

# **TIAA-CREF**

*Qualified 401(a) Volume Submitter  
Plan and Trust For Public Employers\**

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## Article I - Definitions

Unless defined otherwise by the Code, Treasury Regulations, or other applicable guidance, the following terms shall have the meaning described herein.

- 1.1. **Account Balance** means the separate account maintained for each Participant which reflects the aggregate amount credited to the Participant's account under all accounts, the earnings or loss of each Annuity Contract or a Custodial Account (net of 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 type elected in the Adoption Agreement that is established 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 Code Section 414(p)(8)).
- 1.2. **Adoption Agreement** means the separate agreement that is executed by the Employer which sets forth the elective provisions of this Plan specified by the Employer.
- 1.3. **Annuity Contract** means a nontransferable contract that is issued by a company qualified to issue annuities and licensed as an insurance company in a State and which includes payment in the form of an annuity.
- 1.4. **Beneficiary(ies)** means the individual, Employer, trustee, or estate designated by the Participant to receive benefits. A married Participant's right to designate a Beneficiary (or a form of benefits) or change his or her designation is subject to the Spouse's rights as described in Section 8.6 and elected in the Adoption Agreement.
- 1.5. **Code** means the Internal Revenue Code of 1986, as amended. Reference 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 that Section.
- 1.6. **Computation Period** means the periods specified in the Adoption Agreement for measuring service for eligibility for participation and vesting.
- 1.7. **Compensation** will have one of the meanings below pursuant to the election in the Adoption Agreement.

Form W-2 wages. Wages as defined in Code Section 3401(a) for purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or the services performed, and all other payments of compensation paid by the Employer to the Participant for which the Employer is required to issue statements under Code Section 6041, 6051, and 6052.

Form W-2 Wages less any exclusions selected in the Adoption Agreement.

Code Section 3401(a) wages. Wages for purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of employment or the services performed (such as the exception for agriculture labor in Code Section 3401(a)(2)) and including differential wage payments as defined in Code Section 3401(h).

Code Section 415 compensation. A Participant's earned income, wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (or to the extent these amounts would have been includible in gross income but for an election under Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to: commissions paid to salespersons; compensation for services on the basis of a percentage of profits; commissions on insurance premiums; tips; bonuses; fringe benefits; and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulation Section 1.62-2(c)), and except as set forth below, excluding the following:

- (a) Employer contributions to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p)) which are not includible in the Employee's gross income for the taxable year in which contributed, or any distributions from a plan of deferred compensation (whether or not qualified);
- (b) Amounts realized from the exercise of a nonstatutory stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (c) Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;
- (d) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary-reduction agreement) towards the purchase of an annuity described in Code Section 403(b) of the Internal Revenue Code (whether or not the amounts are actually excludible from the gross income of the Employee); or
- (e) Other items of remuneration that are similar to any of the items listed above.

If elected in the Adoption Agreement, Compensation shall include amounts paid by the later of 2 ½ months after the Participant's Severance from Employment with the Employer or the end of the limitation year that includes the Participant's Severance from Employment if:

- (a) The payment is regular compensation for services during or outside the Participant's working hours, commissions, bonuses or other similar payments, and, absent a severance of employment, the payment would have been made to the Participant while the Participant continued in the employ of the Employer;
- (b) The payment is for unused accrued bona fide sick, vacation, or other leave that the Participant would have been able to use if employment had continued; or
- (c) The payment is received by the Participant pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.
- (d) If elected in the Adoption Agreement, Compensation includes amounts paid after an Employee's Severance from Employment with the Employer if:
- (e) The Participant does not provide services for the Employer by reason of qualified military service as described in Code Section 414(u)(1) to the extent those payments do not exceed the amount the Participant would have received had he or she continued to perform services for the Employer rather than entering qualified military service; or
- (f) The Participant is permanently and totally disabled as defined in Code Section 22(e)(3) and either the Participant is not a highly compensated employee (as defined in Code Section 414(q)) immediately before becoming disabled or the Employer elects to continue contributions on behalf of all Participants who are permanently and totally disabled for a fixed or determined period.

Notwithstanding the election made in the Adoption Agreement, Compensation shall include only that compensation which is actually paid to the Participant during the determination period. Except as provided elsewhere in this Plan, the determination period shall be the period selected by the Employer in the Adoption Agreement. If the Employer makes no election, the determination period shall be the Plan Year.

Notwithstanding the above, if elected by the Employer in the Adoption Agreement, Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee under Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), or 403(b) of the Code.

Also, notwithstanding the election made in the Adoption Agreement, Compensation for a Participant in a defined contribution plan who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the compensation such Participant would have received for the limitation year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled, if such compensation is greater than the compensation determined without such imputed

Compensation if:

- (a) The Participant is not a highly compensated employee (as defined under Code Section 414(q)); and
- (b) The contributions made on behalf of such Participant are nonforfeitable when made.

The annual Compensation of each Participant taken into account for purposes of determining all benefits provided under the Plan for any Plan Year shall not exceed \$150,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Notwithstanding the above, Employees of the Employer who became Participants in the Plan before the first day of the Plan Year beginning after December 31, 1995, will be subject to the annual compensation limit in effect under the Plan before that date as determined by IRS regulations.

- 1.8. ***Custodial Account*** means the group or individual custodial account or accounts established for each Participant by the Employer or by each Participant individually, to hold assets of the Plan.
- 1.9. ***Date of Employment or Re-employment*** means the first day in which an employee is paid for the performance of services for the most recent period of service with the Employer. For a faculty member, the Date of Employment or Re-employment is the effective date of the appointment.
- 1.10. ***Differential Pay*** means any payment which is made by the Employer to a Participant with regards to any period during which the individual is performing services in the uniformed services while on active duty for a period of more than 30 days and such amount represents all or a portion of the wages such Participant would have received from the Employer if the Participant was performing services for the Employer. Differential Pay is included in Compensation for purposes of determining benefits under the Plan unless specifically elected otherwise under the Adoption Agreement.
- 1.11. ***Eligible Employee*** means any employee who is employed by the Employer or any other employer that is required to be aggregated with the Employer under Code Section 414(b), (c), (m), (n), or (o) or the regulations issued thereunder, including an officer of the Employer, who is in an eligible category of Employee as designated in the Adoption Agreement. The term Eligible Employee shall not include an independent contractor or self-employed individuals as defined by Code Section 401(c)(1), but may include Leased Employees as provided in Section 1.18., if so elected in the Adoption Agreement.

- 1.12. **Employer** means a State or its employment unit named in the Adoption Agreement which adopts this Plan.
- 1.13. **Employer Contribution** means the contributions made by the Employer on behalf of a Participant specified in the Adoption Agreement.
- 1.14. **Fund Sponsor** means the insurance, variable annuity, an investment company, or any other company offering funding instruments which are providing the Funding Vehicles under the Plan.
- 1.15. **Funding Vehicles** means any investment held by the trustee pursuant to Article VI and the Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the Employer for use under the Plan which are described in Article VI and designated in the Adoption Agreement as being available for the purpose of funding benefits under this Plan.
- 1.16. **Hour of Service** means each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Employer or any other employer that is required to be aggregated with the Employer under Code Section 414(b), (c), (m), (n), or (o) or the regulations issued thereunder. The method for calculating Hours of Service selected in the Adoption Agreement will be credited to the Eligible Employee for the computation period in which the duties are performed for the Employer.

If the Employer elects the actual Hours of Service method for counting Hours of Service, the following hours will be credited to the Eligible Employee for the Computation Period in which the duties are performed for the Employer:

- (a) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours of service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period);
- (b) Hours of Service under this paragraph will be calculated and credited pursuant to the Department of Labor Regulation Section 2530.200b-2 of which is incorporated herein by this reference;
- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service will not be credited both under the first paragraph or the second paragraph, as the case may be, and under this paragraph. These hours will be credited to the Eligible Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made; or

- (d) Any other description provided by the Employer in the Adoption Agreement.

If the Employer elects the elapsed time method for counting Hours of Service, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date of Severance from Employment except for periods of service which may be disregarded in Section 2.3. The first day of employment is the first day the Employee performs an Hour of Service. Fractional periods of a year will be expressed in terms of days. An Employee will also receive credit for any period of severance of less than 12 consecutive months. A period of severance is a continuous period of time during which the Employee is not employed by an Employer for at least 12 consecutive months.

- 1.17. **Individual Agreement** means the agreement between a Fund Sponsor and the Employer or a Participant that constitutes or governs an Annuity Contract or a Custodial Account.
- 1.18. **Leased Employee** means any person (other than an employee of the Employer (the "recipient employer")) who, pursuant to an agreement between the recipient employer and any other person ("leasing organization"), has performed services for the recipient employer (or for the recipient employer and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient employer. Contributions or benefits provided a Leased Employee by the leasing organization that are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A Leased Employee shall not be considered an employee of the recipient employer if:

- (a) Such employee is covered by a money purchase pension plan (maintained by the leasing organization) providing:
    - (i) a non-integrated employer contribution rate of at least 10 percent of compensation (as defined in Code Section 415(c)(3)), but including amounts contributed pursuant to a salary reduction agreement which are excludible from the employee's gross income under Code Sections 125, 402(e)(3), 402(h)(1)(B), 403(b) );
    - (ii) for immediate participation; and
    - (iii) full and immediate vesting.
  - (b) Leased Employees do not constitute more than 20 percent of the recipient employer's non-highly compensated workforce.
- 1.19. **Normal Retirement Age** means the age selected in the Adoption Agreement. Selection of a Normal Retirement Age in no way imposes a mandatory retirement age.



- 1.20. **Participant** means any Eligible Employee of the Employer for whom contributions are currently being made or have previously been made under the Plan and who has not received a distribution of his or her benefit under the Plan. Except for those employees excluded in the Adoption Agreement, all Eligible Employees who satisfy the participation requirements in the Adoption Agreement will be eligible to participate in the Plan in accordance with Article II.
- 1.21. **Plan** means the retirement plan of the Employer as described in this document, the Adoption Agreement, and any amendments thereto.
- 1.22. **Plan Administrator** means the individual, committee, or entity identified in the Adoption Agreement. If no Plan Administrator is designated in the Adoption Agreement, then the Employer is the Plan Administrator, unless provided otherwise by applicable state statute or regulation.
- 1.23. **Plan Entry Date** means the first administratively practicable day after the date that an Eligible Employee has met the participation requirements set forth in the Adoption Agreement unless another date is otherwise specified in the Adoption Agreement.
- 1.24. **Plan Year** is the 12-consecutive-month period designated in the Adoption Agreement.
- 1.25. **Severance from Employment** means that the Participant ceases to be employed by the Employer maintaining the Plan.
- 1.26. **Spouse** has the meaning provided under Section 7 of Title 1 of the United States Code pursuant to the Defense of Marriage Act of 1996, unless another definition is otherwise specified in the Adoption Agreement.
- 1.27. **State** means a state, a political subdivision of a state, or any agency or instrumentality of a state. “State” includes the District of Columbia (pursuant to Code Section 7701(a)(10)).
- 1.28. **Taxable Wage Base (TWB)** (also known as the Social Security Earnings Base) means the contribution and benefit base under Section 230 of the Social Security Act.
- 1.29. **Valuation Date** means the assets of the Plan will be valued daily and annually at fair market value as of the last day of the Plan Year. The method of allocating gains, expenses, losses, appreciation, or depreciation, shall be the method(s) described in the Funding Vehicles.
- 1.30. **Year of Service** means a Year of Service as determined under the Adoption Agreement.

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## Article II - Eligibility for Participation

- 2.1. **Participation.** An Eligible Employee who has met the eligibility requirements in the Adoption Agreement will begin participation in this Plan on his or her Plan Entry Date. Each Participant is entitled to the benefits and is bound by all of the terms, provisions, and conditions of this Plan, including any and all amendments which from time to time may be adopted, including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan contributions have been applied.

If an individual is classified as an independent contractor during any period of providing services to the Employer, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation.

- 2.2. **Notification.** The Employer will notify each Eligible Employee in writing of eligibility to participate in the Plan.
- 2.3. **Break in Service.** An Eligible Employee shall incur a Break in Service for each Computation Period during which the Eligible Employee fails to complete more than half the number of Hours of Service needed for a Year of Service.
- 2.4. **Reemployment.** A Participant shall resume participation in the Plan immediately upon reemployment. In the case of a Participant who does not have any non-forfeitable right to the Account Balance attributable to Employer Contributions, Years of Service before the date of reemployment will not be taken into account in computing vesting service under Article VII if the period of absence from employment equals or exceeds five years. The period of absence shall be computed in the same manner as Years of Service.
- 2.5. **Return to Eligible Class.** In the event a Participant is no longer a member of an eligible class of employees and becomes ineligible to participate, such employee will participate immediately upon returning to an eligible class of employee.
- 2.6. **Enrollment in Plan.** To participate in this Plan, an Eligible Employee shall complete and return to the Employer the appropriate enrollment form(s). Unless the Eligible Employee's participation in the Plan is mandatory, failure to complete and return such forms shall be deemed a waiver of such Eligible Employee's right to participate.
- 2.7. **Information Provided by the Employee.** Each Eligible Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the administration of the Plan, including any information required under the Individual Agreements.

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## Article III - Plan Contributions

- 3.1. **Employer Contributions.** The Employer will make contributions to the Plan as set forth in the Adoption Agreement. If this Plan is a profit sharing plan, the Employer may, in its sole discretion, make profit sharing contributions without regard to current or accumulated earnings or profits.
- 3.2. **Employee Contributions.** If elected in the Adoption Agreement, this Plan will accept after-tax employee contributions.
- 3.3. **Military Service Credit.** A Participant whose employment is interrupted or who is on a leave of absence due to qualified military service under Code Section 414(u) will be provided contributions, benefits, and service credit with respect to qualified military service in accordance with Code Section 414(u) and the elections made in the Adoption Agreement.
- 3.4. **Acceptance of Rollover Contributions.** If elected in the Adoption Agreement, the Plan will accept rollover contributions as provided in Section 4.1 and in accordance with the provisions of the Funding Vehicles.
- 3.5. **Acceptance of Transfer Contributions.** If elected in the Adoption Agreement, the Plan will accept transfer contributions as provided in Section 4.2 and in accordance with the provisions of the Funding Vehicles.
- 3.6. **Contributions Made Promptly.** Contributions shall be transferred to the applicable Funding Vehicles within the applicable time prescribed by the Code. Contributions are considered to be credited to Participants no later than the next business day following the day in which the contributions are made to the Funding Vehicles.
- 3.7. **Allocation of Contributions.** Contributions shall be forwarded to the Fund Sponsors of the Funding Vehicles selected by a Participant, in accordance with the procedures established by the Employer and the Fund Sponsors. Contributions may be allocated by the Participant to one or more Funding Vehicles in whole number percentages. At least as frequently as once a month, a Participant may change his or her allocation of future Plan Contributions to such Funding Vehicles.
- 3.8. **Remittance Statements.** The Employer will determine the total amount of contributions to be made for each Participant from time to time on the basis of its books and records and in accordance with the provisions of this Section. When each contribution payment is made by the Employer, the Employer will prepare a statement identifying the Participant and the portion of the payment which is made for him or her, and will deliver the payment to the appropriate Fund Sponsors with the contribution payment. Determination by the Employer, which is evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contributions payment.

- 3.9. ***Participant Statements.*** At least once a year the Fund Sponsors to whom the Participant has allocated contributions will send the Participant a report summarizing the status that portion of his or her Account Balance with that Fund Sponsor.
- 3.10. ***Limitations.*** Notwithstanding anything to the contrary contained in this Plan, the obligation of the Employer to make contributions is subject to the provisions relating to the amendment and termination of the Plan. However, no amendment or termination will affect any obligation of the Employer to make contributions with respect to Compensation earned by Participants prior to the date of amendment or termination.

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## Article IV – Rollover Contributions and Transfer Contributions

- 4.1. **Rollover Contributions.** If elected in the Adoption Agreement, the Plan will accept rollover contributions as provided in this Section. Such contributions will be subject to the terms and restrictions of the Funding Vehicles.
- (a) **Eligible Rollover Contributions.** An employee who is a Participant who is entitled to request an Eligible Rollover Distribution from another Eligible Retirement Plan may request to have all or a portion of the Eligible Rollover Distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Plan Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an Eligible Retirement Plan.
  - (b) **Eligible Rollover Distribution.** For purposes of Section (a), an Eligible Rollover Distribution means any distribution of all or any portion of a Participant's benefit under another Eligible Retirement Plan, except that an Eligible Rollover Distribution does not include: (1) any installment payment for a period of 10 years or more, (2) any distribution made upon hardship, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9).
  - (c) **Eligible Retirement Plan.** An Eligible Retirement Plan means another qualified trust described in Code Section 401(a), an annuity plan described in Code Section 403(a) or 403(b), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or an eligible governmental plan described in Code Section 457(b). Rollovers of after-tax amounts may only be made from another plan qualified under Code Section 401(a), an IRA, or a 403(b) plan.
  - (d) **Separate Accounts.** Separate accounts shall be established and maintained for the Participant for any Eligible Rollover Distribution paid to the Plan.
- 4.2. **Transfers.** If elected in the Adoption Agreement, direct transfers for a Participant from another plan qualified under Code Section 401(a) shall be permitted as provided in this Section and pursuant to the terms and restrictions of the Funding Vehicles.

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## Article V - Limitations On Contributions

### 5.1. *Single Plan Limits.*

- (a) If, for the current limitation year, the Participant does not participate in and has never participated in, another qualified plan maintained by the Employer or a welfare benefit fund, as defined in Code Section 419(e) maintained by the Employer, or an individual medical account, as defined in Code Section 415(l)(2), maintained by the Employer, or a simplified employee pension, as defined in Code Section 408(k), maintained by the Employer, which provides an annual addition as defined in Section 5.4(a), the amount of annual additions which may be credited to the Participant's account for any limitation year will not exceed the lesser of the maximum permissible amount as described in Section 5.4(h) or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to the Participant's account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the annual additions for the limitation year will equal the maximum permissible amount.
- (b) Prior to determining the Participant's actual Compensation for the limitation year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the limitation year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the Participant's actual Compensation for the limitation year.
- (d) If pursuant to Section 5.1(c) or as a result of the allocation of forfeitures there is an excess amount, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a welfare benefit fund or individual medical account, if any, will be deemed to have been allocated first regardless of the actual allocation date. The excess shall be disposed of in accordance with the procedures promulgated by the Internal Revenue Service for correcting such excess amounts.

### 5.2. *Multiple Plan Limits*

- (a) This Section applies if, in addition to this Plan, the Participant is covered for the same limitation year under another qualified volume submitter or a qualified master or prototype defined contribution plan maintained by the Employer, a welfare benefit fund, as defined in Code Section 419(e) maintained by the Employer, an individual medical account, as defined in Code Section 415(l)(2), maintained by the Employer, or a simplified employee pension, as defined in Code Section 408(k), maintained by the Employer, which provides an annual

addition as defined in Section 5.4(a). The annual additions which may be credited to a Participant's account under this Plan for any such limitation year will not exceed the maximum permissible amount as described in Section 5.4(h), reduced by the annual additions credited to a Participant's account under the other plans and welfare benefit funds for the same limitation year. If the annual additions with respect to the Participant under other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the Employer are less than the maximum permissible amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's account under this Plan would cause the annual additions for the limitation year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans and funds for the limitation year will equal the maximum permissible amount. If the annual additions with respect to the Participant under such other defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's account under this Plan for the limitation year.

- (b) Prior to determining the Participant's actual Compensation for the limitation year, the Employer may determine the maximum permissible amount for a Participant in the manner described in Section 5.1(b).
- (c) As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the Participant's actual Compensation for the limitation year.
- (d) If, pursuant to Section 5.2(c) or as a result of the allocation of forfeitures, a Participant's annual additions under this Plan and such other plans would result in an excess amount for a limitation year, the excess amount will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
- (e) If an excess amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the excess amount attributed to this Plan will be the product of
  - (i) the total excess amount allocated as of such date, times
  - (ii) the ratio of (a) the annual additions allocated to the Participant for the limitation year as of such date under this Plan to (b) the total annual additions allocated to the Participant for the limitation year as of such date under this and all the other qualified master or prototype-defined contribution plans.
- (f) Excess amounts attributed to this Plan will be disposed of per Section 5.1(d).

5.3. **Multiple Plan Limits (No Other Volume Submitters).** If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a volume submitter plan, annual additions which may be credited to the Participant's account under this Plan for any limitation year will be limited in accordance with Sections 5.2(a) through 5.2(f) as though the other plan were a volume submitter plan unless the Employer provides other limitations in the Adoption Agreement.

5.4. **Definitions.** The following definitions apply to this Article:

- (a) **Annual Additions** means the sum of the following amounts credited to a Participant's Account for the Limitation Year under this Plan, any other qualified defined contribution plan:
- (i) Employer Contributions;
  - (ii) Employee Contributions;
  - (iii) Forfeitures;
  - (iv) Mandatory Employee Contributions to a defined benefit plan that are not picked up by the employer pursuant to Code Section 414(h)(2) are treated as annual additions to a defined contribution plan;
  - (v) Amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan are treated as annual additions to a defined contribution plan;
  - (vi) Also amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e), are treated as annual additions to a defined contribution plan; and
  - (vii) Allocations under a simplified employee pension described in Code Section 408(k).

For this purpose, any excess amount applied under Sections 5.1(d) or 5.2(f) in the limitation year to reduce Employer Contributions will be considered annual additions for such limitation year.

- (b) **Compensation** means a Participant's earned income, wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includible in gross income (or to the extent these amounts would have been includible in gross income but for an election under Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)).



These amounts include, but are not limited to: commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Treasury Regulation Section 1.62-2(c)), and except as set forth below, excluding the following:

- (i) Employer contributions to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p)) which are not includible in the employee's gross income for the taxable year in which contributed, or any distributions from a plan of deferred compensation (whether or not qualified);
- (ii) Amounts realized from the exercise of a nonstatutory stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) Amounts realized from the sale, exchange, or other disposition of stock acquired under a statutory stock option;
- (iv) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code (whether or not the amounts are actually excludible from the gross income of the Employee); or
- (v) Other items of remuneration that are similar to any of the items listed above.

Notwithstanding the preceding sentence, Compensation for a Participant in a defined contribution plan who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the compensation such Participant would have received for the limitation year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled, if such compensation is greater than the compensation determined without such imputed Compensation if:

The Participant is not a highly compensated employee (as defined under Code Section 414(q)); and

The contributions made on behalf of such Participant are nonforfeitable when made.

For limitation years beginning on or after July 1, 2007, and if elected in the Adoption Agreement, Compensation shall also include compensation paid by the later of 2 ½ months after the Participant's Severance from Employment with the Employer or the end of the limitation year that includes the Participant's Severance from Employment if:

The payment is regular compensation for services during or outside the Participant's working hours, commissions, bonuses, or other similar payments, and, absent a severance of employment, the payment would have been made to the Participant while the Participant continued in the employ of the Employer;

The payment is for unused accrued bona fide sick, vacation, or other leave that the Participant would have been able to use if employment had continued; or

The payment is received by the Participant pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Also, if elected in the Adoption Agreement, for limitation years beginning on or after July 1, 2007, Compensation shall also include compensation paid after an Employee's Severance from Employment with the Employer if:

The Participant does not provide services for the Employer by reason of qualified military service as used in Code Section 414(u)(1) to the extent those payments do not exceed the amount the Participant would have received had he or she continued to perform services for the Employer rather than entering qualified military service; or

The Participant is permanently and totally disabled as defined in Code Section 22(e)(3) and either the Participant is not a highly compensated employee (as defined in Code Section 414(q)) immediately before becoming disabled or the Employer elects to continue contributions on behalf of all Participants who are permanently and totally disabled for a fixed or determined period.

- (c) **Employer** means the Employer that adopts this Plan and any employer required to be aggregated with the Employer pursuant to applicable IRS guidance.
- (d) **Excess Amount** means the excess of the Participant's annual additions for the limitation year over the maximum permissible amount.
- (e) **Limitation Year** means the calendar year or the 12-consecutive-month period elected by the Employer in the Adoption Agreement. All qualified plans maintained by the Employer must use the same limitation year. If the Plan is amended to adopt a different limitation year, the new limitation year must begin on a date within the limitation year in which the amendment is made.

- (f) **Master or Prototype Plan** means a plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.
- (g) **Maximum Annual Additions** means the maximum annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year and which shall not exceed the lesser of:
  - (i) \$40,000 (as adjusted under Code Section 415(d)); or
  - (ii) 100 % of the Participant's Compensation for the limitation year.

The compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of Code Sections 401(h) or 419A(f)(2)) which is otherwise treated as an annual addition.

If a short limitation year is created because of an amendment changing the limitation year to a different 12-consecutive-month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short limitation year}}{12}$$

- (h) **Volume Submitter Plan** means a plan the form of which is the subject of a favorable advisory letter from the Internal Revenue Service.

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## Article VI – Investment of Contributions and Funding Vehicles

- 6.1. ***Manner of Investment.*** All amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more investments held in trust, in one or more Annuity Contracts, or Custodial Accounts.
- 6.2. ***Investment of Contributions.*** In accordance with the terms of the Individual Agreements, each Participant or Beneficiary shall direct the investment of his or her account among one or more Funding Vehicles made available by the Sponsoring Organizations and any other Funding Vehicles for the Plan that the Employer makes available to Participants as specified in the Adoption Agreement. A Participant may at any time revise his or her investment direction. A change in the investment direction shall take effect as of the date provided by the Plan Administrator to Funding Vehicle on a uniform basis for all Participants.
- 6.3. ***Exclusive Benefit Rule.*** The corpus or income of the Plan may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.

Except as provided herein, no annuity contract will be purchased under the Plan unless: (1) no value under contracts providing benefits under the Plan or (2) credits determined by the Fund Sponsor (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such contracts may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. Under the group annuity contract, premiums or other consideration received by the Fund Sponsor must be allocated to Participants' Accounts under the Plan.

- 6.4. ***Sponsoring Organizations.*** Sponsoring Organizations of this volume submitter plan are Teachers Insurance and Annuity Association (TIAA) and the College Retirement Equities Fund (CREF).
- 6.5. ***Funding Vehicles.*** All Funding Vehicles must be annuity contracts, as defined in Code Section 401(g), issued by companies qualified to do business under the insurance laws of a state, custodial accounts that satisfy the requirements of Code Section 401(f) which are made available by the Sponsoring Organizations, or any other investment held in a trust pursuant to Section 6.7.
- 6.6. ***Trust Requirement.*** Qualified plans under Code Section 401(a) are required to satisfy the trust provisions of Code Section 401(a). A trust is created under and subject to a trust agreement in which all of the Plan assets, and the income thereon, are held and from which the Plan benefits are distributed. For this purpose, amounts held under an annuity contract or custodial account pursuant to Code Section 401(f) will qualify as a trust. Annuity Contracts and Custodial Accounts made available by the Sponsoring Organization are intended to satisfy the trust requirement pursuant to Code Section 401(f). All Funding Vehicles that are not made available by the Sponsoring Organizations shall be held in a trust pursuant to Section 6.7.

- 6.7. **Trust.** All Funding Vehicles that are not made available by the Sponsoring Organizations shall be held in a trust that meets the requirements of applicable law. The trust shall be adopted by completing and executing a trust agreement, which will form a part of the Plan. Plan contributions may not be restricted by the Employer exclusively to Funding Vehicles held in the trust. Any dividends or credits earned on Funding Vehicles held in the trust will be allocated to the Participants' Accumulation Accounts derived from the contribution for whose benefit the amounts are held.
- 6.8. **Trust Agreement** means the trust agreement which is a written agreement (or declaration) made by and between the Employer and the trustee under which the trust, as amended from time to time, is maintained.
- 6.9. **Trustee.** The person(s), committee, or organization appointed under and currently serving as the trustee under the trust agreement. In the case of an annuity contract or custodial account treated as a qualified trust under Code Section 401(f), the person holding the assets of such annuity contract or custodial account shall be treated as the Trustee.

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## Article VII - Vesting

7.1. **Employer Contributions.** Amounts attributable to Employer Contributions shall become nonforfeitable and fully vested in the Participant's account in accordance with the vesting schedule elected in the Adoption Agreement.

(a) **Vesting Schedule.** One of the following vesting schedules, as elected in the Adoption Agreement, shall apply to Employer Contributions.

- (i) Immediate: All contributions are immediately vested when made;
- (ii) Cliff: All contributions are 100% vested after three Years of Service;
- (iii) Graded: All contributions are 100% vested in six years; or Contributions vest:
  - 20% after two Years of Service;
  - 40% after three Years of Service;
  - 60% after four Years of Service;
  - 80% after five Years of Service; and
  - 100% after six Years of Service.
- (iv) Alternative schedule consistent with the provisions of the Code.

(b) Notwithstanding any non-immediate vesting schedule elected in the Adoption Agreement, a Participant shall be fully vested upon:

- (i) Termination or partial Plan termination for affected Participants; and
- (ii) Complete discontinuance of contributions under the Plan.

(c) Pursuant to the elections in the Adoption Agreement, a Participant may also be fully vested upon:

- (i) Attaining Normal Retirement Age, if he or she is still an Employee at that time;
- (ii) Disability (as defined in Code Section 72(m)(3)); and/or
- (iii) Death.

The Computation Period for vesting shall be as designated in the Adoption Agreement. Years of Service for the calculation of the Participant's nonforfeitable percentage shall include all Years of Service except those specifically disregarded by Section 2.3.

- 7.2. ***Employee, Rollover, and Transfer Contributions.*** All applicable Employee contributions including Code Section 414(h) pick-up contribution, after-tax contributions, rollovers (after-tax amounts and pre-tax amounts), transfers, and earnings thereon will be 100% nonforfeitable at all times.
- 7.3. ***Severance from Employment.*** For purposes of this Article, if the value of a Participant's vested Account Balance is zero upon Severance from Employment, the Participant shall be deemed to have received a distribution of such vested Account Balance.

If the Participant severs employment and elects to take a distribution, the non-vested portion will be treated as a forfeiture. If the Participant elects to have distributed less than the entire vested portion of his or her Account Balance derived from Employer Contributions, the part of the non-vested portion that will be treated as a forfeiture is the total non-vested portion multiplied by a fraction, the numerator of which is the amount of the distribution attributable to Employer Contributions and the denominator of which is the total value of the vested Employer-derived Account Balance.

If a Participant receives or is deemed to receive a distribution pursuant to this Section and the individual resumes employment covered under this Plan, the rehired Participant's Employer-derived Account Balance will be restored to the amount on the date of distribution if the Participant repays to the Plan the full amount of the distribution attributable to Employer Contributions before the earlier of five years after the first date on which the individual is subsequently re-employed by the Employer, or the date the Participant incurs five consecutive one-year Breaks in Service following the date of the distribution. If a Participant is deemed to receive a distribution pursuant to this Section, and the Participant resumes employment covered under this Plan before the date the Participant incurs five consecutive one-year Breaks in Service, upon the re-employment of such Participant, the Employer-derived Account Balance will be restored to the amount on the date of such deemed distribution.

- 7.4. ***Forfeitures.*** Forfeitures arising hereunder shall be used to reduce Employer Contributions in the limitation year and succeeding limitation years if necessary or pay Plan expenses as elected in the Adoption Agreement. No forfeitures will occur solely as a result of a Participant's withdrawal of employee contributions.

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## Article VIII - Benefits

### 8.1. *Normal Form of Benefit.*

- (a) Unless the joint and survivor rules are elected in the Adoption Agreement, the normal form of benefit is a Single Life Annuity. Except as limited by the Employer in the Adoption Agreement, a Participant who does not elect a Single Life Annuity may receive benefits under income options set forth in the Funding Vehicles between the Fund Sponsor(s) and Participants and/or the Employer. Notwithstanding the foregoing, any option selected must comply with the applicable requirements of Article IX, Distribution Requirements.
- (b) To the extent the following rules are elected in the Adoption Agreement, this Subsection shall be administered in accordance with Code Sections 401(a)(11) and 417 and the regulations issued thereunder:
  - (i) The vested Account Balance of a married Participant will be paid in the form of a Qualified Joint and Survivor Annuity or a Qualified Optional Survivor Annuity, unless an optional form of benefit is selected pursuant to a Qualified Election within the applicable election period described in Code Section 417(a) and the Treasury Regulations issued thereunder.
  - (ii) If a married Participant dies prior to the annuity starting date, the vested Account Balance will be paid to the Participant's surviving Spouse in the form of a Qualified Preretirement Survivor Annuity, unless the surviving Spouse has waived his or her rights to such a benefit by consenting in a Qualified Election.
  - (iii) The normal form of benefit for an unmarried Participant is a Single Life Annuity. Except as limited by the Employer in the Adoption Agreement, a Participant who does not elect a Single Life Annuity may receive benefits under income options set forth in the Funding Vehicles between the Fund Sponsor(s) and Participant and/or the Employer.
- (c) Any option selected must comply with the applicable requirements of the Distribution Requirements Article.
- (d) Definitions used in this Section:
  - (i) ***Qualified Election*** means the election made by a Participant's Spouse to consent to waive the normal form of benefit required under the full joint and survivor rules elected in the Adoption Agreement. Such consent shall not be effective unless:
    - The Participant's Spouse consents in writing to the election;



- The election designates a Beneficiary(ies) or form of benefits, which may not be changed without spousal consent (or the Spouse's consent expressly permits designations by the Participant without any further spousal consent);
- The Spouse's consent acknowledges the effect of such election and is witnessed by a Plan representative or notary public; or
- The Participant establishes to the satisfaction of a Plan representative that the consent required cannot be obtained because there is no Spouse, because the Spouse cannot be located or because of other circumstances as the Secretary of the Treasury may by regulations prescribe.

Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment that may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Code Section 417(a)(3).

- (ii) ***Qualified Joint and Survivor Annuity*** means an annuity for the life a Participant with a survivor annuity for the life of the Participant's Spouse which is not less than 50% of the amount of the annuity which is payable during the joint lives of the Participant and his or her Spouse, and is the actuarial equivalent of a single annuity for the life of the Participant.
- (iii) ***Qualified Optional Survivor Annuity*** means an annuity for the life of the Participant with a survivor annuity for the life of the Participant's Spouse that is 75% of the amount which is payable during the joint lives of the Participant and his or her Spouse, and is the actuarial equivalent of a single annuity for the life of the Participant.
- (iv) ***Qualified Preretirement Survivor Annuity*** means a survivor annuity for the life of a Participant's Spouse, the actuarial equivalent of which is not less than 50% of the Participant's vested Account Balance.

- 8.2. ***Optional Forms of Benefit.*** The optional forms of benefit are the forms offered by the Funding Vehicles available under this Plan. Optional forms available under a Funding Vehicle are equally available to all Participants choosing that Funding Vehicle. The selection of an optional form is subject only to the terms of this Plan and Adoption Agreement and is otherwise not subject to the Employer's discretion. Subject to the elections made in the Adoption Agreement, optional forms of benefit available under this Plan may be:
- (a) *Single life annuities* as provided under the Funding Vehicle contracts. A single life annuity means an annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
  - (b) *Joint and survivor annuities* as provided under the Funding Vehicle contracts. A joint and survivor annuity means an annuity payable in equal installments for the life of the Participant and providing for at least 50% of the equal installments to be paid for the life of the Participant's surviving Spouse in the event of the Participant's death.
  - (c) *Lump sum benefit* as provided under the Funding Vehicle contracts. A lump sum benefit means a one-time payment of the Account Balance or systematic withdrawals of a portion of the Account Balance payable on a monthly, quarterly, semi-annual, or annual basis.
  - (d) *Fixed period annuities* as provided under the Funding Vehicle contracts. A fixed period annuity means an annuity payable over a period which shall not be less than two nor more than 30 years and subject to the limits of Section 9.5.
  - (e) Any other such annuity and withdrawal option as may be provided under the Funding Vehicle contracts.
- 8.3. ***Life Insurance.*** The Plan does not invest in or distribute life insurance.
- 8.4. ***Commencement of Benefits.*** Benefits shall commence in accordance with the elections made in the Adoption Agreement and pursuant to Article IX. Payment of benefits under the Plan will commence only when the request is submitted in good order in accordance with Article IX and the rules of the applicable Funding Vehicle(s) holding the Participant's Accumulation Account.
- 8.5. ***Annuity Contracts.*** Any annuity contract distributed under the Plan must be nontransferable. The terms of any annuity contract purchased and distributed by the Plan to a Participant or Beneficiary shall comply with the requirements of this Plan.
- 8.6. ***Death Benefits.*** In the event a Participant dies prior to commencement of retirement benefit payments, the full current value of the vested amount in the Account Balance will be paid to the Beneficiary designated by the Participant under the procedures set forth by the Fund Sponsors.

If there is no designated Beneficiary and the joint and survivor rules are elected in the Adoption Agreement, the Participant's Spouse, if any, is the Beneficiary for at least 50% of the Participant's vested Account Balance and the remainder will be paid to the Participant's estate.

Otherwise, if there is no designated Beneficiary the Account Balance will be paid pursuant to the terms of the Funding Vehicle or if such terms are absent, to the Participant's estate.

Benefits payable under this Section are subject to the minimum distribution rules of Code Section 401(a)(9), as described in Article IX.

- 8.7. ***Benefits for Participants Who Have Died or Become Disabled While Performing Qualified Military Service.*** In the case of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)(5)), the Participant's Beneficiary shall, to the extent required by Code Section 401(a)(37), be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service unless so elected in the Adoption Agreement) that would be provided under the Plan had the Participant resumed and then severed employment on account of death.

Pursuant to an election in the Adoption Agreement, Participants who die or become disabled (as defined in Code Section 72(m)(3)) as a result of performing qualified military service prior to re-employment by the Employer shall be credited for benefit accrual purposes as if the Participant had resumed employment (pursuant to Chapter 43 of Title 38 of the United States Code) on the day preceding death or disability and severed employment on the actual date of death or disability.

- (a) For Participants in a contributory plan who die while performing qualified military service, the following rules will apply if elected in the Adoption Agreement:
  - (i) The Employer Contribution will be based on the Participant's actual employee contributions contributed to the Plan (or elective deferrals if an Employer match applies to this Plan) for the prior 12 months (or the actual length of employment if less than 12 months) herein referred to as "deemed contributions".
  - (ii) If the Employer Contribution is based on Years of Service, the Participant's qualified military service will be credited as actual service with the Employer.
- (b) For Participants in a contributory plan who become disabled while performing qualified military service, the following rules will apply as elected in the Adoption Agreement:

- (i) The Employer Contribution may be based on either:
- deemed contributions (described in (a)(i) above); or
  - the actual contributions the Participant has contributed upon resuming employment (with the Employer) which does not exceed the amount the Participant could have contributed during the period of qualified military service had the Participant not been called to duty. Any contribution made under this provision must be made pursuant to and within the permitted period for making these “make-up” contributions under Code Section 414(u)(8); and
- (ii) If the Employer Contribution is based on Years of Service, the Participant’s qualified military service may be credited as actual service with the Employer.

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## Article IX - Distribution Requirements, Rollovers, Transfers, and Loans

### 9.1. *Commencement of Benefits:*

- (a) ***Contributions and/or Transfer Contributions.*** Subject to the distribution elections in the Adoption Agreement, distributions of contributions and/or amounts held in a separate account attributable to transferred contributions may not be made earlier than Severance from Employment.
- (b) ***Amounts Held In Rollover Accounts.*** If permitted by the Adoption Agreement and a Participant has separate accounts under the Plan attributable to rollover contributions, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the Participant's rollover account(s).
- (c) ***FICA Replacement ("3121") Plan Contributions.*** If this election applies in the Adoption Agreement, distributions may not be made from the Participant's Account Balance that is attributable to the amounts contributed to satisfy the FICA replacement contributions (7.5% of the Participant's Compensation up to the applicable year's TWB) prior to Severance from Employment or death.
- (d) Unless the Participant elects otherwise, the payment of benefits under the Plan to the Participant will begin no later than the 60<sup>th</sup> day after the latest of the close of the Plan Year in which:
  - (i) The date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified under the Plan;
  - (ii) Occurs the 10<sup>th</sup> anniversary of the year in which the Participant commenced participation in the Plan; or
  - (iii) The Participant has a Severance from Employment.

A Participant may elect to defer distributions under the Plan to a date that is no later than the Participant's Required Beginning Date, which is defined in this Article. Notwithstanding the foregoing or any other provision of the Plan, the failure of a Participant (and Spouse, if applicable) to consent to a distribution while a benefit is immediately distributable, within the meaning of the elections made in the Adoption Agreement and this Article IX, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this Section.

- ### 9.2. ***Required Minimum Distributions.*** The Plan shall comply with the minimum distribution requirements of Code Section 401(a)(9) and the Treasury Regulations issued thereunder.

9.3. **General Rules.** The requirements of the following Sections are intended to comply with Code Section 401(a)(9) and the Treasury Regulations issued thereunder. The requirements of Code Section 401(a)(9) shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan. Notwithstanding the other provisions of this Section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to Section 242(b)(2) of TEFRA.

9.4. **Suspension of 2009 Required Minimum Distributions.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code Section 401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), 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 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. In addition, notwithstanding contrary provisions of the Plan if a Beneficiary's balance is required to be distributed under Code Section 401(a)(9)(B)(ii), the five year period will be determined without regard to calendar year 2009.

**Direct Rollovers.** Notwithstanding the provisions of the Plan relating to required minimum distributions under Code Section 401(a)(9), and solely for purposes of applying the direct rollover provisions of the Plan, 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions.

9.5. **Time and Manner of Distribution.**

- (a) **Required Beginning Date.** The Participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (b) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:
  - (i) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then distributions to the surviving Spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

- (ii) If the Participant's surviving Spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (iii) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (iv) If the Participant's surviving Spouse is the Participant's sole designated beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section, other than (b)(i), will apply as if the surviving Spouse were the Participant.

For purposes of Sections 9.5.(b) and 9.7., unless Section 9.5.(b)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 9.5.(b)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 9.5.(b)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 9.5.(b)(i), the date distributions are considered to begin is the date distributions actually commence.

- (c) ***Forms of Distribution.*** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year, distributions shall be made in accordance with Sections 9.6. and 9.7. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

#### 9.6. ***Required Minimum Distributions During Participant's Lifetime.***

- (a) ***Amount of Required Minimum Distribution for Each Distribution Calendar Year.*** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - (i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

- (ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.
- (b) ***Lifetime Required Minimum Distribution Through Year of Participant's Death.*** Required minimum distributions will be determined under this Subsection beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

#### 9.7. ***Required Minimum Distributions After Participant's Death.***

(a) ***Death On or After Date Distributions Begin.***

- (i) ***Participant Survived by Designated Beneficiary.*** If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:
- The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - If the Participant's surviving Spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
  - If the Participant's surviving Spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.



- (ii) ***No Designated Beneficiary.*** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) ***Death Before Date Distributions Begin.***
- (i) ***Participant Survived by Designated Beneficiary.*** If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 9.7.(a).
  - (ii) ***No Designated Beneficiary.*** If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iii) ***Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin.*** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 9.5.(b)(i), this Section 9.7.(b) shall apply as if the surviving Spouse were the Participant.

9.8. ***Definitions.***

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

- (b) ***Distribution Calendar Year.*** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 9.5.(b). The required minimum distribution for the Participant's first distribution calendar year shall be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) ***Life Expectancy.*** Life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.
- (d) ***Participant's Account Balance.*** The Participant's Account Balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Participant's Account Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Participant's Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (e) ***Required Beginning Date.*** The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70 ½ or, if later, April 1 following the calendar year in which the Participant retires.
- (f) ***Spouse.*** For purposes of Section 9.2 through 9.9, Spouse has the meaning provided under Section 7 of Title 1 of the United States Code pursuant to the Defense of Marriage Act of 1996.

9.9. ***Election to Allow Participants, Former Participants or Beneficiaries to Elect the Five-Year Rule.***

Participants or Beneficiaries may elect on an individual basis whether the five-year rule or the life expectancy rule in Subsections 9.5.(b) and 9.7.(b) applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 9.5.(b), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor the Beneficiary makes an election under this paragraph, distributions will be made in accordance with Sections 9.5.(b) and 9.7.(b).

- 9.10. ***Direct Rollover of Eligible Rollover Distributions.*** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover and subject to the terms and restrictions of the Funding Vehicles. A Distributee may not make the election described in the preceding sentence to roll over only a portion of the Eligible Rollover Distribution.

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

- (a) ***Eligible Rollover Distribution.*** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:
- (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a period of 10 years or more;
  - (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9);
  - (iii) any hardship distribution;
  - (iv) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and
  - (v) any distribution(s) that is reasonably expected to total less than \$200 during a year.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions, if applicable, which are not includible in gross income. However, such after-tax portion, if any, may be transferred only to an individual retirement account or annuity described in Code Sections 408(a) or 408(b), or to a qualified defined contribution plan described in Code Sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (b) **Eligible Retirement Plan.** An Eligible Retirement Plan which agrees to accept a Distributee's Eligible Rollover Distribution is a qualified plan described in Code Section 401(a), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or an eligible plan under Code Section 457(b) which is maintained by a governmental employer which agrees to separately account for amounts transferred into such plan from this Plan. Effective for Plan Years beginning on and after January 1, 2008, an eligible rollover distribution may be paid to a Roth IRA as described in Code Section 408A. In the case of a distribution to a non-spouse Beneficiary, an Eligible Retirement Plan is limited to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Code Section 408(d)(3)(C)). The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a domestic relations order as defined in Code Section 414(p).
- (c) **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 domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the Spouse or former Spouse. A Distributee also includes the Participant's non-spouse designated beneficiary under Section 8.5. In the case of a non-spouse beneficiary, the Direct Rollover may be made only to an individual retirement account or annuity described in Code Sections 408(a) or 408(b) ("IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18, 2007 I.R.B. 395.
- (d) **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (e) **Spouse.** For purposes of Section 9.10, Spouse has the meaning provided under Section 7 of Title 1 of the United States Code pursuant to the Defense of Marriage Act of 1996.

9.11. **Transfers to Another Qualified Plan.** If elected in the Adoption Agreement, direct transfers for a Participant to another plan qualified under Code Section 401(a) shall be permitted pursuant to the terms and restrictions of the Funding Vehicles.

- 9.12. **Transfers for the Purchase of Service Credit.** If elected in the Adoption Agreement, transfers for the purchases of service credit shall be permitted under the Plan as provided in this Section and pursuant to the terms and restrictions of the Funding Vehicles.
- (a) If a Participant is also a Participant in a tax-qualified defined benefit governmental plan (as defined in Section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan.
  - (b) Except as provided in this paragraph, a transfer may be made before the Participant has had a Severance from Employment. In the case of a plan with FICA Replacement "3121" contributions, a transfer may only be made after the Participant has had a Severance from Employment.
  - (c) A transfer may be made only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).
- 9.13. **Automatic Rollovers of Small Account Balances.** If elected in the Adoption Agreement and pursuant to the terms and restrictions of the Funding Vehicle, Code Section 401(a)(31)(B) and the Treasury Regulations issued thereunder, in the event of an Account Balance greater than \$1,000 but less than \$5,000 (or such other limit as permitted by the Treasury Regulations), and the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover or to receive the distribution directly, then to the extent required and permitted by the Treasury Regulations, the Plan Administrator will distribute such amount in a Direct Rollover to an IRA designated by the Plan Administrator for the benefit of the Participant.
- 9.14. **Notice of Direct Rollover.** The Plan Administrator shall provide, within a reasonable time period before making an 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.
- 9.15. **Loans.** If elected in the Adoption Agreement and subject to the terms of the Funding Sponsors, loans are available to Participants before the commencement of benefit payments to the extent permitted under Code Section 72(p).
- (a) No loan to a Participant under the Plan may exceed the lesser of:
    - (i) \$50,000, reduced by the greater of:
      - (1) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made; or

- (2) 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 Plan Administrator (not taking into account any payments made during such one-year period); or
- (ii) 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 Plan Administrator).
- (b) All loans shall be established and administered in accordance with the terms of the loan agreement, the Funding Vehicle from which the loan is taken, Code Section 72(p) and the Treasury Regulations issued thereunder.
- (c) To the extent required by the joint and survivor rules elected in the Adoption Agreement, a married Participant's Spouse must consent to the loan or execute a waiver.

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## Article X - Administration

- 10.1. **Plan Administration.** This Plan is intended to satisfy Code Section 401(a) as applicable to a governmental employer as defined in Code Section 414(d) and all provisions shall be interpreted consistently therewith. This Plan shall be administered in accordance with the applicable Code Section(s) and regulations issued thereunder which are now in effect or as hereafter amended or recodified.
- 10.2. **Plan Administrator.** The Plan Administrator named in the Adoption Agreement shall be responsible for enrolling Participants, remitting contributions to the Plan for each Participant to the Funding Vehicle(s) selected by the Participant, and for performing other duties required for the operation of the Plan.
- 10.3. **Administrative Duties.** The Plan Administrator shall be responsible for administering the Plan according to its terms. These provisions and requirements include but are not limited to:
- (a) Determining whether an employee is eligible to participate in the Plan;
  - (b) Determining whether contributions comply with the applicable limitations;
  - (c) Determining that any transfers, rollovers, or purchases of service credit comply with applicable requirements and limitations;
  - (d) Maintaining a list of all Fund Sponsors, Funding Vehicles, and investments under the Plan;
  - (e) Determining that the requirements of the Plan and Section 401(a) of the Code are properly applied;
  - (f) Determining the status of domestic relations orders in accordance with the procedures of the Funding Vehicles;
  - (g) Discretionary and final authority in determining any uncertain terms and to resolve any disputes arising under and all questions concerning administration of the Plan; and
  - (h) Employing attorneys, agents, and accountants as it finds necessary or advisable to assist it in carrying out its duties.

Any determination made by the Plan Administrator shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Plan Administrator will at all times exercise good faith, apply standards of uniform application, and refrain from arbitrary action.

- 10.4. **Authority of the Employer.** The Employer, by action of its authorized representative, Board of Trustees, governing body, or committee may designate a person or persons other than the Employer to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 10.5. **Action of the Employer.** Any act authorized, permitted, or required to be taken by the Employer under the Plan, which has not been delegated in accordance with Section 10.3., may be taken by the Employer's authorized representative, the Board of Trustees, governing body, or committee or as set forth in any governing provision of law. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Employer under the Plan will be in writing and signed by: (i) the Employer's authorized representative, (ii) the members of the Board of Trustees, governing body, or committee, as proscribed by law, (iii) by any member or members of the Board of Trustees, governing body, or committee as may be designated by an instrument in writing, signed by all members (or otherwise proscribed by law), as having authority to execute the documents on its behalf, or (iv) a person who becomes authorized to act for the Employer in accordance with the provisions of Section 10.3. Any action taken by the Employer which is authorized, permitted, or required under the Plan and is in accordance with a Funding Vehicle's contractual obligations, is final and binding upon the Employer, all persons who have or who claim an interest under the Plan, and third parties dealing with the Employer.
- 10.6. **Indemnification.** In addition to whatever rights of indemnification the Employer's authorized representative, members of the Board of Trustees, governing body, or committee, or any other person or persons (other than the Sponsoring Organizations) to whom any power, authority, or responsibility of the Employer is delegated pursuant to Section 10.3., may be entitled under any provision of law, the Employer may, under any other agreement, satisfy any liability actually and reasonably incurred by any member or other person or persons, including expenses, attorney's fees, judgment, fines, and amounts paid in settlement or in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise by the member or other person or persons of any of the powers, authority, responsibilities, or discretion of the Employer as provided under the Plan or trust, or reasonably believed by the authorized representative, member of the Board of Trustees, governing body, or committee, or other person(s) to be provided thereunder or any action taken by the Employer's authorized representative, member of the Board of Trustees, governing body, or committee, or other person(s) in connection with it.
- 10.7. **No Reversion.** Except as provided in Section 12.8, under no other circumstances or conditions will any contributions of the Employer revert to, be paid to or inure to the benefit of, directly or indirectly the Employer.



- 10.8. **Valuations.** Records for each Participant or Beneficiary shall be maintained on the basis of the Plan Year. The assets of the Plan will be valued at fair market value as of the Valuation Date, and the method of allocating trust gains, expenses, losses, appreciation, or depreciation, shall be the method(s) described in the Annuity Contracts and Custodial Accounts or by other applicable documents issued under the Funding Vehicles held under the trust requirement.
- 10.9. **Relationship of Federal and State Law.** The Plan is intended to satisfy the applicable requirements of Code Section 401(a) that apply to government plans as defined in Code Section 414(d) including Treasury Regulations and other authoritative pronouncements. To the extent not governed by the provisions of the Code or other federal laws, the Plan shall be administered, interpreted and enforced in accordance with the law of the state in which the Employer is located.
- 10.10. **Expenses.** The Employer may, in its sole discretion, pay any or all reasonable expenses of the Plan's administration, including but not limited to those involved in retaining necessary professional assistance. If the Employer chooses not to pay such expenses, those amounts may be paid in the following manner at the discretion of the Employer and as permitted by the terms of the Individual Agreement:
- (a) From the assets of the Funding Vehicles;
  - (b) From the Accumulation Accounts of Participants who are assessed such expenses or expenses particular to a group of Participants;
  - (c) From the Accounts of terminated Participants, even if such amounts are not assessed against active Participants; or
  - (d) By Participants outside of the Plan.

Amounts paid from Participant Accumulation Accounts or by Participants outside of the Plan are permitted only to the extent allowed by law, permitted by the terms of the Individual Agreement, and are subject to the nondiscriminatory rules established and applied uniformly by the Employer. Participant expenses, such as those incurred by the Participant in retaining investment advice, may be paid from the Participant's account to the extent permitted by the Individual Agreement.

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## Article XI - Termination and Amendment

- 11.1. **Termination.** While it is expected that this Plan will continue indefinitely, the Employer reserves the right at any time to terminate the Plan, or to discontinue any further contributions or payments under the Plan. In the event of a termination of the Plan or a complete discontinuance of Plan contributions, the Employer will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts of affected Participants will become nonforfeitable to the extent funded.
- 11.2. **Distribution Upon Termination.** Upon termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Annuity Contracts will be distributed to the Participant, the shares in the Custodial Account may be redeemed or otherwise distributed pursuant to the terms of the Custodial Account agreement, and the investment options held in trust will be liquidated, redeemed, or otherwise distributed pursuant to the instructions of the trustee consistent with the terms of any Funding Vehicle.
- 11.3. **Amendment by Plan Sponsoring Organization.** The Plan Sponsoring Organization reserves the right to amend the terms of the Plan and Adoption Agreement to maintain approval under the IRS Volume Submitter Plan program or to conform the Plan to any qualification requirement under the Code, regulations or other related guidance applicable to governmental plans. No amendment by the Plan Sponsoring Organization which modifies selections in the Adoption Agreement shall be binding upon an Employer unless approved by the Employer in writing.
- 11.4. **Amendment by Employer.** The Employer reserves the authority to amend this Plan at any time. The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy Code Section 415 because of the required aggregation of multiple plans, and (3) add certain model amendments published by the Internal Revenue Service which specifically provide that their adoption will not cause the plan to be treated as individually designed. An Employer that amends the Plan for any other reason will no longer participate in this volume submitter plan and will be considered to have an individually designed plan. An Employer with an individually designed plan will no longer be entitled to rely on the determination letters received by TIAA-CREF's volume submitter plan for the qualification of its individually designed plan document and must submit its own application for a determination letter to maintain its plan qualification.

11.5. ***Limitation on Amendment.*** Notwithstanding the provisions of Section 11.4., the following conditions and limitations apply:

- (a) No amendment will be made which will operate to recapture for the Employer any contributions previously made under this Plan except reversions as permitted under Section 12.8. Also, those contributions made in contemplation of initial approval by the Internal Revenue Service may be returned to the Employer if the Internal Revenue Service fails to approve the Plan, provided they are returned within one year of the date of denial and the determination letter application was filed in a timely manner.
- (b) No amendment will deprive, take away or alter any previously approved right of any Participant insofar as Plan contributions are concerned.

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## Article XII - Miscellaneous

- 12.1. **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.
- 12.2. **Claims of Other Persons.** The provisions of the Plan will in no event be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Employer, its officers, employees, or directors, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 12.3. **Non-Alienation of Retirement Rights or Benefits.** Except as provided below in (a) and (b), the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- (a) **Domestic Relation Orders.** Notwithstanding the first paragraph of this Section, above, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a Spouse or former Spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Plan Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.
- (b) **IRS Levy.** Notwithstanding the first paragraph of this Section, above Subsection (a), the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

- 12.4. **Plan Mergers.** In the event of a merger or consolidation with, or transfer of assets or liabilities to any other plan, each Participant will receive a benefit immediately after such merger, etc. (if the Plan then terminated) which is at least equal to the benefit the Participant was entitled to immediately before such merger, etc. (if the Plan had terminated).
- 12.5. **Individual Agreements.** The terms of the Funding Vehicles and the terms of the trust in which a Funding Vehicle may be held and any certificates 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 incorporated by reference into the Plan. Documents establishing such Funding Vehicles shall be consistent with the terms of the Plan. In the event of any conflict between the terms of this Plan and the terms of any document that is made a part of the Plan, the Plan Administrator shall resolve the conflict. In the event of any conflict between the terms of this Plan and the terms of any portion of any document that is not a part of the Plan, the Plan provisions shall control. Notwithstanding the foregoing, in no event will the terms of the Plan expand or change the benefits, rights, or features available under the Individual Agreements.
- 12.6. **Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes. Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Code Section 3401 and the Employment Tax Regulations issued thereunder). A payee shall provide such information as the Funding Vehicle may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.
- 12.7. **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 Funding Vehicle, benefits will be paid to such person as the Funding Vehicle may designate or the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.
- 12.8. **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Funding Vehicle, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Employer.
- 12.9. **Procedure When Distributee Cannot Be Located.** The Funding Vehicle shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means:
- (a) The mailing by certified mail of a notice to the last known address shown on the Employer's or the Plan Administrator's records;

- (b) Notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans); and
- (c) The payee has not responded within six months.

If the Funding Vehicle is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Funding Vehicle shall continue to hold the benefits due such person except to the extent state law requires otherwise.

- 12.10 **Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.
- 12.11 **Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.
- 12.12 **Failure of Qualification.** If the Employer's Plan fails to attain or retain qualification, such Plan will no longer participate in this volume submitter plan.