

**DEFERRED COMPENSATION PLAN**  
**for**  
**TAX EXEMPT ORGANIZATIONS**

Restatement Effective: March 1, 2010

This Plan is an important legal document. You will want to consult with your lawyer or other tax advisor on whether or not it accommodates your particular situation, and on its tax and legal implications. Diversified Investment Advisors does not and cannot provide legal or tax advice. The Plan document is intended purely as a model document for use by your attorney in preparing a Section 457(b) eligible deferred compensation plan sponsored by a tax exempt organization. This is not the appropriate document to be used for a Section 457(b) plan sponsored by a governmental organization.

Additionally, the Plan document has been revised to reflect (1) the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), (2) the Job Creation and Worker Assistance Act ("JCWAA"), (3) final IRS interpretative guidance under EGTRRA regarding this type of plan, (4) the Pension Protection Act of 2006 ("PPA"), (5) the Heroes Earnings and Assistance Relief Tax Act of 2008 ("HEART Act"), (6) final Treasury Regulations under Code section 415 issued on April 5, 2007 and (7) other miscellaneous administrative and clarifying changes. Future guidance may affect the provision and/or operation of this type of plan. Accordingly, such guidance, if and when issued, may necessitate an update or further revision to this plan document in order to ensure compliance with the Code and applicable Treasury Regulations.

## Table of Contents

	<u>Page</u>
ARTICLE I DEFINITIONS.....	1
Section 1.1 Account.....	1
Section 1.2 Automatic Distribution Date .....	1
Section 1.3 Beneficiary .....	1
Section 1.4 Catch-Up Dollar Limitation .....	1
Section 1.5 Code .....	1
Section 1.6 Deferred Compensation.....	1
Section 1.7 Dollar Limitation .....	2
Section 1.8 Eligible Section 457(b) Plan .....	2
Section 1.9 Employee.....	2
Section 1.10 Employer.....	2
Section 1.11 Enrollment Agreement .....	2
Section 1.12 ERISA .....	2
Section 1.13 Investment Agent.....	2
Section 1.14 Investment Arrangement.....	2
Section 1.15 Includible Compensation.....	3
Section 1.16 Investment Fund .....	3
Section 1.17 Normal Retirement Age .....	3
Section 1.18 Participant .....	3
Section 1.19 Plan.....	4
Section 1.20 Plan Year .....	4
Section 1.21 Plan Administrator.....	4
Section 1.22 Severance Event.....	4
Section 1.23 Total Deferred Compensation.....	4
Section 1.24 Treasury Regulations .....	5
Section 1.25 Unforeseeable Emergency .....	5
ARTICLE II ENROLLMENT AND PARTICIPATION.....	6
Section 2.1 Eligibility .....	6
Section 2.2 Enrollment Agreement .....	6
ARTICLE III PARTICIPANT DEFERRALS .....	7
Section 3.1 Maximum Deferral.....	7
Section 3.2 Limited Catch-Up Deferrals.....	7
Section 3.3 Special Rules .....	8
Section 3.4 Deferrals after Severance from Employment, Including Sick, Vacation, and Back Pay .....	8
Section 3.5 USERRA .....	9
Section 3.6 Employer Participation .....	9
Section 3.7 Remittances .....	9
Section 3.8 Excess Deferrals.....	9
ARTICLE IV PARTICIPANTS' ACCOUNTS .....	10
Section 4.1 Participants' Accounts.....	10
Section 4.2 Account Statements.....	10
Section 4.3 Finality of Determinations .....	10
Section 4.4 Procedures.....	10

## Table of Contents

	<u>Page</u>
ARTICLE V INVESTMENT OF PLAN ASSETS .....	11
Section 5.1 Unsecured Obligations.....	11
Section 5.2 Right to Establish Rabbi Trust.....	11
Section 5.3 Investment Funds .....	11
Section 5.4 Investment Choice .....	11
Section 5.5 Rules and Regulations .....	12
Section 5.6 Disclaimer .....	12
ARTICLE VI DISTRIBUTIONS .....	13
Section 6.1 Commencement Date for Distributions .....	13
Section 6.2 Method of Distribution .....	14
Section 6.3 Distributions to a Beneficiary.....	15
Section 6.4 General Provisions.....	15
Section 6.5 Unforeseeable Emergency Distributions.....	16
Section 6.6 HEART Act Withdrawals .....	16
ARTICLE VII PLAN-TO-PLAN TRANSFERS .....	17
Section 7.1 Transfers to the Plan.....	17
Section 7.2 Transfers from the Plan .....	17
Section 7.3 Administrative Rules .....	18
ARTICLE VIII PLAN ADMINISTRATION .....	19
Section 8.1 Plan Administrator.....	19
Section 8.2 Power and Authority.....	19
Section 8.3 Presumption of Fairness .....	19
Section 8.4 Delegation of Duties.....	19
Section 8.5 Other Parties .....	19
Section 8.6 Expenses .....	20
Section 8.7 Claims Procedures.....	20
Section 8.8 Electronic Administration .....	22
ARTICLE IX TERMINATION OR AMENDMENT OF PLAN.....	23
Section 9.1 Plan Termination.....	23
Section 9.2 Plan Amendment .....	23
ARTICLE X NON-ASSIGNABILITY AND QDRO's .....	24
Section 10.1 Non-Assignability .....	24
Section 10.2 Qualified Domestic Relations Orders .....	24
ARTICLE XI INTERPRETATION.....	26
Section 11.1 Construction.....	26
Section 11.2 Eligible 457(b) Plan.....	26
Section 11.3 Word Usage .....	26
Section 11.4 Headings.....	26
Section 11.5 Entire Agreement.....	26
Section 11.6 Employment.....	26
ARTICLE XII EFFECTIVE DATE.....	27
Section 12.1 Effective Date of Plan .....	27

**PEPPERDINE UNIVERSITY**

**DEFERRED COMPENSATION PLAN**

**PREAMBLE**

Pursuant to the laws of the state in which the Employer is organized, the Employer hereby adopts and establishes this Deferred Compensation Plan document effective as of the date provided in Article XII hereof.

The primary purpose of this Plan is to provide a program of deferred compensation in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended, that provides benefits to its present and future Employees who meet the eligibility and participation requirements set forth herein and their Beneficiaries.

This Plan is intended to qualify as an unfunded eligible deferred compensation plan maintained by a tax exempt organization within the meaning of Code section 457(b). Unless the Plan is a church plan within the meaning of Code section 414(e) which has not made the election described in Code section 410(d), the Plan shall be maintained for the purpose of providing deferred compensation to a select group of management or highly compensated employees.

## ARTICLE I DEFINITIONS

Whenever the following terms are used in this instrument, except where the context clearly indicates otherwise, such terms shall have the meaning as hereinafter set forth in the Sections of this Article I:

### **Section 1.1 Account**

"Account" means the individual bookkeeping account maintained hereunder to record the interest of a Participant in the Plan. The balance of such Account shall represent a Participant's Total Deferred Compensation under the Plan. A Participant's Account shall be divided into individual sub-accounts (the "Sub-Accounts") reflecting the portion of the Participant's Account that is deemed allocated to an Investment Fund maintained hereunder and the earnings and losses attributable thereto.

### **Section 1.2 Automatic Distribution Date**

"Automatic Distribution Date" means April 1 of the calendar year after the close of the Plan Year in which the Participant has a Severance Event.

### **Section 1.3 Beneficiary**

"Beneficiary" means, subject to Section 10.2 of this Plan, the person or persons designated by the Participant to receive distributions hereunder in the event of the Participant's death prior to receiving distribution of his or her entire interest under the Plan. In the absence of a written designation of a Beneficiary, the Beneficiary shall be the surviving spouse of the Participant, and if there is no surviving spouse, then the Participant's estate. A Beneficiary shall have no rights hereunder during the Participant's lifetime except as otherwise provided by law.

### **Section 1.4 Catch-Up Dollar Limitation**

"Catch-Up Dollar Limitation" means twice the Dollar Limitation.

### **Section 1.5 Code**

"Code" means the Internal Revenue Code of 1986, as amended.

### **Section 1.6 Deferred Compensation**

"Deferred Compensation" means the amount of Includible Compensation not yet earned that will be deferred by the mutual agreement of the Participant and the Employer.

## **Section 1.7 Dollar Limitation**

"Dollar Limitation" means the applicable dollar amount within the meaning of Code sections 457(b)(2)(A) and 457(e)(15)(A), as adjusted for the cost-of-living in accordance with Code section 457(e)(15)(B).

## **Section 1.8 Eligible Section 457(b) Plan**

"Eligible Section 457(b) Plan" means an eligible deferred compensation plan within the meaning of Code section 457(b), other than this Plan.

## **Section 1.9 Employee**

"Employee" means any individual common-law employee or independent contractor who receives any type of compensation from the Employer for services rendered to the Employer.

## **Section 1.10 Employer**

"Employer" means Pepperdine University which is the employer which has executed this Plan document for the purpose of adopting and establishing this Plan. The Employer is a tax exempt organization described in Code section 457(e)(1)(B).

## **Section 1.11 Enrollment Agreement**

"Enrollment Agreement" means the written agreement (in the form promulgated by the Plan Administrator from time to time) in which the Employee elects to participate in the Plan, and approved by the Plan Administrator on behalf of the Employer.

## **Section 1.12 ERISA**

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

## **Section 1.13 Investment Agent**

"Investment Agent" means any person or entity, including without limitation a mutual fund investment company, insurance company, bank or trust company that offers an Investment Fund through an Investment Arrangement under the Plan.

## **Section 1.14 Investment Arrangement**

"Investment Arrangement" means any grantor trust agreement, custodial account agreement or annuity contract entered into by the Employer or its designee pursuant to Article V and pursuant to which Investment Funds are offered under the Plan. Mutual

fund investment company shares owned directly by the Employer with respect to this Plan shall be deemed held through an Investment Arrangement.

### **Section 1.15 Includible Compensation**

"Includible Compensation" means base annual wages, before reduction for employee benefits and ministerial housing allowance, paid or payable by Pepperdine University for services performed in the fiscal year prior to the current plan year which are includable in gross income for Federal income tax purposes, including foreign earned income (as defined in Code Section 911(b)), whether or not excludable from gross income under Code Section 11, excluding employee expense reimbursements, all fringe benefit allowances which are includable in gross income, overtime pay, shift differential pay, special compensation (including, but not limited to, overload payments, workshop payments, directed studies payments, special payments). In all cases, Compensation shall include amounts deferred under this Plan and any reduction pursuant to any salary reduction agreement with the Employer with regard to any plan established under Code Section 457(b), 403(b), 401(k), 125 or 132(f). The amount of Includible Compensation is determined without regard to any community property laws.

### **Section 1.16 Investment Fund**

"Investment Fund" means any separate investment option or vehicle offered under the Plan through an Investment Arrangement, in which all or a portion of the Plan's assets may be separately invested and to which all or a portion of a Participant's Account may be deemed allocated solely for the purpose of measuring the earnings, gains, losses and expenses accrued or incurred by such Account.

### **Section 1.17 Normal Retirement Age**

"Normal Retirement Age" means age 70-1/2 or, if earlier, any age designated by a Participant in a written instrument delivered to the Plan Administrator, provided that such age begins no earlier than the earlier of age 65 or the age at which such Participant has the right to retire under the Employer's basic defined benefit pension plan covering the Participant (or the Employer's money purchase pension plan in which the Participant also participates if the Participant is not eligible to participate in the Employer's basic defined benefit pension plan) without the Employer's consent and to receive immediate retirement benefits without actuarial or similar reduction because of retirement before some later age specified in such basic pension plan and is not later than age 70-1/2.

### **Section 1.18 Participant**

"Participant" means any Employee who is in an eligible classification, who has elected to participate in the Plan by executing an Enrollment Agreement pursuant to the requirements of Section 2.2 of the Plan, and for whom an Account is maintained under the Plan. Eligible classification shall include: Senior administrators, including the

President, the Chancellor, the Provost, the University's Vice Presidents, the Dean of each of the University's schools, employees holding the rank of tenured full professor, and any member of the faculty, librarians or staff who earns at least \$110,000 per year and is in the top 10% of employees ranked by compensation at the end of the prior fiscal year.

#### **Section 1.19 Plan**

"Plan" means this Deferred Compensation Plan, including any amendments hereto.

#### **Section 1.20 Plan Year**

"Plan Year" means the calendar year.

#### **Section 1.21 Plan Administrator**

"Plan Administrator" means the Employer or the person(s) or entity appointed by the Employer to administer the Plan in accordance with Article X. In no event shall Diversified Investment Advisors or an affiliate thereof be the Plan Administrator.

#### **Section 1.22 Severance Event**

"Severance Event" means a severance of the Participant's employment with the Employer within the meaning of Code section 457(d)(1)(A)(ii) and the applicable Treasury Regulations.

In the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

#### **Section 1.23 Total Deferred Compensation**

"Total Deferred Compensation" means, with respect to each Participant, the sum of all Deferred Compensation of such Participant, plus income or less loss thereon, including gains from the sale or other disposition of property, less (a) the amount of any distributions to the Participant or a Beneficiary of the Participant and (b) any fees or expenses charged against such Participant's Total Deferred Compensation.



## **Section 1.24 Treasury Regulations**

"Treasury Regulations" means proposed, final, or temporary Treasury Regulations issued by the Secretary of the Treasury or his or her delegate interpreting provisions of the Code that apply to the Plan.

## **Section 1.25 Unforeseeable Emergency**

"Unforeseeable Emergency" means a severe financial hardship to the Participant or a Beneficiary resulting from a sudden unexpected illness, accident, or disability of the Participant or Beneficiary, his or her spouse, or a dependent (as defined in Code section 152, without regard to Code section 152(b)(1), (b)(2), and (d)(1)(B)) of the Participant or Beneficiary, loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster), or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. Imminent foreclosure of or eviction from the participant's or beneficiary's primary residence, the need to pay for medical expenses (including non-refundable deductibles and the cost of prescription drug medication), and the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code section 152, without regard to Code section 152(b)(1), (b)(2), and (d)(1)(B)) may each constitute an Unforeseeable Emergency. However, the need to send a Participant's child to college or to purchase a new home shall not, of itself, be considered Unforeseeable Emergencies. The Plan Administrator shall determine in its sole discretion whether a hardship to a Participant constitutes an Unforeseeable Emergency.

## ARTICLE II ENROLLMENT AND PARTICIPATION

### Section 2.1 Eligibility

Any Employee who meets the requirements of Section 1.18 and whom the Employer declares eligible to participate in this Plan shall be a Participant in this Plan provided that (i) such Employee complies with the provisions of Section 2.2 hereof, and (ii) except in the event that this Plan is a church plan within the meaning of Code section 414(e) which has not made the election described in Code section 410(d), such Employee is determined by the Employer to be a member of a select group of management or highly compensated employees within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA.

### Section 2.2 Enrollment Agreement

(a) An eligible Employee may become a Participant by executing an Enrollment Agreement subject to the approval of the Plan Administrator. Compensation will be deferred for any calendar month only if an Enrollment Agreement providing for such deferral is executed by the Participant and approved by the Plan Administrator before the beginning of such month, or such other date as may be permitted under the Code.

(b) By signing an Enrollment Agreement, the Participant elects to participate in this Plan and consents to the deferral by the Employer of the amount specified in an Enrollment Agreement from the Participant's Includible Compensation for each pay period.

(c) Notwithstanding the foregoing, the Plan Administrator may establish, in its sole discretion, a minimum deferral amount uniformly applicable to all Participants.

(d) A Participant's deferral shall continue in effect until modified, disallowed or revoked in accordance with the terms of this Plan (and any procedures established by the Plan Administrator hereunder), or until the Participant's Severance Event.

## ARTICLE III PARTICIPANT DEFERRALS

### Section 3.1 Maximum Deferral

(a) Except as otherwise provided in Section 3.2 hereof, the maximum amount (the "Maximum Deferral") that a Participant may defer during any taxable year under this Plan shall not exceed the lesser of:

(1) the Dollar Limitation reduced by any applicable amount specified in Section 3.1(b) hereof; or

(2) the Participant's Includible Compensation for the calendar year reduced by the amount specified in Section 3.1(b) hereof.

(b) The amounts specified in this Section 3.1(b) of the Plan shall be equal to any amount excluded from the Participant's gross income under Code section 457(a) for the taxable year other than any such amount attributable to elective deferrals made under this Plan.

### Section 3.2 Limited Catch-Up Deferrals

For one or more of the Participant's last three taxable years ending before the taxable year in which the Participant attains Normal Retirement Age, the Maximum Deferral shall be the lesser of:

(a) the Catch-Up Dollar Limitation; or

(b) the underutilized limitation. The underutilized limitation determined under this Section 3.2(b) is equal to the sum of:

(1) An amount equal to (A) the Maximum Deferral determined under Section 3.1 for the current taxable year (determined without regard to Section 3.2 of the Plan) plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(2) An amount equal to (A) the aggregate limit referred to in Code section 457(b)(2) for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to Sections 3.2), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

Notwithstanding the above, in no event can the deferred amount be more than the Participant's Includible Compensation for the calendar year.

### **Section 3.3                      Special Rules**

For purposes of this Article III, the following rules shall apply:

(a)     **Participant Covered by More Than One Eligible Plan.** If the Participant is or has been a participant in one or more other Eligible Section 457(b) Plans, then this Plan and all such other plans shall be considered as one plan for purposes of applying the limitations under Article III. For this purpose, the Plan Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Plan Administrator receives from the Employer sufficient information concerning the Participant's participation in such other plan.

(b)     **Pre-Participation Years.** In applying Section 3.3, a year shall be taken into account only if (1) the Participant was eligible to participate in the Plan during all or a portion of the year and (2) Includible Compensation deferred, if any, under the Plan during the year was subject to the limitation described in Section 3.1 or any other plan ceiling required by Code section 457(b).

### **Section 3.4                      Deferrals after Severance from Employment, Including Sick, Vacation, and Back Pay**

A Participant who has not had a severance from employment may elect to defer accumulated sick pay, accumulated vacation pay, and back pay under this Plan if the requirements of section 457(b) are satisfied. These amounts may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee on the date the amounts would otherwise be paid or made available. Compensation that would otherwise be paid for a payroll period that begins before severance from employment is treated as an amount that would otherwise be paid or made available before an employee has a severance from employment. In addition, deferrals may be made for former employees with respect to compensation described in Treas. Reg. §1.415(c)-2(e)(3)(i) (relating to certain compensation paid by the later of 2 and 1/2 months after severance from employment or the end of the limitation year that includes the date of severance from employment). For this purpose, the calendar year is substituted for the limitation year. In addition, compensation described in Treas. Reg. §1.415(c)-2(e)(4), (g)(4), or (g)(7) (relating to compensation paid to participants who are permanently and totally disabled or compensation relating to qualified military service under section 414(u)), shall be treated as compensation described in Treas. Reg. §1.415(c)-2(e)(3)(i) to the extent permitted by Treasury Regulations.

### **Section 3.5 USERRA**

Notwithstanding any provision of this plan to the contrary, contributions and benefits under this Plan shall be in accordance with Code section 414(u), relating to veterans' reemployment rights under the Uniformed Services Employment and Reemployment Act of 1994 ("USERRA").

### **Section 3.6 Employer Participation**

Notwithstanding any other provisions of this Plan, the Employer may add to the amounts payable to any Participant under the Plan additional Deferred Compensation for services to be rendered by the Participant to the Employer during a calendar month, provided that:

(a) Such additional Deferred Compensation (including, if applicable, Employer matching contributions and other Employer non-elective contributions), when added to all other Includible Compensation deferred under the Plan, does not exceed the Maximum Deferral, and

(b) Such additional Deferred Compensation is immediately vested upon contribution to the Plan.

### **Section 3.7 Remittances**

As soon as administratively possible, the Employer shall remit a Participant's Deferred Compensation for each payroll period to the Investment Agent designated to receive such Deferred Compensation.

### **Section 3.8 Excess Deferrals**

If elective deferrals on behalf of a Participant for any calendar year exceeds the Maximum Deferral amount described in Section 3.1(a), or elective deferrals on behalf of a Participant for any calendar year exceeds the limitations described in Section 3.1(a) when combined with other amounts deferred by the Participant under another Eligible Section 457(b) Plan, then the elective deferral, 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 no later than the first April 15 of the calendar year following the close of the calendar year of the excess deferral. Any excess deferral is included in

## ARTICLE IV PARTICIPANTS' ACCOUNTS

### **Section 4.1 Participants' Accounts**

The Plan Administrator shall establish and maintain a bookkeeping Account in the name of each Participant to which such Participant's Deferred Compensation for each payroll period shall be credited as herein provided.

### **Section 4.2 Account Statements**

Consistent with the requirements of any Investment Arrangement, and not less frequently than annually (as determined by the Plan Administrator), each Participant shall periodically receive a written Account statement showing the Account and Sub-Account balances, the amount of any contributions to or distributions from the Account since the date of the preceding Account statement, and the Investment Funds to which his or her Sub-Accounts are deemed allocated.

### **Section 4.3 Finality of Determinations**

The Plan Administrator shall have exclusive responsibility for determining the balance of each bookkeeping Account maintained hereunder. The Plan Administrator's determinations thereof shall be conclusive upon all interested parties.

### **Section 4.4 Procedures**

The Plan Administrator shall establish such further accounting procedures for the purpose of making allocations, valuations and adjustments to Participants' Accounts provided in this Article IV as the Plan Administrator deems advisable.

## ARTICLE V INVESTMENT OF PLAN ASSETS

### **Section 5.1 Unsecured Obligations.**

The benefits under this Plan represent the mere unfunded promise of the Employer to pay such benefits. The Employer may, but is not required to, invest a portion of its general assets in the Investment Funds selected pursuant to Section 5.3, but such investment shall be solely as a device for the measurement of the benefits payable to a Participant under this Plan, and shall not constitute or be treated as a fund of any kind. A Participant's Account shall be an unsecured obligation of the Employer to pay the Participant (or the Participant's Beneficiary, in the event of the Participant's death) the amount of the Account at the time provided in Article V. Accounts are maintained for recordkeeping purposes only.

### **Section 5.2 Right to Establish Rabbi Trust.**

The Employer may establish a grantor trust conforming to the requirements of Rev. Proc. 92-64 as a funding vehicle to which it may make contributions from time to time. The trust's assets shall remain subject to the payment of claims of the Employer's general creditors upon the Employer's insolvency.

### **Section 5.3 Investment Funds**

The Employer shall in its sole discretion determine and select the Investment Agent(s) and, subject to any applicable law, the number and type of Investment Funds to be offered under an Investment Arrangement. The Employer may, in its sole discretion, change the Plan's Investment Funds from time to time with respect to future periods. The Employer shall communicate the same and any changes therein in writing to the Plan Administrator.

### **Section 5.4 Investment Choice**

In accordance with the procedures and requirements established by the Plan Administrator, the Employer may in its sole discretion permit each Participant to designate one or more Investment Funds established pursuant to this Article for the deemed investment of his or her Account. The amounts credited to a Participant's Account for each payroll period shall be deemed allocated by the Plan Administrator among the Investment Funds in accordance with the election made by the Participant. Unless otherwise provided by the Plan Administrator, the percentage elected for investment in any one of the Investment Funds must be a multiple of one percent (1%). In accordance with the procedures and requirements established by the Plan Administrator, and subject to the terms and conditions of any affected Investment Fund, the Employer, in its discretion, may permit a Participant to elect to change his or her investment designation with respect to future contributions under the Plan or to elect to transfer investments from any Investment Fund to any other Investment Fund. If the

Employer in its sole discretion does not permit Participants to elect any Investment Funds, or if the Employer permits such Participant elections and a Participant fails to make such an election, the applicable Investment Funds shall be determined by the Employer in its sole discretion.

### **Section 5.5 Rules and Regulations**

The Plan Administrator may promulgate forms and any additional rules and regulations it deems necessary or appropriate to govern all aspects of this Article V.

### **Section 5.6 Disclaimer**

The Employer and the Plan Administrator make no endorsement, guarantee or any other representation and shall not be liable to the Plan or to any Participant, Beneficiary, or any other person with respect to (a) the financial soundness, investment performance, fitness, or suitability of any investment option offered pursuant to this Plan or any investment vehicle in which amounts deferred under the Plan are actually invested, (b) the tax consequences of the Plan to any Participant, Beneficiary or any other person, (c) any losses incurred due to any delay in implementing a Participant's investment choice pursuant to Section 5.3.



## ARTICLE VI DISTRIBUTIONS

### Section 6.1 Commencement Date for Distributions

(a) Subject to the provisions of this Article VI and Article VIII hereof, distribution of a Participant's Account to the Participant or his or her Beneficiary, if applicable, shall commence on the Participant's Automatic Distribution Date.

(b) Notwithstanding Section 6.1(a) of this Article VI, and subject to the provisions of Sections 6.3 and 6.4, a Participant may, on any date before or after his or her Severance Event, elect the distribution of his or her Account in one lump sum amount not later than sixty (60) days following such election provided, however, that:

(1) the total amount payable to the Participant does not exceed \$5,000 (or, if different, the amount described in Code section 457(e)(9)(A)); and

(2) such amount may be distributed only if --

(A) no amount has been deferred under the Plan with respect to such Participant during the 2-year period ending on the date of the distribution, and

(B) there has been no prior distribution under the Plan to such Participant to which this Section 6.1(b) applied.

(c) If the preceding conditions in paragraphs (1) and (2) of this Section 6.1(b) are met, the Plan Administrator may exercise its discretion, on a uniform basis, to distribute such Account without the Participant's consent.

(d) Notwithstanding Section 6.1(a) of this Article VI, and subject to the provisions of Section 6.4 hereof, a Participant may elect to defer commencement of distributions until a fixed or determinable date subsequent to the commencement date specified in Section 6.1(a), but in no event later than the required beginning date as described in Section 6.2(c) hereof. Such election must be made at least 30 days prior to the commencement date specified in Section 6.1(a) hereof.

(e) A Participant (or, if applicable, his or her Beneficiary after the death of the Participant prior to the commencement of distributions hereunder) may elect to postpone the commencement date specified in the initial election to defer commencement of distributions made pursuant to Section 6.1(d), if any, to a later date that is permissible under this Section 6.1(e), provided, however, that only one (1) such additional postponement election under this Section 6.1(e) is permitted, and such postponement election must be made (1) at least 30 days prior to the commencement date specified in the initial election made pursuant to Section 6.1(d) and (2) after

amounts would have been payable under this Article VI but for an election made under Section 6.1(d).

## **Section 6.2 Method of Distribution**

A Participant entitled to a distribution of benefits under Section 6.1 may elect to receive payment in any one of the following forms of distribution:

(a) The normal method of distribution to a Participant (or, if applicable, his or her Beneficiary) under this Plan shall be one lump sum distribution.

(b) Notwithstanding Section 6.2(a), a Participant (or, if applicable, his or her Beneficiary after the death of the Participant prior to the commencement of distributions hereunder) may make an election, in a writing filed with the Plan Administrator, of one of the following alternate methods of distribution:

(1) One lump sum distribution;

(2) Annual or more frequent (as permitted by the Plan Administrator) installments made in substantially nonincreasing amounts over a period not to exceed the life expectancy of the Participant or the joint life expectancies of the Participant and Beneficiary; and

(3) A partial distribution in a designated amount (as permitted by the Plan Administrator) followed by the method of distribution described in paragraph (2) above commencing on a specified date that is permissible under the Code but in no event later than the last day of the calendar year following the calendar year in which the initial partial distribution is made.

Such election may be made or modified until the date 30 days prior to the time that payments are to commence in accordance with Section 6.1.

(c) All distributions under this Article VI shall comply with Code section 401(a)(9), including but not limited to the minimum incidental death benefit rule of Code section 401(a)(9)(G) and the temporary waiver rule of Code section 401(a)(9)(H), and 457(d), and the Treasury Regulations thereunder. A Participant's Account shall be distributed no later than the Participant's required beginning date, that is, not later than the April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70-1/2, or (2) the calendar year in which the Participant retires.

(d) If a Participant elects to receive installment payments, such Participant's Account shall continue to participate in the investment performance of the Investment Funds in which such amounts are invested and to bear its allocable share of administrative and investment expenses until the date such amounts are distributed.

The amount of the installments shall be redetermined at least annually to reflect the changes in the value of a Participant's Account.

(e) A Participant (or his or her Beneficiary) may not elect a form of periodic installment distributions as the method of distribution under Section 6.2(b) hereof if his or her Account balance is not equal to or greater than any minimum account balance, or if his or her periodic payment under such method of distribution is not equal to or greater than any minimum periodic amount, established by the Plan Administrator in its sole discretion for such purpose and uniformly applicable to all Participants, consistent with any term or limitation of any applicable Investment Fund.

### **Section 6.3 Distributions to a Beneficiary**

(a) If a Participant dies prior to the commencement of the distribution of his or her Account, such Participant's Account shall be distributed to his or her Beneficiary over a period not to exceed (1) five (5) years from the Participant's date of death in one lump-sum distribution, if the Beneficiary is the Participant's estate, (2) the Beneficiary's life or life expectancy, if the Beneficiary is the Participant's surviving spouse and if distribution commences on or before the date the deceased Participant would have attained age 70-1/2, (3) the life expectancy of the Beneficiary if the Beneficiary is not the Participant's surviving spouse and if distributions commence within one (1) year of the date of the Participant's death, or (4) the lesser of five (5) years from the date of the Participant's death, if subsections (1), (2), and (3) are inapplicable.

(b) If a Participant dies after the commencement of the distribution of his or her Account, any amount of such Participant's Account not distributed during his or her life shall be distributed to his or her Beneficiary at least as rapidly as distributed to the Participant on the date of his or her death.

(c) Notwithstanding any provision of the Plan to the contrary, payments to a Beneficiary shall be made in compliance with the requirements of Code sections 401(a)(9) and 457(d) and applicable Treasury Regulations.

### **Section 6.4 General Provisions**

(a) If the Plan Administrator shall find that any person to whom any amount is payable under the Plan is unable to care for his or her affairs, is a minor, or has died, then any payment due him or her or his or her estate (unless a prior claim therefore has been made by a duly appointed legal representative) may, if the Plan Administrator so elects, be paid to his or her spouse, a child, a relative, or any other person maintaining or having custody of such person otherwise entitled to payment or deemed by the Plan Administrator to be a proper recipient on behalf of such person. Any such payment shall be a complete discharge of all liability under the Plan with respect to such payment.

(b) Notwithstanding Section 6.1(c) herein, a Participant (or, if applicable, his or her Beneficiary after the death of the Participant prior to the commencement of distributions hereunder) may not elect to defer the commencement date specified in Section 6.1(a) if his or her Account balance is not equal to or greater than any minimum account balance established by the Plan Administrator in its sole discretion for such purpose and uniformly applicable to all Participants, consistent with any term or limitation of any applicable Investment Fund.

### **Section 6.5 Unforeseeable Emergency Distributions**

Notwithstanding any other provision herein, in the event of an Unforeseeable Emergency, a Participant may request that the Plan Administrator pay to him or her all or a portion of his or her Account balance. Such a request shall in addition be treated as a request for a revocation of deferrals under the Enrollment Agreement. If the application for payment is approved by the Plan Administrator, payment will be made as soon as administratively possible following such approval. Payment shall be limited strictly to that amount reasonably necessary to meet the situation constituting the Unforeseeable Emergency (taking into account the amount of any income tax withholding or other income tax liability resulting from the distribution). Payments may not be made to the extent that an Unforeseeable Emergency is or may be relieved through (1) reimbursement or compensation by insurance or otherwise, (2) by liquidation of the Participant's assets (to the extent such liquidation does not itself cause severe financial hardship), or (3) by cessation of deferrals under the Plan. Any remaining amounts shall be paid in accordance with the distribution provisions of this Article VI of the Plan.

### **Section 6.6 HEART Act Withdrawals**

Effective for Plan Years beginning on or after January 1, 2009, notwithstanding any provision of this Plan, a Participant on leave to perform qualified military service described in Code section 414(u)(5) for a period of at least 30 days and receiving differential wage payments from the Employer shall be treated, for purposes of eligibility for distributions, as having incurred a Severance Event and may elect a withdrawal of his or her Account. In the event that a Participant receives a withdrawal pursuant to this Section 6.6, he or she shall be suspended from making elective deferrals under this Plan, and all other plans maintained by the Employer, for six (6) months after receipt of such withdrawal.

## ARTICLE VII PLAN-TO-PLAN TRANSFERS

### Section 7.1 Transfers to the Plan

Subject to the requirements of Code section 457(e)(10), and Treasury Regulations thereunder, and procedures established by the Plan Administrator, a transfer may be accepted from a tax-exempt employer's Eligible Section 457(b) Plan if such transfer complies with the following requirements:

(a) The transferor tax-exempt employer's Eligible Section 457(b) Plan must provide for transfers;

(b) The Participant or Beneficiary whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to the Participant or Beneficiary immediately before the transfer;

(c) In the case of a transfer for a Participant, the Participant must have had a Severance Event with the transferring employer and must be performing services for the Employer.

The Plan Administrator may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Code section 457(e)(10), to confirm that such plan is an Eligible Section 457(b) Plan within the meaning of Code section 457(b), and to assure that transfers are provided for under such plan. The Plan Administrator may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Plan Administrator agree to hold such other assets under the Plan.

Such amount shall be held, accounted for, administered and otherwise treated in the same manner as Includible Compensation deferred by the Participant under Article III hereof except that such amount shall not be considered Includible Compensation deferred under the Plan in the taxable year of such transfer in determining the Maximum Deferral under Sections 3.1 and 3.2 hereof. Except as otherwise specifically provided in this Plan, such transferred amounts shall be subject to all provisions of this Plan applicable to deferrals made hereunder.

The transferred amount shall be subject to the constructive receipt rules under Code section 457(b) and applicable Treasury Regulations as if the elections made by the Participant or Beneficiary under the transferor plan had been made under the Plan.

### Section 7.2 Transfers from the Plan

Subject to the requirements of Code section 457(e)(10) and Treasury Regulations thereunder, and the procedures established by the Plan Administrator, an

Account may be transferred to another eligible deferred compensation plan if such transfer complies with the following requirements:

- (1) The transferee tax-exempt employer's Eligible Section 457(b) Plan must provide for the receipt of transfers;
- (2) The Participant or Beneficiary whose amounts deferred are being transferred must have deferred compensation immediately after the transfer at least equal to the amount deferred with respect to the Participant or Beneficiary immediately before the transfer;
- (3) In the case of a transfer for a Participant, the Participant must have had a Severance Event with the Employer and must be performing services for the transferee employer.

No transfer shall occur unless the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer.

The Plan Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Code section 457(b), and to assure that transfers are provided for under such plan.

### **Section 7.3 Administrative Rules**

Subject to applicable law, the Plan Administrator shall prescribe such rules and procedures concerning this Article VII hereof with respect to plan-to-plan transfers as the Plan Administrator in its sole judgment deems desirable for the orderly administration of the Plan.

## ARTICLE VIII PLAN ADMINISTRATION

### **Section 8.1 Plan Administrator**

This Plan shall be administered by the Plan Administrator, who shall represent the Employer in all matters concerning the administration of this Plan. The Plan Administrator shall serve at the pleasure of the Employer and the Employer shall have the right to appoint, in its sole and absolute discretion, any successor Plan Administrator.

### **Section 8.2 Power and Authority**

Subject to any applicable laws and any approvals required by the Employer, the Plan Administrator shall have full power and authority to interpret the provision of the Plan, to adopt rules and regulations for the administration of the Plan, and to interpret, alter, amend, or revoke any rules and regulations so adopted.

### **Section 8.3 Presumption of Fairness**

Every action taken by the Plan Administrator shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon him or her. The Plan Administrator shall be deemed to have exercised reasonable care, diligence and prudence and to have acted impartially as to all persons interested, unless the contrary is proven by affirmative evidence. The Plan Administrator's decisions shall be afforded the maximum deference permitted by applicable law. The Plan Administrator shall not be liable for amounts of Includible Compensation deferred by Participants or for other amounts payable under the Plan.

### **Section 8.4 Delegation of Duties**

Subject to any applicable laws and any approvals required by the Employer, the Plan Administrator may delegate any or all of his or her powers and duties hereunder to another person, persons, or entity, and may pay reasonable compensation for such services as an administrative expense of the Plan, to the extent such compensation is not otherwise paid.

### **Section 8.5 Other Parties**

Any person or entity which issues policies, contracts, or investment media to the Employer or in respect of a Participant is not a party to this Plan and such person or entity shall have no responsibility, accountability or liability to the Employer, the Plan Administrator, any Participant, or any Beneficiary with regard to the operation or adequacy of this Plan, including any future amendments made thereto.

## **Section 8.6 Expenses**

If not paid by the Employer, all reasonable expenses incurred in the administration of the Plan, including without limitation those of any trustee and the Plan Administrator, shall be paid from the Participants' Accounts to which such expenses are allocable.

## **Section 8.7 Claims Procedures**

(a) Claims for benefits under the Plan made by a Participant, Beneficiary, or any other person or entity who may be eligible to receive benefits under the Plan (collectively, a "claimant") must be submitted in writing to the Plan Administrator at such address as may be specified from time to time. In addition, the Plan Administrator, in its sole discretion, may treat any writing or other communication (sent or forwarded to the Plan Administrator) related to a claimant's benefits as a claim for benefits under these procedures, even if the writing or communication is not labeled as a claim for benefits.

If a claim is denied in whole or in part, the Plan Administrator shall notify the claimant of its decision by written or electronic notice, in a manner calculated to be understood by the claimant. The notice shall set forth:

- (1) the specific reasons for the denial of the claim;
- (2) a reference to specific provisions of the Plan on which the denial is based;
- (3) a description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary; and
- (4) an explanation of the Plan's claims review procedure for the denied or partially denied claim and any applicable time limits, and a statement that the claimant has a right to bring a civil action under ERISA section 502(a) following an adverse benefit determination on review.

Such notification shall be given within 90 days after the claim is received by the Plan Administrator (or within 180 days, if special circumstances require an extension of time for processing the claim, and provided written notice of such extension and circumstances and the date a decision is expected is given to the claimant within the initial 90-day period). A claim is considered approved only if its approval is communicated in writing to a claimant.

(b) Review of Denied Claims



(1) Upon denial of a claim in whole or in part, a claimant or his or her duly authorized representative shall have the right to submit a written request to the Plan Administrator for a full and fair review of the denied claim. A request for review of a claim must be submitted within 60 days of receipt by the claimant of written notice of the denial of the claim. If the claimant fails to file a request for review within 60 days of the denial notification, the claim will be deemed abandoned and the claimant precluded from reasserting it.

(2) The claimant or the claimant's representative shall have, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits.

(3) The claimant may submit written comments, documents, records, and other information relating to the claim for benefits.

(4) The review shall take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(5) Failure to raise issues or present evidence on review will preclude those issues or evidence from being presented in any subsequent proceeding or judicial review of the claim.

(6) The person or persons reviewing the appeal will advise the claimant of the results of the review within 60 days after receipt of the written request for review (or within 120 days if special circumstances require an extension of time for processing the request, and if notice of such extension and circumstances and the date a decision is expected is given to such claimant within the initial 60 day period).

(7) The decision on review shall be in written or electronic form, in a manner calculated to be understood by the claimant. The notice shall set forth:

(A) the specific reasons for the denial of the appeal of the claim;

(B) a reference to specific provisions of the Plan on which the denial is based;

(C) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies

of, all documents, records, and other information relevant to the claimant's claim for benefits.

(D) a statement describing any voluntary appeal procedures offered by the Plan (if any) and the claimant's right to obtain the information about such procedures and a statement of the claimant's right to bring an action under Section 502(a) of ERISA.

(c) A claimant may not commence a civil action in court for any benefit claim until he or she has fully exhausted these claims procedures. A claimant who has fully exhausted these claims procedures may file a civil action in a court of competent jurisdiction no later than the date which is one year after date these claims procedures have been exhausted. If a civil action is not filed within this one-year period, the claimant's benefit claim will be deemed waived and abandoned.

(d) Any other claims for benefits that arise under, or in connection with, the Plan must also be filed with the Plan Administrator and will be considered in accordance with the procedures described in this Section 8.7.

### **Section 8.8 Electronic Administration**

Any Participant or Beneficiary election under the Plan, and any forms, regulations, rules, notices or other communications to a Participant or Beneficiary under the Plan may, to the extent permitted by the Plan Administrator and by applicable law, be made electronically in a manner consistent with the requirements contained in Treasury Regulation section 1.401(a)-21 or other applicable guidance.

## ARTICLE IX TERMINATION OR AMENDMENT OF PLAN

### **Section 9.1 Plan Termination – Future of Plan**

It is the expectation of the University that it will continue the Plan and payment of contributions hereunder indefinitely, but continuance of the Plan is not assured as a contractual obligation of the University and the right is reserved by the Board of Regents of the University at any time to reduce, suspend or discontinue the University's contributions hereunder or to terminate the Plan. Such reduction, suspension, discontinuance or termination shall be stated in an instrument in writing executed by the President or the Executive Vice President of the University.

No termination shall affect the amount of any Includible Compensation deferred before the time of the termination and income thereon accrued to the date of the termination in accordance with the terms of the Plan. Upon such termination, each Participant shall be deemed to have revoked his or her Enrollment Agreement as of the date of such termination. Plan assets shall be distributed at the direction of the Employer in accordance with the requirements of Code section 457 and any applicable Treasury Regulations thereunder.

### **Section 9.2 Plan Amendment**

The Board of Regents of the University shall have the right to amend the Plan at any time and to any extent that it may deem advisable. Such amendment shall be stated in an instrument in writing executed by the President or the Executive Vice President of the University and delivered to the Fund Sponsors. The Plan shall be deemed to have been amended in the manner set forth therein and all Participants shall be bound thereby.

The President and the Executive Vice President of the University, acting together, shall have the right to amend the Plan at any time and to any extent that they deem advisable; provided, however, that the Board of Regents shall retain exclusive authority to amend this provision or terminate the Plan. All amendments by the President and Executive Vice President shall be stated in an instrument in writing, executed by the President and the Executive Vice President, and delivered to the Fund Sponsors. The Plan shall be deemed to have been amended in the manner set forth therein and all Participants shall be bound thereby. The President or the Executive Vice President shall notify the Board of Regents of any amendment to the Plan at the next regularly scheduled Board meeting.

No amendment shall affect the amount of any Includible Compensation deferred before the time of the amendment and income thereon accrued to the date of the amendment in accordance with the terms of the Plan.

## ARTICLE X NON-ASSIGNABILITY AND QDROS

### Section 10.1 Non-Assignability

Neither the Participant, nor his or her Beneficiary, nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and non-transferable; and in the event of an attempt to assign or transfer, the Employer shall have no further liability hereunder, nor shall any unpaid amounts be subject to attachment, garnishment or execution, or be transferable by operation of law in the event of bankruptcy or insolvency, except (a) with respect to a qualified domestic relations order as may be permitted under Code sections 414(p)(11) and (12) and as further provided below in Section 10.2, or (b) as may be required by any other applicable law. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Code section 457.

### Section 10.2 Qualified Domestic Relations Orders

(a) Notwithstanding any otherwise conflicting provision in this Plan, the Plan may permit the distribution of all or a portion of a Participant's Account pursuant to, and in accordance with the terms and provisions of, a qualified domestic relations order (as such term is defined below). A distribution or payment from this Plan shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a Participant.

(b) Definitions:

(1) Domestic Relations Order. For purposes of this Plan, the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which (i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and (ii) is made pursuant to a State domestic relations law (including a community property law).

(2) Alternate Payee. For purposes of this Plan, the term "Alternate Payee" means any spouse, former spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant.

(c) The Plan Administrator may promulgate any additional rules and regulations it deems necessary or appropriate to govern this Section 10.2.