Code associated with a former employer of the Participant. Notwithstanding the foregoing, transfers shall be permitted only to the extent (i) the transferor plan provides for such transfers, (ii) the Participant will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer, and (iii) the Participant gives written direction to the Employer or its designee in a satisfactory form

to make such transfer. The Plan Administrator may require documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code and Section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible government plan as defined in Section 1.457-2(f) of the Income Tax Regulations.

The amount so transferred shall be credited to the Participant's Account Balance and 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 the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.1. Such funds and the accumulation generated from them shall be fully vested and nonforfeitable at all times.

3.11 Acceptance of Rollover Contributions. On or after January 1, 2002, when a Participant is entitled to receive and elects to receive, a distribution from another eligible deferred compensation plan maintained by a State, political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State, or from a plan qualified under Section 401(a) or 403(b) of the Code, that is in each case an eligible rollover distribution under the Code, each Investment Sponsor shall, subject to the rules of such Investment Sponsor, accept such amount under this Plan, provided that the rollover to this Plan is made either directly from another such plan or by the Participant within sixty (60) days of the receipt of the distribution. Any such amounts rolled over from any such plan shall be made in the form of cash only and accounted for separately upon acceptance as a rollover under this Plan. Such funds and the accumulation generated from them shall be fully vested and nonforfeitable at all times and shall not be considered when calculating the maximum deferral limit under Section 3.1.

3.12 Qualified Military Service. Notwithstanding any provisions of this Plan to the contrary, contribution benefits, and service credits with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. An Eligible Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on leave of absence for qualified military service under Code Section 414(u) may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Eligible Employee could have elected during the period if the Employee's employment with the Employer 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 interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to (3) times the period of the interruption or leave).

**ARTICLE IV
INVESTMENT OF CONTRIBUTIONS**

- 4.01 Direction of Investments.** A Participant may request that amounts contributed to the Plan on his or her behalf be allocated among the available Investment Options established under the Plan. The Investment Options shall include the Investment Options made available by Fidelity Investments and TIAA-CREF and may, in addition, include Investment Options made available by additional approved Investment Sponsors. The initial allocation request may be made at the time of enrollment. Once made, an investment allocation request shall remain in effect for all subsequent contributions until changed by the Participant. The initial allocation request may be at the time of enrollment. Once made, an investment allocation request shall remain in effect for all subsequent contributions until changed by the Participant.
- 4.02 Investment Changes.** A Participant may change any investment allocation made by such Participant hereunder, or transfer existing accumulations to another Investment Option available under the Plan, by submitting a written request to the Investment Sponsor or its designee on such form as may be required by the Investment Sponsor Employer or designee. Any such changes shall become effective as soon as administratively feasible after the Investment Sponsor or its designee receives a satisfactory written request.
- 4.03 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.
- 4.04 Institutional Fee Billing – Investment Advisor Fees.** To the extent permitted by law and the provisions of the Funding Vehicles, 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 Account. Such payment shall be made directly to the Investment Provider. 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.
- 4.05 Current and Former Vendors.** 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 457(b) of the Code or other requirements of applicable law.

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 3.1, the Employer shall keep the Vendor informed of the name and contract information of the Administrator in order to coordinate information necessary to satisfy section 457(b) of the Code or other requirements of applicable law.

ARTICLE V. BENEFIT DISTRIBUTIONS

5.01 Eligibility for Payment.

- (a) Distribution of benefits from the Plan shall be made no earlier than: (i) Severance from Employment, (ii) the calendar year in which the Participant attains age 70-1/2, (iii) in the event of an approved financial hardship due to an Unforeseeable Emergency, as defined below, or (iv) if elected in the Adoption Agreement, to the extent permitted under Section 5.02 below.
- (b) Notwithstanding the foregoing, if elected in the Adoption Agreement, with respect to amounts payable to a Participant who is classified as an independent contractor, as determined, no amount will be paid to the Participant before a date at least twelve (12) months after the day on which the contract expires under which services are performed for the Employer (or, in the case of more than one contract, all such contracts expire); and no amount payable to the Participant on that date will be paid to the Participant if, after expiration of the contract (or contracts) and before that date, the Participant performs services for the Employer as an independent contractor or an Employee.
- (c) “Severance from Employment” means the termination of a Participant’s employment with the Employer for any reason including the Participant’s death or retirement.
 - (1) Effective for distribution on or after January 1, 2002, a Participant will be deemed to have incurred a Severance from Employment without regard to whether such Participant continues in the same job for a different employer following liquidation, merger, consolidation, or other similar transaction.
 - (2) “Severance from Employment” shall not include the situation described in Section 5.01 (c) below under which a Participant is treated as having severed from employment while performing military service to enable him or her to take a distribution.
 - (3) “Severance from Employment” for a Participant classified as an independent contractor shall mean the cessation of services upon expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the Employer provided the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration will not constitute a good-faith and

complete termination of the contractual relationship if the Employer anticipates a renewal of the contractual relationship or the independent contractor becoming an Employee. For this purpose, an Employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to contract again for the services provided under the expired contract, and neither the Employer nor the Independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an Employer is considered to intend to contract again for the services provided under an expired contract if the Employer's doing so is conditioned only upon incurring a need for the services, the availability of funds, or both.

- (d) Participant becomes disabled.

5.02 Distribution Due to Unforeseeable Emergency.

- (a) A participant may request a distribution due to an Unforeseeable Emergency by submitting a written request to the Employer or its designee, accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency. The Employer or designee shall have the authority to require such evidence, as it deems necessary to determine if a distribution shall be warranted. The distribution shall be limited to an amount sufficient to meet the Unforeseeable Emergency.
- (b) "Unforeseeable Emergency" means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant resulting from a sudden and unexpected illness or accident of the Participant, the Participant's spouse, or of a dependent of the Participant, as defined in Section 152(a) of the Code (for taxable years beginning on or after January 1, 2005, without regard to Section 152(b)(1), (b)(2), and (d)(1)(B) of the Code), loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:
 - (1) Through reimbursement or compensation by insurance or otherwise;
 - (2) By liquidation of the Participant's assets, to the extent that liquidation of such assets would not itself cause severe financial hardship; or
 - (3) By cessation of deferrals under the Plan.

The need to send a Participant's child to college or the desire to purchase a home shall not be considered to be an Unforeseeable Emergency.

5.03 In-Service Distribution. A Participant may elect to receive an in-service distribution of all or part of the Participant's benefit under the Plan if the following requirements are met:

- (a) the total amount of the Participant's benefit under the Plan does not exceed \$5,000 (or the dollar limit under Section 411(a)(11) of the Code, if greater),
- (b) the Participant has not previously received an in-service distribution of the Participant's benefit under the Plan, and
- (c) no amounts have been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

5.04 In-Service Distributions From Rollover Account.

- (a) 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.
- (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.

5.05 Small Account Balances. If the total amount payable to a Participant who has a Severance from Employment does not exceed \$1,000, then without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary in the form of a lump-sum payment. The determination of whether a Participant's account balance exceeds \$1,000 shall be determined by including rollover contributions (and earnings attributable thereto) within the meaning of Section 457(e)(16) of the Code.

5.06 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 distributions 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).

5.07 Special Considerations Relating to Military Service

- (a) A Participant who dies or becomes disabled while performing qualified military service will be treated as if he had resumed employment with the Employer on the

date preceding death or Disability and terminated employment on the actual date of death or Disability.

- (b) A Participant shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Section 3401 (h)(2)(A) of the Code, thereby enabling a distribution, but if the Participant elects such a distribution, the Participant may not make any Elective Deferrals during the six-month period beginning on the date of distribution.
- (c) In accordance with Section 401(a)(37) of the Code, any additional benefits (other than benefit accruals relating to the period of qualified military service) made available to the Beneficiary of a Participant who dies while in active service of the Employer shall be made available to the Beneficiary of an active Employee who is on leave and dies while performing qualified military service (as defined in Section 414(u) of the Code).

5.08 Commencement of Distributions

- (a) For distributions on or after January 1, 2002, a Participant may commence distribution of benefits at any time following Severance from Employment by submitting a request to the Investment Sponsor.
- (b) Notwithstanding the provisions of Section 5.08 (a) above, in no event shall distribution of benefits commence with respect to any Participant later than April 1st of the calendar year following the calendar year in which the Participant attains age 70 ½, or if later, the April 1st of the calendar year following the calendar year in which the Participant separates from service.

ARTICLE VI FORM OF PAYMENT

6.01 General Rule. This Article VI is intended to comply with Code Section 457(d) and the regulations issued thereunder. To the extent that there is any conflict between the provisions of Code Section 457(d) and the regulations issued thereunder and any other provisions in this Plan, the provisions of Code Section 457(d) and the regulations issued thereunder will control.

6.02 Form of Payment. The forms of benefit payments available to the Participant shall include:

- (a) Lump Sum. A single lump sum payment of all or a part of the Account Balance credited to a Participant's account.

- (b) Single Life Annuity. An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
- (c) Joint Life Annuity. An annuity payable in equal installments for the joint lives of the Participant and his or her Beneficiary.
- (d) Fixed Period Payments. Payments for a fixed period subject to the terms or limitations of the applicable Investment Sponsor or Investment Options.
- (e) Such other annuity and withdrawal options as provided under the Investment Options available under this Plan.

All forms of payments shall be subject to the limitations of the applicable Investment Sponsor and its Investment Options.

6.03 Limits on Income Options. Distributions, if not made in a single lump sum, shall be made over a period that does not exceed:

- (a) The life of the Participant;
- (b) The lives of the Participant and his or her designated Beneficiary;
- (c) A period of certain not extending beyond the life expectancy of the Participant; or
- (d) A period certain not exceeding beyond the life expectancies of the Participant and his or her designated Beneficiary.

6.04 Minimum Amounts to be Distributed

- (a) If a Participant's retirement payments are to be distributed in a form other than a single lump sum, the amount to be distributed each year, and the times those amounts are paid, shall satisfy the requirements specified in Section 401(a)(9) of the Code and the regulations issued thereunder.
- (b) Notwithstanding the foregoing Section 6.04(a), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(h) of the Code ("2009 RMD"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least ten (10) years ("Extended 2009 RMDs"), will receive those

distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect not to receive the distributions described in this Section 6.03(b).

- 6.05 Election.** Subject to the rules of the Investment Sponsor, a Participant or Beneficiary may elect the form of distribution of his or her benefits and may revoke that election, with or without a new election, at any time at least thirty (30) days before his or her benefit begin, or such other time as permitted by the Employer or its designee, by notifying the Employer or its designee in writing of his or her election. Unless otherwise set forth in the Adoption Agreement, all distributions of benefits paid pursuant to the terms of this Plan shall be made directly by the applicable Investment Sponsor to the Participant or Beneficiary.
- 6.06 Failure to Make Election.** If a Participant fails to elect a form of payment in a timely manner, benefits shall be paid in a single lump sum.

ARTICLE VII DEATH BENEFITS

- 7.01 Forms of Payment.** Distribution to Beneficiaries will be made in a single lump sum to the designated Beneficiary as soon as administratively feasible following the death of the Participant unless the Beneficiary selects an alternative distribution option. These alternative distribution options may include:
- (a) **Single Life Annuity.** An annuity payable in equal installments for the life of the Beneficiary that terminates upon the Beneficiary's death.
 - (b) **Joint Life Annuity.** An annuity payable in equal installments for the joint lives of the Beneficiary and his or her beneficiary.
 - (c) **Fixed Period Payments.** Payments for a fixed period subject to the terms or limitations of the applicable Investment Sponsor or Investment Options.
 - (d) Such other annuity and withdrawal options provided under the Investment Options.

All forms of payment shall be subject to the limitations of the applicable Investment Sponsor and its Investment Options.

7.02 Death Distribution Requirements. Notwithstanding any other provisions in this section, any distribution option selected by a Beneficiary must comply with the following distribution provisions:

- (a) **Death After Distributions Begin.** If the Participant dies after distribution of his or her interest has commenced, the remaining portion of such interest shall continue to be distributed at least as rapidly as the method of distribution being used prior to the Participant's death.
- (b) **Death Before Distributions Begin.** If the Participant dies before distribution of his or her interest has commenced, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death, except to the extent that the recipient of such benefits elects to receive distributions in accordance with (1) or (2) below:
 - (1) If any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made in substantially equal annual payments over the life of the designated Beneficiary, or over a period certain not extending beyond the life expectancy of the designated Beneficiary, and commencing no later than the December 31 of the calendar year immediately following the calendar year in which the Participant died;
 - (2) If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (1) above shall be the December 31 of the calendar year in which the Participant would have attained age 70-1/2. If the Participant has not made an election pursuant to this Section 7.02 by the time of his or her death, the Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (a) the December 31 of the calendar year in which distributions would be required to begin under this Section 7.02 or (b) the December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (c) For purposes of Section 7.02 if the surviving spouse dies after the Participant, but before payments to such spouse begins, the provisions of Section 7.01 with the exception of paragraph (2) shall be applied as if the surviving spouse were the Participant.

- (d) For purposes of this Section 7.02, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.
- (e) For the purpose of this Section 7.02, distribution of a Participant's interest is considered to begin on the Participant's required date (or, if applicable, the date distribution in the form of an annuity irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

7.03 Death of Beneficiary Before Death Benefits Commence.

In the event that a Beneficiary dies after becoming entitled to receive benefits under this Beneficiary shall be paid to the estate of the Beneficiary in a single lump sum payment as soon as administratively feasible following the Beneficiary's death. No other distribution elections shall be permitted.

**ARTICLE VIII
TRANSFERS AND ROLLOVERS**

8.01 Transfers from the Plan

- (a) If elected in the Adoption Agreement and to the extent permitted by law, any Participant or Beneficiary can elect to have all or any portion of their Account Balance transferred to another Eligible Governmental Deferred Compensation Plan within the meaning of Section 457(b) of the Code and section 1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this Section 8.01 for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other Eligible Governmental Deferred Compensation Plan. Further, a transfer is permitted under this Section 8.01 only if (i) the plan receiving such amounts provides for acceptance of such transfers, (ii) the Participant or Beneficiary will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer, and (iii) the Participant or Beneficiary gives written direction to the Employer or its designee in a satisfactory form to make such transfer.
- (b) Upon the transfer of assets under this Section 8.01, 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 8.01 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this

Section 8.01, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer.

8.02 Permissive Service Credit Transfers

Any Participant who participates in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant may elect to have any portion of the Participant's Account Balance transferred from this Plan to the defined benefit governmental plan. A transfer under this Section 8.01 only if the transfer is either for (i) the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan; or (ii) the repayment of contributions and earnings related to a previous forfeiture of service credit under the defined benefit governmental plan.

8.03 Direct Rollovers. Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's election under this provision, a "distributee" may elect, at the time and in the manner prescribed by the Employer, to have all or any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

For the purpose of implementing the requirements of this provision, certain terms contained in the Section 8.03 shall be defined as follows:

(a) Eligible Rollover Distribution

An eligible rollover distribution is any distribution of all or any portion of the Account Balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and any other exception permitted by law of the Internal Revenue Service. Any amount that is distributed on account of hardship shall not be an eligible rollover distribution (and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.) For 2009 only, the following shall also be treated as an eligible rollover distribution: 2009 RMDs and Extended 2009 RMDs as define.

(b) Eligible Rollover Distribution to a Roth IRA

Effective January 1, 2008, a Participant or any designated Beneficiary of the Participant may elect to roll over amounts in accordance with Section 408 A (e) of the

Code directly to a Roth IRA, provided that for any taxable year prior to January 1, 2010, the provisions of Section 408A(c)(3)(B) of the Code are satisfied.

(c) Eligible Retirement Plan

An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an individual retirement account described in Section 408 A(b) of the Code which has been designated at the time of establishment as a Roth IRA, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and Eligible Plan under Section 457(b) of the Code which is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State which agrees to separately account for amounts transferred into such plan from this Plan. 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 alternative payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

(d) Distributee

A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Effective beginning January 1, 2010, consistent with the provisions of Code Section 402(c)(11), in the case of a distribution to a designated Beneficiary for the purposes of Code Section 401(a)(9) 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 alternative payee under a domestic relations order, a direct rollover is payable only to an individual retirement account, Roth IRA 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).

**ARTICLE IX
LOANS**

9.01 Availability. A Participant who is an Employee may apply for and receive a loan from his or her Account Balance as provided in this Section 9.01. All loans must be

subject to the terms of the Investment Options available under the Plan from which they are taken and subject to such rules and procedures as the Plan Administrator may adopt. Any such loan must be available to all Participants on a reasonably equivalent basis and may not be for an amount less than \$1,000. All applications for a loan shall be made to the Investment Sponsor sponsoring the Investment Option from which the loan is taken.

- 9.02 Maximum Loan Amount.** No loan to a Participant hereunder may exceed the lesser of: \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to 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 Investment Sponsor (not taking into account any payments made during such one-year period), or
- (a) 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 Investment Sponsor).

For purposes of this Section 9.02, any loan from any other plan maintained by a participating 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 paragraph shall not be applied so as to allow the amount of a loan under this Section 9.02 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

- 9.03 Terms of Loan.** The terms of the loan shall:

- (a) Require level amortization with payments not less frequently than quarterly throughout the repayment period.
- (b) Require that the loan be repaid within five (5) years unless the Participant certifies in writing to the Plan Administrator that the loan is to be used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as principal residence of the Participant, in which case the loan may be repaid over a period not greater than ten (10) years.
- (c) Provide for interest rate to be determined under the terms of the Investment Option or the loan procedures of the Investment Sponsor.

- 9.04 Extended Loan Terms for Leaves of Absence due to Military Service.** The Plan may suspend the obligation to repay a loan for any period during which a Participant is performing military service in accordance with Section 414(u)(4) of the Code, even if the service is not qualified military service as defined under the Uniformed Services Employment and Reemployment Rights Act of 1994. Loan repayments must resume

upon the completion of the military service, and the loan must be repaid in full (including interest that accrues during the period of military service) by amortization in substantially level payments over a period that ends not later than five (5) years after the origination date of the loan (unless the loan is for the purchase of a principal residence) plus the period of military service.

- 9.05 Loan Default.** In the event that a Participant fails to make a loan payment under this Section 9 by the end of the calendar quarter following the calendar quarter in which the loan payment was due, a default on the loan shall occur. Loan defaults shall be administered in accordance with specific rules documented under the Investment Options and the Code.

ARTICLE X BENEFICIARY INFORMATION

- 10.01 Designation.** A participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time prior to commencement of benefits, in writing, in a form approved by the Employer or the Investment Sponsor. Such Beneficiary designations, amendments, or revocations will be maintained by the Investment Sponsor and shall be effective upon satisfactory receipt by the Investment Sponsor.
- 10.02 Failure to Designate a Beneficiary.** Benefits shall be paid to the Participant's estate, if, prior to the date a Participant commences to receive a payment of benefits under the Plan, the Participant has not designated a Beneficiary or no designated Beneficiary survives the Participant and benefits are payable following the Participant's death.

ARTICLE XI PLAN ADMINISTRATION

- 11.01 Plan Administration.** The Employer shall be responsible for appointing a Plan Administrator to administer the Plan. The Plan Administrator may authorize a committee comprised (to the extent possible) of not less than three persons, to act collectively with regard to administration of the Plan. The Plan Administrator shall have sole discretionary responsibility for the interpretation of the Plan, enrolling Participants in the Plan, sending contributions on behalf of each Participant to the applicable Investment Sponsor, and for performing other duties required for the operation of the Plan. Any action taken on any matter within the discretion of the Plan Administrator shall be made in its sole and absolute discretion based on this Plan document and the Adoption Agreement, and shall

be final, conclusive, and binding on all parties. In order to discharge its duties hereunder, the Plan Administrator shall have the power and authority to delegate ministerial duties and to employ such outside professionals as may be required for prudent administration of the Plan. The Plan Administrator shall also have authority to enter into agreements on behalf of the Employer necessary to implement this Plan.

- 11.02 Accounts and Expenses.** The Employer shall establish and maintain accounts on behalf of each Participant. Such Participant's accounts shall be valued in accordance with the rules of the Investment Option, in which the accounts are invested. Each Participant shall receive a written notice of his or her Account Balance following such valuation or valuations, provided that such notice shall not be required to be given more than one time per calendar quarter. Each Participant's Account Balance shall reflect the aggregate of his or her aggregate Elective Deferrals, Employer non-elective contributions, Employer matching contributions, and transfers and rollovers, if any, and shall also reflect investment experience credited to such Account Balance and expense charges applied to, and distributions made from, such Account Balance.
- 11.03 Mistaken Contribution.** 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 in good order of a proper request approved by the Plan 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 Participant or, to the extent required or permitted by the Plan Administrator, to the Employer.
- 11.04 Domestic Relations Orders.** If a judgment, decree or order (including approval of a property settlement agreement) that relates to the provisions 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 provided such domestic relations order is found to be qualified under the provisions of Section 414(p) of the Code. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Investment Sponsor shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. The Plan Administrator shall establish such procedures, in the absence of any procedures established by the Investment Sponsor.
- 11.05 Location of Participant or Beneficiary Unknown.** The Plan Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a

Participant's Beneficiary entitled to benefits under the Plan. For this purpose a reasonable attempt means (a) the mailing by certified mail of notice to the last known address shown on the Employer's records, (b) notification sent to the Social Security Administration under their program to identify payees under retirement plans, or (c) employing the services of a locator service. If after one or more of these methods is employed and the Participant or Beneficiary has not responded within six (6) months, and no claim has been made for such benefits, the benefits due such Participant or Beneficiary shall continue to be held in the Investment Option until such time as the Investment Sponsor deems it appropriate to apply State abandoned property law to distribute the benefits from the Plan or to forfeit the benefit, in accordance with the terms of the Investment Option.

11.06 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 Plan Administrator or the Investment Sponsor, the Investment Sponsor shall make the distribution of benefits to the Participant's or Beneficiary guardian, conservator, custodian, attorney-in-fact, or to any other legal representative adjudged to be appropriate upon receiving satisfactory evidence of such status or a court order to that effect.

ARTICLE XII AMENDMENT OR TERMINATION OF PLAN

12.01 Amendment of Plan. While it is expected that this Plan will continually indefinitely the Employer reserves the right at any time to amend or otherwise modify the Plan without any liability for such action. No amendment shall increase the duties or responsibilities of any Investment Sponsor without its prior consent thereto in writing.

12.02 Termination of Plan. The Employer shall have the right at any time to terminate the Plan. No termination shall affect the funds already deferred under the Plan. In order for the Plan to be considered terminated, amounts deferred under the Plan must be distributed to all Plan Participants and Beneficiaries as soon as administratively practicable after termination of the Plan, in accordance with the terms of the Investment Option.

ARTICLE XIII
MISCELLANEOUS

- 13.01 Plan Non-Contractual.** Nothing contained in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Employer, and nothing contained in this Plan will be construed as a commitment on the part of the Employer to continue the employment or the rate of compensation of any person for any period, and all Employees of the Employer will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 13.02 Claims of Other Persons.** The provisions of the Plan will in no event be construed as giving any Participants or any other person, firm, corporation or other legal entity, any legal or equitable right against the Employer, its officers, employees, directors or trustees, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 13.03 Assignments.** No benefits or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily, other than as provided under Section 401(a)(13) of the Code. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to distributions made on or after January 1, 2002, such order is determined to be a qualified domestic relations order, as defined in Section 414(p) of the Code.
- 13.04 Contracts.** The terms of each Investment Option offered to Participants as an investment option hereunder, the terms of a trust in which an investment option may be held, and any contract issued on behalf of a Participant or certificate issued to a Participant, are a part of the Plan as if fully set forth in the Plan document and the provisions of which are hereby incorporated by reference into the Plan. In the case where there is any inconsistency or ambiguity between the terms of the Plan and those of any contract, certificate or trust, if any, funding the Plan, the terms of the contract, certificate or trust will control to the extent not inconsistent with the provisions of Section 457(b) of the Code and any applicable regulations issued thereunder.
- 13.05 Pronouns.** Whenever used herein, the masculine pronoun is deemed to include the feminine. The singular form, whenever used herein, shall mean or include the plural form where applicable, and vice versa.
- 13.06 Representations.** The Employer does not represent or guarantee that any particular Federal or State income, payroll, personal property or other tax consequences will result from participation in this Plan. A Participant should consult with professional tax

advisors to determine the tax consequences of his or her participation. Furthermore, the Employer does not represent or guarantee investment returns with respect to any Investment Option and shall not be required to restore any loss which may result from such investment or lack of investment.

13.07 Severability. If a court of competent jurisdiction holds any provisions of this Plan to be invalid or unenforceable, the remaining provisions of this Plan shall continue to be fully effective.

13.08 Applicable Law. This Plan shall be construed in accordance with applicable Federal law and, to the extent otherwise applicable, the laws of the State in which the Employer is located.

IN WITNESS WHEREOF, this Plan Document has been executed this 22nd day of October, 2010.

Employer: UNIVERSITY OF KENTUCKY

BY Larry L. Owsley

Printed Name: LARRY L. OWSLEY

Title: VICE PRESIDENT FOR BUSINESS AFFAIRS

RECOMMENDED
By: [Signature]
VICE PRESIDENT FOR HUMAN RESOURCES

DATE: 11-19-2010

APPROVED AS TO FORM

[Signature]
ASSOC. UNIVERSITY COUNSEL 27