

**BOWDOIN COLLEGE RETIREMENT PLAN**  
*As Amended and Restated Effective Generally July 1, 2013*

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## **BOWDOIN COLLEGE RETIREMENT PLAN**

The Bowdoin College Retirement Plan became effective July 1, 1988. The Plan is hereby amended and restated generally effective July 1, 2013, except as specifically stated herein or as otherwise required to comply with changes in the tax laws. The Plan is intended to qualify as a money purchase pension plan under Section 401(a) of the Code and to comply with the applicable provisions of the Code and ERISA, as well as the regulations and rulings thereunder.

### **ARTICLE I      Definitions**

Whenever used in this Plan, the following terms shall have the meanings set forth below, unless otherwise expressly provided herein:

1.1      “Account” means the account established and maintained by the Plan Administrator for each Participant which shall reflect the Participant’s share of the Trust Fund; provided such Account shall reflect separately (a) the Participant’s share of Employer contributions; (b) the Participant’s Rollover Contributions; and (c) the direct transfer of plan assets made on behalf of the Participant from another qualified plan.

1.2      “Annuity Starting Date” means the first day of the first period for which an amount is payable as an annuity or any other form.

1.3      “Beneficiary” means the person or persons designated by a Participant as provided in Section 7.2 to receive any amounts payable under the Plan following the death of the Participant.

1.4      “Break in Service” means an Eligibility Computation Period during which an Employee has not completed more than five hundred (500) Hours of Service. Effective December 12, 1994, a reemployed Employee’s period of Qualified Military Service shall be disregarded for purposes of determining whether he or she has incurred a Break in Service.

1.5      “Code” means the Internal Revenue Code of 1986, as from time to time amended.

1.6      “Compensation” means, with respect to any Plan Year, the total compensation paid by the Employer to the Employee for services rendered while a Participant that constitutes wages as defined in Section 3401(a) of the Code and all other payments made by the Employer to the Employee for services rendered while a Participant for which the Employer is required to furnish the Employee a written statement under Sections 6041(d), 6051(a)(3), and 6052 of the Code, without regard to any rules under Section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or services performed. Notwithstanding the foregoing to the contrary, Compensation (i) shall include elective contributions made by the Employer on behalf of an Employee that are not includable in income under Section 125, Section 132(f)(4) (effective for Plan Years beginning on or after July 1, 1998), Section 402(e)(3), Section 402(h), Section 408(p)(2), Section 403(b), and compensation deferred under an ineligible deferred compensation plan within the meaning of Section 457(b) of the Code, and (ii) shall be reduced by reimbursements or other expense allowances (cash and non-cash), fringe benefits (including, but not limited to, imputed income from group-term life insurance in excess of \$50,000 and Employer-paid domestic partner benefits), moving expenses, de-

ferred compensation, and welfare benefits (including but not limited to, severance benefits). For purposes of this Section, amounts under Section 125 shall include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount shall be treated as an amount under Code Section 125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the Employer's health plan.

Notwithstanding the foregoing to the contrary, effective for Plan Years beginning on or after July 1, 2002, the annual compensation of any Employee in excess of Two Hundred Thousand Dollars (\$200,000) (as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B)) shall not be taken into account under the Plan. If Compensation for a prior Plan Year is taken into account for any Plan Year, such Compensation shall be subject to the annual Compensation limit in effect for such prior Plan Year. In the event that Compensation is determined based on a period of time that contains fewer than twelve (12) calendar months, the annual compensation limit shall be an amount equal to the annual compensation limit for the calendar year in which the period begins multiplied by a fraction, the numerator of which is the number of full calendar months in the period and the denominator of which is twelve (12).

1.7 "Determination Date" means, with respect to any Plan Year, the last day of the preceding year or in the case of the first Plan Year, the last day of such Plan Year.

1.8 "Disability" or "Disabled" means a Participant's incapacity to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of long-continued and indefinite duration as certified by a licensed physician approved by the Employer.

1.9 "Effective Date" means, except as otherwise provided herein, July 1, 2013 with respect to this amendment and restatement of the Plan.

1.10 "Eligibility Computation Period" means the initial twelve (12) consecutive month period beginning with the date on which an Employee first performs an Hour of Service and thereafter each Plan Year commencing with the Plan Year that includes the first anniversary of his or her Employment Commencement Date.

1.11 "Employee" means any individual employed by the Employer, excluding any individual who is employed as an independent contractor, Leased Employees, and temporary employees who are on student assignments. The determination of an individual's employment status for all purposes under the Plan shall be made by the Employer in accordance with its standard classifications and employment practices, which shall be nondiscriminatorily applied and communicated to its Employees, and without regard to the classification or reclassification of the individual by any other party.

1.12 "Employer" means Bowdoin College. If the Employer is a member of a group of employers which constitutes a controlled group of corporations (as defined in Section 414(b) of the Code), which constitutes trades or businesses (whether or not incorporated) which are under common control (as defined in Section 414(c) of the Code), or which constitutes an affiliated service group (as defined in Section 414(m) of the Code and modified in Section 414(o) of the Code), all such employers shall be considered a single employer as required by Sections 414(b), 414(c), 414(m) and 414(o) of the Code. For purposes of applying the limitations of Article IV,

the Section 414(b) definition of a controlled group of corporations and the Section 414(c) definition of trades or businesses under common control shall be modified as provided in Section 415(h) of the Code.

1.13 "Employment Commencement Date" means the date on which an Employee first performs an Hour of Service for the Employer.

1.14 "ERISA" means the Employee Retirement Income Security Act of 1974 as it may be amended from time to time, and any regulations issued pursuant thereto as such Act and such regulations affect this Plan.

1.15 "Five Percent Owner" means any person who owns (or is considered as owning within the meaning of Section 318 of the Code) more than five percent (5%) of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer.

1.16 "Former Participant" means any individual who ceases to be employed by the Employer and who has not received full distribution of his or her Account.

1.17 "Fund Sponsor" means an insurance, variable annuity, mutual fund or investment company that provides Funding Vehicles available to Participant under the Plan. The Fund Sponsors shall be the entities listed in Appendix A attached hereto and made a part of this Plan. The Employer's initial selection of Fund Sponsors is not intended to limit future additions or deletions of Fund Sponsors; provided, however, that a Fund Sponsor may be added to Appendix A only if it has been approved by the Governing Boards of the College or its delegate.

1.18 "Funding Vehicle" means the financial instruments issued for the purpose of funding accrued benefits under the Plan.

1.19 "Highly Compensated Employee" means, for Plan Years beginning on or after July 1, 1997, an Employee who –

(a) was a Five Percent Owner at any time during the Plan Year or the preceding Plan Year or

(b) for the preceding Plan Year had Section 415 Compensation in excess of \$90,000 (or such higher amount as the Secretary of the Treasury may prescribe) and, if the Plan sponsors elects by Plan amendment, was in the top-paid group (the top twenty percent (20%) of Employees ranked on the basis of Section 415 Compensation for such Plan Year).

1.20 "Hour of Service" means:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. Such hours shall be credited to the computation period in which such duties are performed.

(b) 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. Notwithstanding anything



contained in this subsection (b) to the contrary: (i) no more than five hundred and one (501) Hours of Service shall be credited under this subsection (b) to any Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period), (ii) Hours of Service shall not be credited if payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, unemployment compensation, or disability insurance laws, and (iii) Hours of Service shall not be credited if payment is made solely to reimburse an Employee for medical or medically related expenses incurred by the Employee.

(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 shall not be credited both under subsection (a) or subsection (b), as the case may be, and under this subsection (c). Hours of Service under this subsection (c) shall be credited to the computation period or computation periods to which the award or agreement pertains rather than the Plan Year in which the award, agreement or payment is made.

Hours of Service shall be credited with respect to employment with other members of an affiliated service group (as defined in Section 414(m) of the Code), a controlled group of corporations (as defined under Section 414(b) of the Code) or a group of trades or businesses under common control (as defined under Section 414(c) of the Code) of which the Employer is a member, and any other entity required to be aggregated with the Employer pursuant to Section 414(o) of the Code. Hours of Service shall also be credited with respect to any individual who is treated as an Employee under Section 414(n) of the Code or Section 414(o) of the Code. Hours of Service shall be credited under this subsection only to the extent required under Section 414(b), (c), (m), (n), (o) (or other applicable sections) of the Code and the regulations thereunder.

The number of Hours of Service to be credited to each Employee shall be determined in accordance with the provisions of 29 CFR Sections 2530.200b-2(b) and 2(c) which are incorporated herein by reference thereto.

Each Employee whose Compensation is not determined on an hourly basis shall be credited with forty-five (45) Hours of Service for each week such Employee is required to be credited with at least one (1) Hour of Service.

Each Employee who is absent from work for any period (i) by reason of the pregnancy of the Employee, (ii) by reason of the birth of a child of the Employee, (iii) by reason of the placement of a child with the Employee in connection with the adoption of the child by the Employee or (iv) for purposes of caring for such child for a period beginning immediately following such birth or placement shall, solely for purposes of determining whether such Employee has incurred a Break in Service, be credited with the Hours of Service which would normally have been credited to such Employee but for such absence or, if such Hours of Service cannot be determined, eight (8) Hours of Service for each day of such absence; provided the total number of Hours of Service credited in accordance with this paragraph on account of such absence shall not exceed 501. The Hours of Service described in this paragraph shall be credited in the computation period in which the absence begins, if the Employee would be prevented from incurring a Break in Service in such year solely because the Employee is credited with such Hours of Service or, in all other cases, in the immediately following computation period.

1.21 "Investment Manager" means any fiduciary, other than the Trustee or a named fiduciary (as defined in Section 402(a)(2) of ERISA):

(a) who is appointed by the Employer to manage, acquire, or dispose of all or any portion of the Trust Fund;

(b) who is (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is a bank, as defined in said Act; or (iii) is an insurance company qualified to manage, acquire or dispose of all or any portion of Trust Fund under the laws of more than one State; and

(c) who has acknowledged, in writing, that he, she or it is a fiduciary with respect to the Plan.

1.22 "Leased Employee" means any person who is not an Employee and who provides services to the Employer if:

(a) such services are provided pursuant to an agreement between the Employer and any leasing organization;

(b) such person has performed services for the Employer (or for the Employer and any related person determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one (1) year; and

(c) such services are performed under the primary direction or control of the Employer.

1.23 "Limitation Year" means a calendar year (or any other twelve (12) consecutive month period adopted for all qualified plans of the Employer) pursuant to a written resolution adopted by the Employer. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

1.24 "Named Fiduciary" means with respect to the operation and administration of the Plan, the Plan Administrator, and with respect to the management of the Trust Fund, the Trustee.

1.25 "Normal Retirement Age" means age sixty-five (65).

1.26 "Participant" means any Employee who is or becomes eligible to participate in this Plan, in accordance with Section 2.1.

1.27 "Plan" means this Bowdoin College Retirement Plan.

1.28 "Plan Administrator" means the person or persons designated by the Employer in accordance with Section 9.1. If more than one person is designated, the committee thus formed shall be known as the "Administrative Committee" and all references in the Plan to the Plan Administrator shall be deemed to apply to the Administrative Committee.

1.29 "Plan Year" means the twelve (12) consecutive month period beginning July 1 and ending June 30.

1.30 “Qualified Joint and Survivor Annuity” means an immediate annuity for the life of the Participant, with a survivor annuity for the life of the Participant’s Spouse that is fifty percent (50%) of the amount of the annuity that is payable during the joint lives of the Participant and the Spouse, and which is the actuarial equivalent of the Participant’s Account balance at the Annuity Starting Date.

1.31 “Qualified Life Annuity” means an immediate annuity for the life of the Participant that is the actuarial equivalent of the Participant’s Account balance at the time distribution of the Account is to be made or commence.

1.32 “Qualified Military Service” means service entitling an individual to reemployment rights under USERRA, provided such individual is reemployed or initiates reemployment with the Employer within the period prescribed by USERRA.

1.33 “Qualified Optional Survivor Annuity” means an immediate annuity for the life of the Participant, with a survivor annuity for the life of the Participant’s Spouse that is seventy-five percent (75%) of the amount of the annuity that is payable during the joint lives of the Participant and the Spouse, and which is the actuarial equivalent of the Participant’s Account balance at the Annuity Starting Date.

1.34 “Qualified Preretirement Survivor Annuity” means a survivor annuity for the life of the surviving Spouse of a Participant that is the actuarial equivalent of the Participant’s Account balance at the Annuity Starting Date.

1.35 “Rollover Contributions” means contributions made by an Employee in accordance with Section 3.8 prior to July 1, 2002.

1.36 “Section 415 Compensation” means wages, as defined in Code Section 3401(a), and all other payments to an Employee by the Employer (for services rendered in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Sections 6041(d), 6051(a)(3), and 6052, determined without regard to any rules under Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

(a) Except as set forth in this Section, Section 415 Compensation for a Limitation Year is the Section 415 Compensation actually paid or made available during such Limitation Year. For Limitation Years beginning after December 31, 1997, this includes amounts that would be included in income but for an election under Section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b), and for Limitation Years beginning after June 30, 1998, this includes amounts not includible in income by reason of Section 132(f)(4). For purposes of this Section, amounts under Code Section 125 shall not include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code Section 125 only if the Employer does not request or collect information regarding the Participant’s other health coverage as part of the enrollment process for the Employer’s health plan.

(b) For Limitation Years beginning on or after July 1, 2007, “Section 415 Compensation” includes the following additional amounts paid after the Limitation Year:

(i) Amounts earned but not paid, solely because of the timing of pay periods and pay dates, until the first few weeks of the next Limitation Year, provided such amounts are not included in the following Limitation Year.

(ii) Amounts paid to an Employee within 2½ months after the Employee's severance from employment date, or, if later, the end of the Limitation Year that includes the Employee's severance from employment date, that would have been Section 415 Compensation if paid during the Limitation Year, provided that (A) the payment is regular compensation for services that would have been paid to the Employee if he or she had continued in employment with the Employer, (B) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued, or (C) the payment is received by the Employee 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.

(iii) Amounts paid to: (A) an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if he or she had continued to perform services for the Employer rather than entering qualified military service; or (B) a Participant who is permanently and totally disabled, as defined in Code 22(e)(3), provided that salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated employee, as defined in Code Section 414(q), immediately before becoming disabled.

(iv) Back pay, as defined in Treasury Regulation Section 1.415(c)-2(g)(8), shall be treated as Section 415 Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in the definition of Section 415 Compensation.

(c) Section 415 Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in Code Section 7701(b)(1)(B), who is not a Participant in the Plan, to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States.

(d) The term "Section 415 Compensation" for any Limitation Year shall not reflect compensation in excess of the limitation under Code Section 401(a)(17) that applies to such Limitation Year.

1.37 "Spouse" ("surviving Spouse") means the legal Spouse or surviving Spouse of the Participant, except as provided under a qualified domestic relations order as defined in Section 414(p) of the Code.

1.38 "Trust" means the trust created by the Employer in accordance with the provisions of the Plan.

1.39 "Trustee" means the person or persons appointed by the Employer to serve as Trustee(s) of the Trust, as set forth in Appendix B, which is incorporated into and made a part of this Plan.

1.40 "Trust Fund" means the property held in Trust for the benefit of the Participants and their Beneficiaries.

1.41 "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. Section 4301 *et seq.*, as in effect December 12, 1994 (without regard to any subsequent amendment).

1.42 "Valuation Date" means each business day on which the New York Stock Exchange is open.

1.43 "Year of Participation Service" means an Eligibility Computation Period during which the Employee has completed one thousand (1,000) or more Hours of Service; provided, however, if an Employee incurs a Break in Service prior to satisfying the minimum service requirements of Section 2.1 or Section 2.2, then such Employee's Year of Participation Service prior to such Break in Service shall be disregarded.

## **ARTICLE II     Participation**

### *2.1     Date of Participation.*

(a) Each Employee who is a Participant on the Effective Date shall continue to participate in the Plan in accordance with its terms.

(b) In the case of any other Employee, he or she will become a Participant in the Plan as of the first day of the calendar month coinciding with or next following the calendar month in which such Employee meets the requirements of Section 2.2.

2.2 *Minimum Age and Service Requirements.* Each Employee who has attained age twenty-six (26) and who has completed one (1) Year of Participation Service shall be eligible to participate in the Plan.

### *2.3     Reemployed Former Participant.*

(a) If a Former Participant returns to the employ of the Employer, then such Former Participant shall resume participation on the date he or she first performs an Hour of Service.

(b) If an Employee separates from service with the Employer after satisfying the requirements of Section 2.2 but before he or she commences participation in the Plan and returns to the employ of the Employer, then he or she shall commence participation immediately on the first day of the calendar month coinciding with or next following the date that he or she completes an Hour of Service, provided he or she is still an eligible Employee as of such date.

(c) If an Employee separates from service with the Employer before he or she meets the requirements of Section 2.2 and returns to the employ of the Employer, then he or she shall become a Participant in the Plan on the first day of the calendar month coinciding with or next following the date on which he or she satisfies the requirements of Section 2.2, provided that he or she is still an eligible Employee as of such date.

(d) Notwithstanding the foregoing to the contrary, an Employee who separates from service with the Employer before he or she commences participation in the Plan and incurs five

(5) consecutive Breaks in Service before he or she returns to the employ of the Employer shall be treated as a new Employee.

2.4 *Cessation of Participation.* A Participant's participation in the Plan shall continue until such time as his or her Account balance has been distributed in full (or be deemed to be distributed in full) in accordance with the terms of the Plan.

### ARTICLE III Employer Contributions

3.1 *Amount of Contributions.* For each Plan Year; the Employer shall contribute to the Plan on behalf of each Participant the sum of the amounts determined in accordance with subsections (a) and (b) below or, if applicable, the amount determined under subsection (c):

(a) An amount determined in accordance with the following schedule:

| Participant's Age | Amount of Contribution   |
|-------------------|--|
| 26 to 49          | Ten and twelve one-hundredths percent (10.12%) of such Participant's Compensation      |
| 50 or Older       | Twelve and thirteen one-hundredths percent (12.13%) of such Participant's Compensation |

For purposes of this subsection (a), a Participant's age shall be determined as of the later of (i) the first day of each Plan Year, or (ii) the date he or she commences participation in the Plan.

(b) An amount equal to four and three tenths percent (4.3%) of the Participant's Compensation, if any, in excess of six tenths (6/10) of the maximum taxable wage base under Section 3121(a)(1) of the Code.

(c) Notwithstanding the foregoing provisions of this Section to the contrary, in the case of a Participant who participated in the Bowdoin College Retirement Plan for Officers of Instruction and Officers of Administration or who was employed by the Employer on or before September 1, 1988, as an officer of instruction or officer of administration, the Employer shall, for each Plan Year, contribute to the Plan on behalf of such Participant the greater of the amount determined in accordance with subsections (a) and (b) of this Section, or an amount equal to the sum of the following:

(i) eleven and one-half percent (11.5%) of the lesser of such Participant's Compensation for the Plan Year or such Participant's Compensation for the Plan Year ending June 30, 1989; and

(ii) five and seven tenths percent (5.7%) of the lesser of such Participant's Compensation for the Plan Year or such Participant's Compensation for the Plan Year ending June 30, 1989, if any, in excess of the Social Security Wage Base for the Plan Year or the Plan Year ending June 30, 1989, whichever applies.

3.2 *Timing of Contributions.* The Employer's contribution for any Plan Year shall be made no later than the date prescribed by law for filing the Employer's federal income tax return for its taxable year which ends with or within such Plan Year, including extensions which have been granted for filing such return.

3.3 *Form of Contributions.* All contribution shall be made in cash.

3.4 *Maximum Contributions.* In no event shall the Employer's contribution for any Plan Year exceed the maximum amount which the Employer is permitted to deduct for federal income tax purposes or cause the Annual Addition for any Participant to exceed the amount permitted under the Plan.

3.5 *Return of Contributions.* All contributions by the Employer are conditioned upon the initial qualification of the Plan under the Code and upon their deductibility under Section 404 of the Code. Upon the request of the Employer, any contributions made by it (a) that are made by reason of a mistake of fact, (b) that are conditioned upon the initial qualification of the Plan, or (c) for which a deduction is disallowed shall be returned to the Employer within one (1) year of the mistaken payment of the contribution, denial of qualification (provided the application for qualification is made by the time prescribed by law for filing the Employer's federal income tax return for its taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe), or disallowance of the deduction. In the event of a denial of initial qualification, the amount contributed for the period during which the Plan was not qualified may be returned. In the event of a mistake of fact or disallowance of deduction, the amount that may be returned to the Employer is the excess of the amount contributed over the amount that would have been contributed had there not occurred a mistake of fact or error in determining the deduction. Earnings attributable to any excess contributions shall not be returned and losses attributable thereto shall reduce the amounts that may be returned.

3.6 *Nonforfeitable Contributions.* Each Participant shall have a fully vested and nonforfeitable right in the Employer contributions (and earnings attributable thereto) allocated to his or her Employer Contributions Account. A reemployed Employee's period of Qualified Military Service shall be taken into account as required by law for the purposes of determining the nonforfeitability of the contributions made on behalf of such individual under the Plan.

3.7 *USERRA Make-Up Contributions.* The provisions of this Section shall be effective with respect to any Employee reemployed by the Employer following a period of Qualified Military Service on or after December 12, 1994. In the event that a Participant is reemployed by the Employer following a period of Qualified Military Service, the Employer shall make contributions on the Participant's behalf in accordance with Section 3.1. Such contributions shall equal the amount of contributions that the Employer would have made on behalf of the Participant in accordance with the Plan terms in effect during such Employee's period of Qualified Military Service (and in accordance with the limitations of Section 415 of the Code) if such Employee:

- (a) had continued to be employed by the Employer during such period; and
- (b) received Compensation from the Employer equal to:

(i) the Compensation the Employee would have received during such period if the Employee were not in Qualified Military Service, based on the rate of pay the Employee would have received from the Employer but for the absence; or

(ii) if the Compensation the Employee would have received during such period is not reasonably certain, then the Employee's average Compensation from the Employer during the twelve (12) month period immediately preceding the period of Qualified Military Service (or, the period of employment immediately preceding the period of Qualified Military Service, if shorter).

The make up contributions made in accordance with this Section shall be net of any contributions actually made during an Employee's period of Qualified Military Service. Such contributions shall be made on behalf of an Employee pursuant to this Section during the period that begins on the date of reemployment of such Employee with the Employer and the duration of which is equal to the lesser of (i) three (3) times the period of Qualified Military Service and (ii) five (5) years.

Any make-up contributions made by the Employer on behalf of such Employee pursuant to this Section shall not be subject to any otherwise applicable limitation contained in Sections 402(g), 404(a), or 415 of the Code, and shall not be taken into account in applying such limitations to other contributions or benefits under the Plan or any other plan maintained by the Employer with respect to the year in which such contributions are made. In addition, contributions shall not be taken into account, either for the Plan Year in which they are made or for the Plan Year to which they relate, for purposes of Sections 401(a)(4), 401(a)(26), 401(m), 410(b), or 416 of the Code. No provision of this Section shall be construed to require any crediting of earnings to a Participant's Account with respect to any contribution before such contribution is actually made with respect to a period of Qualified Military Service.

### 3.8 *Rollover Contributions.*

(a) For Plan Years before July 1, 2001, an Employee who has received an eligible rollover distribution (as defined in Section 402(c)(4) of the Code) from an employee's trust described in Section 401(a) of the Code that is exempt from tax under Section 501(a) of the Code may transfer all or any portion of such distribution to the Trust, provided the transfer is made to the Trust not later than the sixtieth (60th) day following the day on which the Employee received such distribution. In addition, an Employee who receives a distribution from an individual retirement account (within the meaning of Section 408(a) of the Code) which account is attributable solely to a rollover contribution (as defined in Section 402(c)(4) of the Code) from an employee's trust described in Section 401(a) of the Code which is exempt from tax under 501(a) of the Code, may transfer the entire amount distributed to the Trust, provided the transfer is made to the Trust not later than the sixtieth (60th) day following the day on which the Employee received such distribution. Notwithstanding the foregoing to the contrary, an Employee who has received an eligible rollover distribution (as herein above defined) solely by reason of the death of his or her Spouse, or a distribution from an individual retirement account (as herein above defined), which account is attributable solely to a rollover contribution (as herein above defined) from an employee's trust described in Section 401(a) of the Code which is exempt from tax under Section 501(a) of the Code, of amounts received by reason of the death of his or her Spouse, may not transfer any portion of such distribution to the Trust. A Rollover Contribution shall be credited to a Rollover Contributions Account on behalf of the contributing Employee, and such Em-



ployee shall have a fully vested and nonforfeitable interest in his or her Rollover Contributions Account. The Rollover Contributions Account of an Employee shall be administered, invested and distributed in the same manner and at the same time as his or her Employer Contributions Account. A Participant's Rollover Contributions Account (and the earnings attributable thereto) shall not be taken into account in determining whether a Participant's Account exceeds Five Thousand Dollars (\$5,000) for purposes of determining whether spousal consent is required pursuant to Section 6.5.

(b) Effective July 1, 2001, the Plan shall not accept any eligible rollover distribution from another employer's tax-qualified plan described in Section 401 of the Code, a tax-deferred annuity or custodial account described in Section 403(b) of the Code, a plan of a governmental or tax-exempt organization described in Section 457 of the Code, an individual retirement account or annuity or a simplified employee pension described in Section 408 of the Code, or any other qualified or non-qualified retirement plan or arrangement.

### 3.9 *Direct Transfers.*

(a) For Plan Years before July 1, 2001, the assets of another retirement plan may, with the prior consent of the Plan Administrator, be directly transferred to the Trust, provided immediately prior to the transfer, the transferor plan is qualified under Section 401(a) of the Code and the related trust is exempt under Section 501(a) of the Code. Upon receipt, the Plan Administrator shall credit the Account of each Employee who participated in the transferor plan with the portion of the transferred assets standing to the credit of such Employee under the transferor plan immediately prior to such transfer, provided such amount shall be separately accounted for in accordance with Section 5.1. Each Employee shall have a fully vested and nonforfeitable interest in his or her Transfer Account. The Transfer Account of any Employee shall be administered, invested and distributed in the same manner and at the same time as his or her Employer Contributions Account.

(b) Effective July 1, 2001, the Plan shall not accept any direct transfer of the assets of another employer's tax-qualified plan described in Section 401 of the Code, a tax deferred annuity or custodial account described in Section 403(b) of the Code, a plan of a governmental or tax-exempt organization described in Section 457 of the Code, an individual retirement account or annuity or simplified employee pension described in Section 408 of the Code, or any other qualified or non-qualified retirement plan or arrangement.

## **ARTICLE IV    Limitation on Annual Additions**

Except as otherwise stated herein, this Article shall be effective for Limitation Years beginning on or after July 1, 2007.

4.1 *Annual Limitation.* Notwithstanding any provision of the Plan to the contrary, the Annual Additions credited to a Participant's account for any Limitation Year shall not exceed the Maximum Permissible Amount or any other limitation contained in this Plan. For Limitation Years ending after December 31, 2001, the Maximum Permissible Amount is the lesser of –

- (a) Forty Thousand Dollars (\$40,000); or
- (b) One hundred percent (100%) of the Participant's Section 415 Compensation.

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, then the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year equal the Maximum Permissible Amount. The Plan may determine the Maximum Permissible Amount on the basis of reasonable estimates of Section 415 Compensation for the Limitation Year, provided such estimates are uniformly determined for all Participants. As soon as practicable after the end of each Limitation Year, the Maximum Permissible Amount shall be determined on the basis of actual Section 415 Compensation.

4.2 *Crediting of Annual Additions to Limitation Years.* Amounts treated as Annual Additions shall be credited to a Participant's account for any Limitation Year in accordance with the general and special timing rules set forth in the Treasury Regulations under Code Section 415.

4.3 *Adjustments to Limitations.*

(a) Effective July 1, 2002 and each July 1 thereafter, the dollar limitation in effect under Section 4.1(a) shall be automatically adjusted for increases in the cost of living in accordance with Section 415(d) of the Code and official guidance issued thereunder each January 1. Such adjustment shall apply to the Limitation Year ending with or within the calendar year of the effective date of such adjustment, but the Participant's Annual Additions shall not reflect the adjusted limit prior to January 1 of that calendar year.

(b) For any Limitation Year that has fewer than twelve (12) months, the dollar limitation in Section 4.1(a) shall be multiplied by a fraction, the numerator of which is the number of months in such Limitation Year, and the denominator of which is twelve (12).

(c) The limit under Section 4.1(b) shall not apply to (i) an individual medical account (as defined in Code Section 415(l) or (ii) a post-retirement medical benefits account for a key employee (as defined in Code Section 419A(d)(1)).

4.4 *Combined Plan Limits.*

For purposes of this Article IV, all qualified defined contribution plans (whether or not terminated) ever maintained by the Employer or a predecessor employer shall be treated as a single defined contribution plan.

(a) If a Participant is covered under another qualified defined contribution plan, welfare benefit fund (as defined in Code Section 419(e)), individual medical account (as defined in Code Section 415(l)(2)), or simplified employee pension (as defined in Code 408(k)) (together, "other plans and funds") maintained by the Employer, then the Maximum Permissible Amount shall be reduced by the sum of the Annual Additions credited to the Participant's accounts under the other plans and funds for the Limitation Year.

(b) If the Annual Additions credited to a Participant's accounts under the other plans and funds are less than the Maximum Permissible Amount and the Employer contribution to be made or allocated to the Participant's account under this Plan would cause the aggregate Annual Additions for a Limitation Year to exceed the Maximum Permissible Amount, then the amount contributed or allocated under this Plan shall be reduced so that the Annual Addition for all of the plans and funds will equal the Maximum Permissible Amount.

(c) If the Annual Additions with respect to the Participant under such other plans and funds in the aggregate are equal to or greater than the Maximum Permissible Amount, then no amount will be contributed or allocated to the Participant's account under this Plan for the Limitation Year.

(d) If the Participant is covered by another plan or fund and the aggregate Annual Additions would result in an Excess Amount, then the Excess Amount shall be deemed to consist of the Annual Addition last allocated, except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first, followed by Annual Additions to a welfare benefit fund or individual medical account, regardless of the actual allocation date.

(e) If an Excess Amount was allocated to a Participant on an allocation date of this Plan that coincides with an allocation date of another defined contribution plan, then the Excess Amount attributed to this Plan will be the product of (i) the total Excess Amount allocated as of such date, multiplied by (ii) a fraction, the numerator of which is the Annual Additions allocated to the Participant's account for the Limitation Year as of such date under this Plan and the denominator of which is the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan and all other defined contribution plans.

(f) Any Excess Amount under this Plan shall be disposed of in accordance with subsections (a) through (e) of Section 4.5 below.

Effective for Limitation Years beginning after December 31, 1999, the combined limitation for defined contribution plans and defined benefit plans in former Code Section 415(e) shall cease to apply.

4.5 *Adjustment for Excess Annual Additions.* If the Annual Additions allocated to a Participant's account for any Limitation Year beginning on or after July 1, 2007, exceed the Maximum Permissible Amount, the excess amount shall be corrected in the manner prescribed or permitted by the Internal Revenue Service's Employee Plans Compliance Resolution System or any successor system, policy or program to the foregoing.

#### 4.6 *Definitions.*

(a) "Annual Addition" shall mean the sum of the following amounts credited to a Participant's account for the Limitation Year:

- (i) Employer contributions;
- (ii) Employee contributions (whether mandatory or voluntary);
- (iii) amounts allocated to an individual medical account (as defined in Code Section 415(l)(2)) that is part of a pension or annuity plan maintained by the Employer;
- (iv) amounts derived from contributions paid or benefits accrued that are attributable to post-retirement 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)) maintained by the Employer; and

(v) amounts allocated under a simplified employee pension plan (as defined in Code Section 408(k)(6)).

The term "Annual Additions" shall include Excess Amounts applied under Sections 4.4 and 4.5 in the Limitation Year to reduce Employer contributions, excess contributions (as described in Code Section 401(k)(8)(B) and excess aggregate contributions (as described in Code Section 401(m)(6)(B) (whether or not distributed), and amounts resulting from Plan transactions deemed to be Annual Additions. The term shall exclude: (A) amounts transferred from another qualified plan; (B) rollover contributions (as described in Code Sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16)); (C) the repayment of loans made to a Participant by the Plan; (D) the repayment of cash-out distributions made pursuant to Code Section 411(a)(7)(B); (E) the repayment of distributions of Employee mandatory contributions made pursuant to Code Section 411(a)(3)(D) and repayment of contributions to a governmental plan pursuant to Code Section 415(k)(3); (F) catch-up contributions made pursuant to Code Section 414(v); (G) restorative payments for losses due to a breach of fiduciary liability; (H) excess deferrals distributed in accordance with Treasury Regulation Section 1.402(g)-1(e)(2) or (3); (I) Employee contributions to a qualified cost of living arrangement (as described in Code Section 415(k)(2)(B); and (J) the reinvestment of dividends in employer stock under an employee stock ownership plan pursuant to Code Section 404(k)(2)(A)(iii)(II).

(b) "Employer" shall mean, for purposes of this Article IV, all members of a controlled group of corporations (as defined in Code Section 414(b) and as modified by Code Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c) and as modified by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m) of which the Employer is a member, and all other entities required to be aggregated with the Employer pursuant to Code Section 414(o). Notwithstanding the forgoing, if this Plan is a Code Section 413(c) plan, then each Employer maintaining the Plan will be treated as a separate Employer.

(c) "Excess Amount" shall mean the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount prescribed in Section 4.1.

(d) "Maximum Permissible Amount" shall mean the limitation prescribed in Section 4.1, as adjusted pursuant to Section 4.3.

(e) "Suspense Account" shall mean an unallocated account equal to the sum of all Excess Amounts for all Participants during the Limitation Year.

4.7 *Incorporation by Reference.* Notwithstanding any other provision in the Plan, the Annual Additions credited to a Participant's account in any Limitation Year, shall not exceed the applicable limitations under Section 415 of the Code and Treasury Regulations and other official guidance issued thereunder, the terms of which are expressly incorporated herein by reference, including, if applicable, the special rules for church plans set forth in Treasury Regulation Section 1.415(c)-1(d) and the special rules for employee stock ownership plans set forth in Treasury Regulation Section 1.415(c)-1(f). Default provisions shall apply to the extent an optional provision is not specified in the Plan or in this Amendment. This Section shall supersede any and all provisions of the Plan that are inconsistent herewith.

## ARTICLE V Accounts and Valuation

5.1 *Participants' Accounts.* The Trustee shall establish and maintain a separate Account for each Participant which shall separately state:

(a) the Participant's share of Employer contributions and the income, expenses, gains and losses of the Trust Fund attributable thereto (such portion of a Participant's Account shall be referred to as his or her "Employer Contributions Account");

(b) the Participant's Rollover Contributions and the income, expenses, gains and losses of the Trust Fund attributable thereto (such portion of a Participant's Account shall be referred to as his or her "Rollover Contributions Account"); and

(c) the Participant's share of assets transferred from another qualified plan in accordance with Section 3.9 and the income, expenses, gains and losses of the Trust Fund attributable thereto (such portion of a Participant's Account shall be referred to as his or her "Transfer Account").

5.2 *Adjustments.* The Trustee shall, except as hereinafter provided, adjust the Participants' Accounts as of each Valuation Date as follows:

(a) First, determine the fair market value of the Trust Fund as of the close of business on such date.

(b) Second, allocate the income, expenses, gains and losses, realized and unrealized, of the Trust Fund since the last preceding Valuation Date among the Accounts in proportion to the Account balances as of the last preceding Valuation Date.

(c) Third, reduce the separate Account of each Participant to reflect all distributions made from such Account since the last preceding Valuation Date.

(d) Fourth, allocate and credit the Employer contributions which are to be credited as of such Valuation Date.

(e) Fifth, allocate and credit each Participant's Account with the Rollover Contributions made on his or her behalf, the assets transferred from another qualified plan in accordance with Sections 3.8 and 3.9 since the last preceding Valuation Date.

(f) Notwithstanding the foregoing provisions of this Section to the contrary, the Plan Administrator may direct the Trustee to debit the Account of any Participant or Former Participant as of any Valuation Date in the amount of any reasonable expense attributable to such Participant's or Former Participant's exercise of control over his or her Account since the preceding Valuation Date. The Plan Administrator shall establish, in writing, reasonable procedures to inform Participants and Former Participants that such expenses may be charged to their Accounts pursuant to this subsection, to inform each Participant or Former Participant at least annually of the actual expenses incurred with respect to his or her Account, and to otherwise carry out this subsection. The Plan Administrator shall follow a uniform and nondiscriminatory policy in charging reasonable expenses to the Account of Participants or Former Participants pursuant to this subsection. For purposes of this subsection, a Participant's or Former Participant's "exercise

of control over his or her Account” shall include but not be limited to an investment direction pursuant to Section 11.5.

5.3 *Allocation of Rollover Contributions.* Any Rollover Contribution by an Employee made prior to July 1, 2001 shall be allocated to his or her Account as of the Valuation Date coinciding with or next following the date on which such contribution is received by the Trustee.

5.4 *Allocation of Asset Transfers.* Any direct transfer of plan assets made on behalf of an Employee prior to July 1, 2001 in accordance with Section 3.9 shall be allocated to his or her Account as of the Valuation Date coinciding with or next following the date on which such transfer is made to the Trustee.

5.5 *Reports to Participants.* The Trustee shall, at least annually, determine each Participant’s share of the Trust Fund and furnish each Participant with a statement summarizing his or her Account.

## **ARTICLE VI Normal Forms of Payment and Waivers**

### *6.1 Qualified Preretirement Survivor Annuity.*

(a) If a Participant is married at the time of his or her death, and the Participant dies before his or her Annuity Starting Date, then his or her Account balance shall, except as provided in subsection (b) below, be paid to his or her Surviving Spouse in the form of a Qualified Preretirement Survivor Annuity.

(b) A Spouse of a Participant who is entitled to receive a Qualified Preretirement Survivor Annuity may, at any time prior to the date on which such benefit commences, elect to receive the Participant’s Account balance under any optional form of payment described in Section 7.8. Such election shall be effective if delivered to the Plan Administrator prior to the date distribution commences or an annuity contract is purchased to provide the Qualified Retirement Survivor Annuity.

### *6.2 Qualified Life Annuity.*

(a) If a Participant is not legally married on his or her Annuity Starting Date, then his or her Account balance shall, except as provided in subsection (b) below, be paid to the Participant in the form of a Qualified Life Annuity.

(b) A Participant may elect to waive the Qualified Life Annuity, which is the normal form of benefit under the Plan for an unmarried Participant, in the manner set forth in Section 6.6 and elect an optional form of payment described in Section 7.8, during the 180-day period ending on the Participant’s Annuity Starting Date.

### *6.3 Qualified Joint and Survivor Annuity; Qualified Optional Survivor Annuity*

(a) If a Participant is legally married on his or her Annuity Starting Date, then his or her Account balance shall, except as provided in subsections (b) and (c) below, be paid in the form of a Qualified Joint and Survivor Annuity.

(b) Effective for Plan Years beginning on or after July 1, 2008, a married Participant may elect a Qualified Optional Survivor Annuity, in lieu of the Qualified Joint and Survivor Annuity, during the 180-day period ending on the Participant's Annuity Starting Date.

(c) A Participant may elect an optional form of payment described in Section 7.8 during the 180-day period ending on the Participant's Annuity Starting Date, provided that

(i) his or her Spouse consents to such election, in the manner set forth in Sections 6.5 and 6.6, unless it is established to the satisfaction of the Plan Administrator that there is no Spouse or that the Participant's Spouse cannot be located at the time of the Annuity Starting Date; or

(ii) the Participant's Account balance at his or her Annuity Starting Date does not exceed the applicable cash-out amount (and did not exceed the applicable cash-out amount as of the date of any prior distribution). For purposes of subsection (b)(ii), the "applicable cash-out amount" means Three Thousand Five Hundred Dollars (\$3,500.00) before July 1, 1998, and Five Thousand Dollars (\$5,000.00) on or after July 1, 1998.

6.4 *Notice to Participants.* No fewer than thirty (30) days and no more than one hundred eighty (180) days before the Participant's Annuity Starting Date, the Plan Administrator shall furnish each Participant with a written explanation of:

(a) the terms and conditions of the Qualified Life Annuity or the Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity, whichever applies based on the Participant's legal marital status;

(b) the Participant's right to waive the Qualified Life Annuity or Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity, and elect an optional form of payment and the effect of such election;

(c) the right of the Participant's Spouse to consent to such election; and

(d) the Participant's right to make, and the effect of, a revocation of such an election; and

(e) the relative financial effect on the Participant's benefit of such an election.

For any distribution notice issued in Plan Years beginning after December 31, 2006, the description of a Participant's right, if any, to defer receipt of a distribution also will describe the consequences of failing to defer receipt of the distribution. For notices issued before the 90th day after the issuance of Treasury regulations (unless future Revenue Service guidance otherwise requires), the notice will include: (i) a description indicating the investment options available under the Plan (including fees) that will be available if the Participant defers distribution; and (ii) the portion of the summary plan description that contains any special rules that might affect materially a Participant's decision to defer.

6.5 *Spousal Consent.* An election by a Participant under Section 6.3 shall not be effective unless:

(a) the Spouse of the Participant consents in writing to such election with the applicable election period;

(b) such election designates a specific Beneficiary, including any class of beneficiaries or any contingent beneficiaries and the form of benefit payment, which may not be changed without further spousal consent unless expressly permitted by the initial spousal consent; and

(c) the Spouse's consent acknowledges the effect of such election and is witnessed by a notary public.

Any consent by a Spouse under this Section shall be effective only if made and delivered to the Plan Administrator within the manner described in Section 6.6. Such consent shall be valid only with respect to the Spouse who signs the consent.

6.6 *Elections and Consents.* Any election by a Participant or consent by a Participant's Spouse permitted or required under this Article must meet the following requirements:

(a) The election must be made during the 180-day period ending on the Participant's Account Annuity Starting Date, and the Participant must be given at least thirty (30) days to consider whether to make the election. Notwithstanding the preceding sentence, effective July 1, 1997, if a Participant, after receiving the written explanation required by Section 417(a)(3) of the Code and Section 6.4 of the Plan, affirmatively elects to have his or her Account balance distributed in one of the methods permitted under Section 7.8, with Spousal consent if applicable, distribution may be made or commence less than thirty (30) days after the date such written explanation was given, provided:

(i) the Plan Administrator has informed such Participant, in writing, of his or her right to a period of at least thirty (30) days to make the election;

(ii) the Participant is permitted to revoke the election at least until the date distribution is to be made or commence;

(iii) the date distribution is to be made or commence is after the date the written explanation is provided to the Participant; and

(iv) distribution in accordance with such affirmative election is not made or does not commence before the expiration of the seven (7) day period that begins the day after such written explanation is provided to the Participant.

(b) The election or consent shall be in writing and shall be signed by the party making such election or granting such consent. Such election or consent shall become effective upon delivery thereof to the Plan Administrator. Notwithstanding the foregoing, no consent shall be valid unless the Participant has received the written explanation required under Section 6.4.

(c) The election may be revoked by a Participant, without the consent of the Participant's Spouse, at any time prior to the date on which distribution of the Participant's Account balance is to be made or commence. Any such revocation shall be in writing, signed by the Participant making such revocation, and shall become effective upon delivery thereof to the Plan Administrator. A Participant may make an unlimited number of revocations.



(d) Any consent that permits designations by the Participant without any requirement of further consent by the Participant's Spouse must acknowledge that the Spouse has the right to limit his or her consent to a specific Beneficiary (or a form of benefits) and that the Spouse voluntarily elects to relinquish either or both of such rights.

6.7 *Purchasing Annuities.* Any annuity required or permitted to be purchased under this Article shall be selected by the Participant, or the Participant's Spouse, as the case may be, for whom such annuity is to be purchased; and, any such annuity shall be purchased from the Fund Sponsor in which the Participant's Account is invested, or, if a lump sum cash is permitted under the Funding Vehicle in which the Participant's Account is invested, such other insurance company licensed to do business in the State of Maine as such Participant, or such Participant's Spouse, as the case may be, shall designate. If the Participant or the Participant's Spouse shall fail to select the annuity or designate the insurance company as provided above within a reasonable period of time prior to the date on which such annuity is required, under this Article, to be delivered to such Participant or such Participant's Spouse, then the Plan Administrator shall select such annuity and the insurance company from which such annuity shall be purchased. The Plan Administrator shall notify each Participant, or each Participant's Spouse, as the case may be, within a reasonable period of time prior to the date on which any such annuity is required to be delivered, of his or her right, under this Section, to select such annuity and the insurance company from which such annuity is to be purchased. The terms of any annuity required or permitted to be purchased and distributed under this Article shall comply with the requirements of the Plan.

6.8 *Qualified Domestic Relations Orders.* The provisions of this Article shall be subject to the terms of any qualified domestic relations order (as defined by Section 414(p) of the Code) which may be in effect with respect to a Participant at the time distribution of the vested portion of Participant's Account balance is to be made or to commence; and, the former Spouse of a Participant shall be treated, under this Article, as such Participant's Spouse or surviving Spouse to the extent required by any qualified domestic relations order, and any Spouse of the Participant shall not be treated as a Spouse of the Participant for such purpose.

## **ARTICLE VII Distributions**

7.1 *Retirement, Disability, or Termination of Employment.* When a Participant attains Normal Retirement Age, retires on account of Disability, or ceases to be an Employee for any reason, he or she shall have a fully vested and nonforfeitable right to his or her Account. Such Participant shall receive distribution of his or her Account in such manner and at such time as hereinafter provided.

7.2 *Death.* If a Participant dies, then he or she shall have a fully vested and nonforfeitable right to his or her Account. If the Participant dies before complete distribution of his or her Account, then the balance of such Account shall be distributed, in such manner and at such time as hereinafter provided, to his or her surviving Spouse or to his or her designated Beneficiary. Subject to Article VI, each Participant may from time to time, by completing and signing a form furnished by the Fund Sponsor, designate any person or persons (who may be designated concurrently, contingently or successively) to receive any benefits payable upon his or her death. Each Beneficiary designation shall revoke all prior designations by the Participant and shall be effective only when filed in writing with the Fund Sponsor during the Participant's lifetime. If a Participant fails to designate a Beneficiary, then distribution shall be made to his or her surviving

Spouse, or if the Participant is not survived by a Spouse, then in the manner described by the Funding Vehicle(s) in which the Participant's Account is invested.

7.3 *Commencement of Distributions to Participants.* Subject to the provisions of Article VI and subsections (a), (b), (c) and (d) below, a Participant may elect to receive or commence receiving distribution of his or her Account as of any Valuation Date that occurs after the date he or she ceases to be employed by the Employer. Any election pursuant to this Section shall be made by such written, telephonic or electronic means as may be prescribed by the Plan Administrator. The Participant's Account shall be valued as of the first Valuation Date that is administratively practicable following receipt of such election by the Plan Administrator or, if later, the date specified in the election, and distribution shall be made or commence as soon as practicable thereafter.

(a) Unless a Participant elects otherwise, distribution shall be made or commence not later than the sixtieth (60th) day after the later of (i) the close of the Plan Year in which the Participant attains Normal Retirement Age or (ii) the Plan Year in which the Participant ceases to be employed by the Employer.

(b) Effective for Plan Years beginning prior to July 1, 1997, distribution to Participant shall be made or commence not later than April 1 of the calendar year following the calendar year in which he or she attains age seventy and one-half (70½).

(c) Effective July 1, 1997:

(i) distribution to a Participant who is not a Five Percent Owner shall be made or commence not later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½) or the calendar year in which the Participant retires; and

(ii) distribution to a Participant who is a Five Percent Owner shall be made or commence not later than April 1 of the calendar year following the calendar year in which he or she attains age seventy and one-half (70½).

(d) Notwithstanding subsection (b) above, a Participant who is not a Five Percent Owner and who attains age seventy and one-half (70½) before January 1, 2000, may elect to receive or commence receiving his or her vested Account balance not later than April 1 of the calendar year following the calendar year in which he or she attains age seventy and one-half (70½) in accordance with Treasury Regulation Section 1.411(d)-4, Q&A-10. The Participant's Account shall be valued as of the first Valuation Date following receipt of such election by the Plan Administrator or the Valuation Date specified in such election, if later, and the withdrawal shall be made or commence as soon as practicable thereafter.

For purposes of subsections (c) and (d), a Five Percent Owner means a Participant who is a Five Percent Owner at any time during the Plan Year ending with or within the calendar year in which such Participant attains age seventy and one-half (70½). Once distributions have commenced to a Five Percent Owner pursuant to subsection (c)(ii) above, such distributions must continue even if the Participant ceases to be a Five Percent Owner in a subsequent year.

#### 7.4 *Minimum Distribution Requirements.*

##### (a) *General Rules.*

(i) The provisions of this Section shall apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(ii) The requirements of this Section shall take precedence over any inconsistent provisions of the Plan.

(iii) All distributions required under this Section shall be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.

(iv) 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.

Pursuant to Section 201 of the Worker, Retiree, and Employer Recovery Act of 2008, and effective January 1, 2009, required minimum distributions for the 2009 distribution calendar year shall be suspended. Notwithstanding the preceding sentence to the contrary, a participant or beneficiary (as the case may be) may elect, in the manner prescribed by the Plan Administrator, to receive, no later than December 31, 2009 (or no later than April 1, 2010, in the event 2009 is the Participant's first distribution calendar year), his or her required minimum distribution for the 2009 distribution calendar year.

##### (b) *Time and Manner of Distribution.*

(i) 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.

(ii) If the Participant dies before distribution is made or begins, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:

(A) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, except as provided in subsection (d) below, 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 seventy and one-half (70½), if later.

(B) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, except as provided in subsection (d) below, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) 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.

(D) 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 subsection (b), other than paragraph (i), shall apply as if the surviving spouse were the Participant.

For purposes of this subsection (b)(ii) and subsection (d), if clause (D) applies, distributions are considered to begin on the Participant's required beginning date. If clause (D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under clause (A). 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 clause (A)), the date distributions are considered to begin is the date distributions actually commence.

(iii) Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions shall be made in accordance with subsections (c) and (d). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

(iv) Notwithstanding subsection (b)(ii) or subsection (d) to the contrary, Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in subsection (b)(ii) and subsection (d) 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 subsection (b) of this Section, 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 beneficiary makes an election under this subsection (b)(iv), distributions shall be made in accordance with subsection (b)(ii) and subsection (d)(ii). For purposes of this subsection (d)(iv), the "5-year rule" means that the Participant's entire interest shall be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

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

(i) During the Participant's lifetime, the minimum amount that shall be distributed for each distribution calendar year is the lesser of:

(A) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(B) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the

Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(ii) Required minimum distributions shall be determined under this subsection (c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

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

(i) Death On or After Date Distributions Begin.

(A) If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) 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.

(ii) Death Before Date Distributions Begin.

(A) Except as provided in subsection (b)(iv), 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 subsection (d)(i) above.

(B) 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.

(C) 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 subsection (b)(ii)(A), this subsection (d)(ii) shall apply as if the surviving spouse were the Participant.

(e) *Definitions.*

(i) "Designated beneficiary" means the individual who is designated as the beneficiary under Section 6.3 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(ii) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that 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 subsection (b)(ii). The required minimum distribution for the Participant's first distribution calendar year shall be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, shall be made on or before December 31 of that distribution calendar year.

(iii) "Life expectancy" means life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(iv) "Participant's Account balance" means the Account balance as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year ("valuation calendar year") increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(v) "Required beginning date" means the date determined under Section 7.3.

7.5 *Distribution to Spouse or Beneficiary.* Upon the death of a Participant, the balance of the Participant's Account shall, subject to the provisions of Article VI and Section 7.4, be distributed to his or her surviving Spouse or, if the Participant is not survived by a Spouse or the Participant's surviving Spouse consents in the manner provided in Section 6.5, to the Participant's designated Beneficiary, in any form of payment that is elected by the Spouse and is permitted under the terms of the Funding Vehicle(s) in which the Participant's Account is invested.

Notwithstanding the foregoing, effective January 1, 2001, to the extent that a Participant's surviving Spouse or any other Beneficiary disclaims all or part of the Participant's Account balance that becomes payable by reason of the Participant's death, such surviving Spouse or Beneficiary shall cease to be considered a surviving Spouse or Beneficiary for purposes of the Plan. To be effective, such disclaimer must be irrevocable, must be witnessed by a notary public, and must satisfy the requirements of Section 2518(b) of the Code and the requirements of applicable state law. Except as specifically provided otherwise in Section 6.3, if a Participant is survived by his or her Spouse but not by a particular designated non-Spouse Beneficiary, consent by such Spouse to the Participant's designation of the particular non-Spouse Beneficiary shall not be treated as a Spousal disclaimer of any part of the Participant's Account balance to which such Spouse would have become entitled upon the Participant's death if such consent had not been given.

7.6 *Distribution to Alternate Payee.* In the event that all or a portion of a Participant's Account is immediately distributable to an alternate payee pursuant to a qualified domestic relations order, the Plan Administrator shall direct the Fund Sponsor to distribute the amount payable to such alternate payee in a lump sum as soon as practicable after determining that such order is qualified in accordance with Article XIII to the extent permitted under the terms of the Funding Vehicle(s) in which the Account is invested. If a lump sum is not permitted under the terms of the Funding Vehicle(s) in which the Account is invested, then distribution shall be made in such form and in such time as set forth in the Order and as permitted under the terms of the Funding Vehicle(s). Except as otherwise provided in the domestic relations order, such distribution shall be made as of the Valuation Date following the date that it is determined that the order is qualified. If the amount to be distributed under this Section exceeds Three Thousand Five Hundred Dollars (\$3,500.00) prior to July 1, 1998, or Five Thousand Dollars (\$5,000.00) effective July 1, 1998, distribution shall not be made without the consent of the alternate payee. Such consent shall be made by such written, telephonic or electronic means as may be prescribed by the Plan Administrator.

In the event that all or a portion of a Participant's Account is payable to an alternate payee pursuant to a qualified domestic relations order, but is not immediately distributable under such order, the Plan Administrator shall direct the Trustee to establish a separate account within the meaning of Section 13.5(b) on behalf of the alternate payee as soon as practicable after determining that such order is qualified in accordance with Article XIII. The Plan Administrator shall distribute the amount payable from such account to such alternate payee in such form and at such time as is provided by the terms of such order. Distribution of a separate account pursuant to this Section may be made prior to the Participant's "earliest retirement age" as defined in Section 13.7.

7.7 *Distributions to Minors and Incompetent Persons.* If any person to whom benefits shall be distributed under the Plan shall be a minor, or if the Plan Administrator shall determine that such person is incompetent by reason of mental or physical disability, the Plan Administrator may direct the Trustee to distribute such benefits in one or more of the following ways to be determined by the Plan Administrator:

- (a) directly to such minor or incompetent person; or
- (b) to a legal or natural guardian or other relative of such minor, or to the legal guardian or conservator of such incompetent person or to any adult person with whom such incompetent person temporarily or permanently resides.

The receipt by such minor, incompetent person, guardian, conservator, relative or other person shall be a complete discharge of the Trustee, the Plan Administrator, and the Trust Fund, and the Trustee and Plan Administrator shall be without any responsibility to see to the application of any such distributions.

7.8 *Optional Forms of Payment.* Subject to Sections 7.3 and 7.4, and the provisions of Article VI, each Participant may elect to have his or her account distributed in one or more of the following optional forms of payment:

- (a) a lump sum to the extent permitted under the terms of the Funding Vehicle(s) in which his or her Account is invested; or
- (b) installments over a period not to exceed the life (or life expectancy) of the Participant (or the joint life and last survivor expectancy) of the Participant and his or her Beneficiary, in accordance with Code Section 401(a)(9) and the Treasury Regulations issued thereunder, and in a time permitted under the terms of the Funding Vehicle(s) in which the Account is invested.

Distribution of a Participant's Account shall be made in cash or in the form of an annuity.

7.9 *Direct Rollovers.*

(a) A Participant who is entitled to receive an Eligible Rollover Distribution may elect to have such distribution (or a portion thereof not less than Five Hundred Dollars (\$500.00)) made directly to an Eligible Retirement Plan ("Direct Rollover Election"). Effective for distributions made on or after January 1, 2002, a surviving Spouse may make a Direct Rollover Election as if such Spouse were the Participant.

An alternate payee who is entitled to receive an Eligible Rollover Distribution pursuant to a qualified domestic relations order under Article XIV and who is the Spouse, surviving Spouse, may make a Direct Rollover Election as if such alternate payee were the Participant.

(b) No earlier than one hundred eighty (180) days and no later than thirty (30) days before an Eligible Rollover Distribution is to be made, the Plan Administrator shall provide the Participant, alternate payee, or surviving Spouse, as the case may be, with an explanation (in writing prior to January 1, 2002) of:

- (i) the rules under which he or she may make a Direct Rollover Election;



(ii) the legal requirement that federal income tax be withheld from the distribution if he or she does not elect a direct rollover;

(iii) the rules under which the amount that he or she actually receives will not be subject to federal income tax if such amount is transferred ("rolled over") within sixty (60) days (unless such 60-day period is otherwise waived by the Internal Revenue Service pursuant to Section 402(c)(3) of the Code), after being received pursuant to Section 402(c) of the Code;

(iv) the rules, if applicable, for receiving special income tax averaging, or capital gain treatment, under Section 402(d) of the Code (for tax years beginning on or before December 31, 1999); and

(v) the Plan provisions under which a Direct Rollover Election with respect to one payment in a series of periodic payments will apply to all subsequent payments until such election is changed.

Notwithstanding the foregoing to the contrary, if an Eligible Rollover Distribution is one of a series of periodic payments, then the explanation required by this subsection shall be provided annually as long as such payments continue.

(c) Notwithstanding subsection (b) to the contrary, effective January 1, 2002, the Plan Administrator may provide the explanation required by subsection (b) more than one hundred eighty (180) days before an eligible rollover distribution is to be made, provided:

(i) the Plan Administrator provides the Participant, alternate payee, or surviving Spouse, as the case may be, with a summary of the explanation required by subsection (b) within the time period set forth in subsection (b). The summary shall:

(A) set forth the principal provisions of the explanation required by subsection (b);

(B) refer the individual to the most recent version of such explanation (and, with respect to an explanation that is provided in any document containing information in addition to the explanation, identify that document and provide a reasonable indication of where the explanation may be found within that document); and

(C) inform the individual that, upon request to the Plan Administrator, a copy of such explanation shall be provided without charge; and

(ii) if, after receiving the summary described in subsection (c)(i) above, the Participant, alternate payee, or surviving Spouse, as the case may be, requests a copy of the explanation required by subsection (b), the Plan Administrator provides such copy to the individual without charge no less than thirty (30) days before the date an Eligible Rollover Distribution is to be made, subject to the provisions of subsection (f) below regarding waiver of that thirty (30) day period.

(d) Effective January 1, 2002, the Plan Administrator shall provide the explanation required by subsection (b) (and the summary of the explanation permitted by subsection (c)) ei-

ther on a written paper document or through an electronic (or telephonic, in the case of the summary) medium that is reasonably accessible to the Participant, alternate payee, or surviving spouse, as the case may be. An electronic explanation (or summary) and a telephonic summary shall be provided under a system that satisfies the requirements of (i), (ii), and (iii) below:

(i) the system shall be reasonably designed to provide the explanation or summary in a manner no less understandable to the individual than a written paper document;

(ii) at the time the explanation or summary is provided, the individual shall be advised that he or she may request and receive the explanation on a written paper document at no charge; and

(iii) upon request by an individual, the Plan Administrator shall provide the explanation on a written paper document to such individual at no charge.

(e) A Direct Rollover Election shall be made in such manner and at such time as the Plan Administrator shall prescribe, and shall include:

(i) the name of the Eligible Retirement Plan;

(ii) a statement that such plan is an Eligible Retirement Plan; and

(iii) any other information necessary to permit a direct rollover by the means selected by the Plan Administrator.

An election to make a direct rollover with respect to one payment in a series of periodic payments shall apply to all subsequent payments in the series until such election is changed; such change with respect to subsequent payments may be made at any time.

If a Participant is married, a Direct Rollover Election of an Eligible Rollover Distribution exceeding Three Thousand Five Hundred Dollars (\$3,500.00) (Five Thousand Dollars (\$5,000.00), effective July 1, 1998), may not be made unless such Participant has obtained the written consent of his or her Spouse as required by Section 6.5. An alternate payee who is a former Spouse of a Participant shall not be required to obtain the written consent of his or her new Spouse, if remarried, in order to make a Direct Rollover Election.

(f) Notwithstanding subsections (b) and (c) to the contrary, if an individual, after receiving the written explanation required by subsection (b), or, effective January 1, 2002, the summary permitted under subsection (c), affirmatively elects to make or not make a direct rollover, an Eligible Rollover Distribution may be made less than thirty (30) days after the date such written explanation was given, provided the Plan Administrator has informed such individual, in writing, of his or her right to a period of at least thirty (30) days to make such election.

(g) As used in this Section, the following terms shall have the following meanings:

(i) "Eligible Retirement Plan" means

(A) an individual retirement account, described in Section 408(a) of the Code;

(B) an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract);

(C) a trust described in Section 401(a) of the Code which is exempt from tax under Section 501(a) of the Code and which is part of a defined contribution plan described in Section 414(i) of the Code that permits rollover contributions;

(D) an annuity plan described in Section 403(a) of the Code;

(E) effective for distributions made on or after January 1, 2002, an annuity contract described in Section 403(b) of the Code, including after-tax employee contributions (if any); or

(F) effective for distributions made on or after January 1, 2002, an eligible Section 457(b) plan maintained by a state, political sub-division of a state, or any agency or instrumentality thereof.

For taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income. For distributions made after December 31, 2007, a participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b).

(ii) "Eligible Rollover Distribution" means a distribution from the Plan of Two Hundred Dollars (\$200.00) or more, excluding the following:

(A) a distribution that is one of a series of periodic payments (not less frequently than annually) made for a specified period of ten (10) years or longer, for the distributee's life expectancy (or the joint life expectancy of the distributee and his or her designated Beneficiary), or for the distributee's life (or the joint lives of the distributee and his or her designated Beneficiary);

(B) a distribution pursuant to Section 7.3 or Section 7.4 to the extent such distribution is required under Section 401(a)(9) of the Code; or

(C) effective for distributions made on or after December 31, 1998, a hardship distribution described in Code Section 401(k)(2)(B)(i)(IV); or

(D) effective for distributions made on or before December 31, 2001, a distribution of nondeductible voluntary contributions (if any).

(h) Direct Rollover of Non-Spousal Distribution.

(i) For distributions after December 31, 2008, a non-spouse beneficiary who is a "designated beneficiary" under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion

of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

(ii) Although a non-spouse beneficiary may roll over directly a distribution as provided in clause (i), any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

(iii) If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).

(iv) A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

## **ARTICLE VIII Top Heavy Provisions**

8.1 *Top Heavy Requirements.* Notwithstanding any provision of this Plan to the contrary, if the Plan is or becomes Top Heavy in any Plan Year, then the provisions of this Article shall become applicable and supersede any conflicting provisions of this Plan.

8.2 *Minimum Contribution Requirement.* Except as hereinafter provided, for each Plan Year in which the Plan is Top Heavy, the Employer shall contribute, on behalf of each Participant who is a Non-Key Employee and who has not terminated employment by the end of such Plan Year, an amount that, when added to the Employer contributions allocated to such Participant's Account, shall be equal to the lesser of:

- (a) three percent (3%) of such Participant's Section 415 Compensation;
- (b) the percentage of such Participant's Section 415 Compensation which is equal to the largest percentage determined by dividing the Employer contributions allocated to the Account of each Key Employee by such Key Employee's Section 415 Compensation.

For Plan Years beginning on or after July 1, 2000, the preceding sentence shall be applied by substituting four percent (4%) for three percent (3%) for each Plan Year in which the Plan is included in a Required Aggregation Group or a Permissive Aggregation Group which includes a qualified defined benefit plan and the Top Heavy Ratio does not exceed ninety percent (90%).

The minimum contribution shall be made on behalf of each Participant who is a Non-Key Employee and who remains in the service of the Employer on the last day of the Plan Year, re-

gardless of the number of Hours of Service such Participant is credited with during such Plan Year.

Notwithstanding any provision of this Section to the contrary, for each Plan Year in which the Plan is Top Heavy, a Participant who is a Non-Key Employee and who is also covered by a qualified defined benefit plan maintained by the Employer, shall accrue a minimum benefit (as required by Section 416(c)(1) of the Code and the regulations thereunder) under such plan (unless such plan is terminated), and a minimum contribution shall not be made on behalf of such Eligible Employee under this Plan. Effective for Limitation Years beginning before July 1, 2000, the preceding sentence shall be applied by substituting "three percent (3%)" for "two percent (2%)" in Section 416(c)(1)(B)(i) of the Code and by increasing (but not by more than ten percentage points) the percentage provided in Section 416(c)(1)(B)(ii) of the Code for each Plan Year in which:

(aa) the Plan is included in a Required Aggregation Group or a Permissive Aggregation Group which includes a qualified defined benefit plan and the Top Heavy Ratio does not exceed ninety percent (90%); and

(bb) the limitation set forth in Section 4.2 would be exceeded if 1.0 is substituted for 1.25 wherever 1.25 appears in said limitation.

8.3 *Present Value Factors.* For purposes of determining the Top Heavy Ratio, the present value of accrued benefits under all defined benefit plans included in a Required Aggregation Group or a Permissive Aggregation Group shall be based on the following factors:

Interest: six and one-half percent (6.5%)

Mortality: 1971 Group Annuity Mortality Table using male rates for all individuals

8.4 *Benefit Accrual.* For purposes of determining the Top Heavy Ratio, the accrued benefit of any Non-Key Employee under all defined benefit plans included in a Required Aggregation Group or a Permissive Aggregation Group shall be determined under the method used for accrual purposes for all such plans of the Employer (if such methods are uniform) or, if no uniform methods apply, as if such benefit accrued no more rapidly than the slowest rate permitted under Section 411(b)(1)(C) of the Code.

8.5 *Definitions.*

(a) "Key Employee" means, for Plan Years beginning on or after July 1, 2002, any Employee or former Employee (including a deceased Employee) who at any time during the Plan Year that includes the determination date is:

(i) an officer of the Employer having annual Section 415 Compensation greater than One Hundred Thirty Thousand Dollars (\$130,000) (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning on or after July 1, 2003);

(ii) a Five Percent Owner; or

(iii) a person who has annual Section 415 Compensation from the Employer of more than One Hundred and Fifty Thousand Dollars (\$150,000.00) and who would be described in (b) above if one percent (1%) was substituted for five percent (5%).

The determination of who is a Key Employee shall be made in accordance with Section 416(i)(1) of the Code and the regulations thereunder, the provisions of which are incorporated herein by reference.

(b) "Non-Key Employee" means any Employee who is not a Key Employee.

(c) "Permissive Aggregation Group" means each plan of the Employer which is included in a Required Aggregation Group and any other plan or plans of the Employer which when considered as a group with the Required Aggregation Group, continues to satisfy the requirements of Sections 401(a)(4) and 410 of the Code.

(d) "Required Aggregation Group" means each plan of the Employer in which a Key Employee is a participant and each other plan of the Employer which enables any plan of the Employer in which a Key Employee is a participant to meet the requirements of Sections 401(a)(4) or 410 of the Code. For purposes of the preceding sentence, the term "plan" includes a terminated plan that, had it not been terminated, would have been aggregated with this Plan under Section 416(g)(2)(A)(i) of the Code.

(e) "Top Heavy" means, with respect to any Plan Year, that, as of the Determination Date:

(i) the Top Heavy Ratio for the Plan exceeds sixty percent (60%), if the Plan is not included in a Required Aggregation Group; or

(ii) the Top Heavy Ratio for the Required Aggregation Group which includes the Plan exceeds sixty percent (60%), if the Plan is included in a Required Aggregation Group, but is not included in a Permissive Aggregation Group; or

(iii) the Top Heavy Ratio for the Permissive Aggregation Group which includes the Plan exceeds sixty percent (60%), if the Plan is included in a Permissive Aggregation Group.

(f) "Top Heavy Ratio" means:

(i) if the Plan is not included in a Required Aggregation Group, a fraction, the numerator of which is the sum of the Account balances of Key Employees under the Plan and the denominator of which is the sum of the Account balances of all Participants under the Plan; or

(ii) if the Plan is included in a Required Aggregation Group or a Permissive Aggregation Group, a fraction, the numerator of which is the sum of the account balances of Key Employees under all defined contribution plans included in such group and the present values of the accrued benefits of Key Employees under all defined benefit plans included in such group and the denominator of which is the sum of the account balances of all participants under all defined contribution plans included in such group and the pre-

sent values of the accrued benefits of all participants under all defined benefit plans included in such group.

The account balances, as well as the present values of accrued benefits, shall be determined, as of the Valuation Date coinciding with the Determination Date, in accordance with the provisions of Section 416(g) of the Code and the regulations thereunder which are incorporated herein by reference. In determining the Top Heavy Ratio for any Plan Year, if an individual who is a Non-Key Employee with respect to the Plan or with respect to any other plan which is included in the same Required Aggregation Group or Permissive Aggregation Group as the Plan, but was a Key Employee with respect to the Plan or such other plan for any prior Plan Year, any account balance or accrued benefit for such individual shall not be taken into account. In addition, any account balance or accrued benefit of any individual who has not performed services for the Employer at any time during the one (1) year period ending on the Determination Date shall not be taken into account. In the case of a distribution made for a reason other than severance from employment, death, or disability, a five (5) year period shall be substituted for the one (1) year period.

## **ARTICLE IX    Plan Administration**

9.1    *Appointment of Plan Administrator.* The Employer may appoint a person or persons to administer the Plan. If a Plan Administrator is not appointed, the Employer shall be the Plan Administrator. If more than one (1) person is appointed, they shall be known as the Administrative Committee. Any Administrative Committee shall act by a majority of its members and such action may be taken either by a vote at a meeting or in a writing without a meeting. Any member may participate in a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. If an Administrative Committee is appointed, all references in the Plan to the Plan Administrator shall be deemed to refer to the Administrative Committee. Any action of the Administrative Committee may be taken without a meeting if all members of the Administrative Committee sign consents setting forth the action taken or to be taken, at any time before or after the intended effective date of such action.

9.2    *Resignation and Removal.* The Plan Administrator, or any member of the Administrative Committee, may resign at any time by delivering to the Employer a written notice of resignation, to take effect at a date specified therein, which shall not be less than thirty (30) days after the delivery thereof, unless such notice shall, in writing, be waived by the Employer.

The Plan Administrator or any member of the Administrative Committee shall serve at the pleasure of the Employer and may be removed by delivery of written notice of removal, to take effect at a date specified therein.

The Employer, upon receipt of a written notice of resignation or delivery of a written notice of removal of the Plan Administrator or any member of the Administrative Committee, shall appoint a successor. In the event the Employer fails to appoint a Plan Administrator or a successor, the Employer shall serve as the Plan Administrator until a Plan Administrator or a successor has been appointed. In the event the Employer fails to appoint a successor to serve as a member of the Administrative Committee, the remaining members of the Administrative Committee shall constitute the Administrative Committee, provided if there is only one remaining member such individual shall serve as the Plan Administrator.

9.3 *Powers and Duties.* The Plan Administrator shall be a Named Fiduciary for purposes of Section 402(a)(1) of ERISA with the following powers and complete discretionary authority to control and manage the interpretation, operation, and administration of the Plan:

(a) To determine all questions concerning the eligibility of Employees to participate in and receive benefits under the Plan.

(b) To compute the amount of benefits payable to any Participant or Beneficiary.

(c) To authorize and direct the Trustee and/or Custodian with respect to payment of benefits.

(d) To furnish the Trustee with such information, statements and reports as will enable the Trustee to comply with the reporting and disclosure requirements under ERISA and the Code.

(e) To interpret the provisions of the Plan and to make rules and regulations for the administration of the Plan.

(f) To maintain all the necessary records for the administration of the Plan.

(g) To employ or retain counsel, accountants, actuaries or such other consultants as may be required to assist in administering the Plan.

(h) To act as agent for service of legal process.

(i) To give written notice to all interested parties (as defined in the regulations prescribed under Section 7476(b)(1) of the Code), in the form and manner, and at such time as prescribed by such regulations, of an application for an advance determination with respect to the initial qualification of the Plan or to the effect of an amendment or termination of the Plan.

The Plan Administrator shall have no power or authority over the investment of the assets of the Trust and nothing in this Section shall be construed as granting such power and authority.

9.4 *Reporting and Disclosure.* The Plan Administrator shall furnish to each Participant and to each Beneficiary who is receiving benefits under the Plan, and shall file with the Secretary of Labor and the Secretary of Treasury all reports, disclosures and notifications as are required under the Code and ERISA.

9.5 *Delegation of Duties.* The Plan Administrator may delegate to any other person or persons, severally or jointly, the authority to perform any act in connection with the administration of the Plan to the extent permitted under ERISA.

9.6 *Payment of Plan Expenses.* Notwithstanding any provision of the Plan or Trust to the contrary, payment of any reasonable expenses of administering the Plan, as determined by the Plan Administrator, shall be made from the Trust Fund, unless paid by the Employer. If such expenses are incurred as a result of services provided to the Plan or Trust by a party in interest (as defined in Section 3(14) of ERISA), no payment shall be made from the Trust Fund unless such payment (a) satisfies the applicable requirements of Section 408 of ERISA, and the regula-



tions thereunder; or (b) is otherwise exempt from the applicable prohibited transaction rules of the Code and ERISA.

9.7 *Compensation and Reimbursement of Expenses.* The Plan administrator shall be entitled to reasonable compensation for services rendered and to reimbursement of expenses properly and actually incurred in the performance of his or her duties on behalf of the Plan, but no person so serving who already receives compensation from the Employer for services rendered as an Employee shall receive compensation from the Plan, except reimbursement of expenses properly and actually incurred and not otherwise reimbursed.

9.8 *Uniformity of Rules and Regulations.* In the administration of the Plan and the interpretation and application of its provisions, the Plan Administrator shall exercise his or her powers and authority in a non-discriminatory manner, and shall apply uniform administrative rules and regulations in order to assure substantially the same treatment to Participants in similar circumstances.

9.9 *Reliance on Reports.* The Plan Administrator shall be entitled to rely upon all certificates and reports made by any counsel, accountant, actuary or other consultant employed or retained to assist in administering the Plan.

9.10 *Multiple Signatures.* In the event the Employer appoints more than one individual to control and manage the administration of the Plan, a majority of the members of such Administrative Committee or any one member authorized by such Administrative Committee shall have authority to execute all documents, reports or other memoranda necessary or appropriate to carry out the actions and decisions of the Administrative Committee. The Trustee or any other interested party may rely upon any document, report or other memorandum so executed as evidence of the Administrative Committee action or decision indicated thereby.

## **ARTICLE X      Claims Procedure**

The provisions of this Article shall apply to any claim for benefits filed on or after January 1, 2002.

10.1 *Filing a Claim for Benefits.* A Participant or other person entitled to benefits under the Plan (or the authorized representative of such Participant or other person) may make a claim for Plan benefits by filing a request with the Plan Administrator. Such request shall be made by such written, telephonic or electronic means as shall be prescribed by the Plan Administrator.

10.2 *Denial of Claim.* If a claim is wholly or partially denied (“adverse benefit determination”), the Plan Administrator shall furnish the claimant with written or electronic notification of the adverse benefit determination. Any electronic notification shall comply with the standards imposed by 29 C.F.R. § 2520.104(b)-1(c)(1)(i), (iii) and (iv). The notification shall set forth in a manner calculated to be understood by the claimant:

- (a) the specific reason or reasons for the adverse benefit determination;
- (b) reference to the specific Plan provisions on which the determination is based;

(c) a description of any additional material or information necessary for the claimant to perfect his or her claim and an explanation why such material or information is necessary; and

(d) a description of the Plan's procedures for review of an adverse benefit determination and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review.

In the case of an adverse benefit determination involving a Disability, then the notification shall also include

(aa) the internal rule, guideline, protocol, or other similar criterion (if any) relied upon to make the decision and a statement that a copy of such rule, guidance, protocol or criterion shall be provided to the claimant free of charge upon request; and

(bb) if the adverse benefit determination was based on a medical necessity or experimental treatment or some other similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claimant's medical circumstances, or a statement that such explanation will be provided free to the claimant upon request.

Such notification shall be furnished to the claimant within ninety (90) days after receipt of his or her claim, unless special circumstances require an extension of time for processing such claim. If an extension of time for processing is required, the Plan Administrator shall, prior to the termination of the initial ninety (90) day period, furnish the claimant with written notice indicating the special circumstances requiring an extension of time and the date by which the Plan Administrator expects to render the benefit determination. In no event shall an extension exceed a period of ninety (90) days from the end of the initial ninety (90) day period.

In the event the claim requires a determination of the Participant's Disability, then the Plan shall notify the claimant within forty-five (45) days after receipt of his or her claim. The forty-five (45) day period may be extended for up to thirty (30) days provided that the Plan Administrator both determines that such extension is necessary due to circumstances beyond the control of the Plan and notifies the claimant, prior to the expiration of the initial forty-five (45) day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision on the claim. The time period may be extended for a second thirty (30) day period subject to the terms described above. The notice of the extension shall (i) explain the standards on which entitlement to a benefit is based and the unresolved issues, (ii) describe additional information necessary to resolve the claim, and (iii) will afford the claimant not less than 45 days from receipt of the notice to provide the specified information.

10.3 *Appeal of Denied Claim.* A claimant or his or her authorized representative may appeal an adverse benefit determination by filing a written request for review with the Plan Administrator within sixty (60) days after receipt by the claimant of the notification of such adverse benefit determination, or within one hundred eighty (180) days of an adverse benefit determination involving a determination of Disability. A claimant or his or her duly authorized representative:

(a) may submit to the Plan Administrator written comments, documents, records, and other information relating to the claim for benefits; and

(b) shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claimant's claim for benefits;

In addition, if the review of an adverse benefit determination includes a determination of Disability, then:

(aa) the claimant shall be provided with the identification of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with the claim denial, whether or not such advice was relied upon to make such determination;

(bb) the review will afford no deference to the initial adverse benefit determination;

(cc) the review will be conducted by an appropriate named fiduciary of the Plan who is neither the individual who denied the claim that is the subject of the appeal, nor the subordinate of such individual; and

(dd) if the adverse benefit determination was based, in whole or in part, on a medical judgment, then the Plan Administrator shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment and who is neither an individual who was consulted in connection with such determination nor the subordinate of any such individual.

The Plan Administrator's review of any denied claim shall take into account all comments, documents, records and other information submitted by the claimant or his or her authorized representative relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

10.4 *Decision on Appeal.* The Plan Administrator shall provide the claimant with written or electronic notification of the benefit determination on review not later than sixty (60) days after receipt of a request for review, unless special circumstances require an extension of time for processing. Any electronic notification shall comply with the standards imposed by 29 C.F.R. § 2520.104b-1(c)(1)(i), (iii) and (iv). If an extension of time for processing is required, the Plan Administrator shall, prior to the termination of the initial sixty (60) day period, furnish the claimant with written notice indicating the special circumstances requiring an extension of time and the date by which the Plan Administrator expects to render the determination on review. In no event shall such extension exceed a period of sixty (60) days from the end of the initial sixty (60) day period. In the case of an appeal of denied claim including a determination of Disability, forty-five (45) days shall be substituted for the sixty (60) days each place it appears in this subsection (d).

In the case of an adverse benefit determination, the notification shall set forth in a manner calculated to be understood by the claimant:

(a) the specific reason or reasons for the adverse determination;

(b) reference to the specific Plan provisions on which the determination is based;

(c) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claimant's claim for benefits; and

(d) a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA.

In the event an appeal including a determination of Disability, then the notification also shall include:

(aa) the internal rule, guideline, protocol, or other similar criterion (if any) relied upon to make the decision and a statement that a copy of such rule, guideline, protocol, or criterion shall be provided to the claimant free of charge upon request; and

(bb) if the adverse benefit determination was based on a medical necessity or experimental treatment or some other similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claimant's medical circumstances, or a statement that such explanation will be provided free to the claimant upon request.

## **ARTICLE XI Trustee**

11.1 *Duties.* The Trustee shall receive and hold all contributions made by an Employer and by the Participants together with such other assets as may be transferred to the Trust in accordance with the provisions of the Plan. In addition, the Trustee shall make distributions or cause the Custodian(s) to make distribution as directed by the Plan Administrator in accordance with the provisions of Article VII.

11.2 *Investments.* Except as otherwise provided in this Article, the Trustee shall invest and reinvest the Trust Fund, without distinction between principal and income, in any property, stocks, bonds or other securities, including common trust funds of the Trustee, notes, mortgages, savings accounts, certificates of deposit, repurchase agreements, cash management accounts (including savings accounts, certificates of deposit, repurchase agreements and cash management accounts offered by the Trustee), contracts issued by life insurance companies or any property real or personal within the United States, as the Trustee may deem advisable subject to the provisions of Sections 404 and 406 of ERISA. The Trustee may hold in cash such portion of the Trust Fund as the Trustee shall deem reasonable under the circumstances, pending investment or payment of expenses or distribution of benefits.

11.3 *Custodian.* The Employer may from time to time appoint one or more banks, insurance companies, mutual fund companies, third party plan administrators or brokers to serve as custodian of all or a portion of the Trust Fund. The Fund Sponsors listed in Appendix A shall be duly authorized Custodians with respect to the Trust Fund.

11.4 *Investment Manager.* The Employer may from time to time appoint one or more Investment Managers to direct the investment and reinvestment of the Trust Fund. Such appointment shall be in writing and shall be effective upon receipt by the Trustee of the Investment Manager's written acceptance and acknowledgment that he or she is a fiduciary with respect to the Plan and Trust. The Employer may revoke the appointment of any Investment Manager by furnishing such Investment Manager and the Trustee with written notice setting forth the effective date of such revocation.

The Trustee shall comply with the directions of an Investment Manager regarding the investment or reinvestment of the Trust Fund or such portion thereof as shall be under manage-

ment by the Investment Manager. Once an Investment Manager has assumed direction of all or a portion of the Trust Fund, the Trustee shall be under no duty to review any investment to be acquired, held or disposed of pursuant to such directions, nor to make any recommendations with regard to the acquisition, disposition or continued retention of any assets under management by the Investment Manager. Until such time as the Trustee is notified, in writing, by the Employer that the Trustee shall again assume exclusive authority and discretion with regard to the portion of the Trust Fund previously under management by the Investment Manager, the Trustee shall not have any responsibility for investments which are managed by an Investment Manager and shall not be liable for making or retaining any investments or for any failure to invest in the absence of direction by an Investment Manager.

11.5 *Investments Directed by Participants.* Each Participant shall have the right to direct the Trustee with respect to investment of his or her Account among the Funding Vehicles offered by authorized Fund Sponsors. Investment directions (and modifications of investment directions) shall not be effective unless made in such manner as may be prescribed by the Trustee. The Trustee may designate a Custodian of all or a portion of the Trust Fund (that has been duly appointed in accordance with Section 11.3) as its agent to receive and execute Participant investment directions. In that event, investment directions (and modifications of investment directions) shall not be effective unless made in such manner as may be prescribed by the Custodian. If a Participant does not make an investment direction or the Plan Administrator or its designated representative does not receive an investment direction before the Participant commences participation, the contributions on behalf of such Participant shall be invested in a default investment option selected by the Trustee, in accordance with applicable law. An investment direction received by the Plan Administrator or its designated representative after the date a Participant commences participation shall be effective as soon as practicable following receipt by the Plan Administrator or its designated representative.

Notwithstanding the foregoing to the contrary, effective November 18, 2008, an Employee who commences participation on or after such date shall not have the right to direct that contributions on his or her behalf be invested in any Funding Vehicle offered by the Teachers Insurance and Annuity Association and the College Retirement Equities Fund ("TIAA-CREF"), and no Participant shall have the right to modify his or her investment directions to begin the investment of contributions on his or her behalf in any Funding Vehicle offered by TIAA-CREF. Effective April 1, 2009, no contributions on behalf of any Participant may be invested in any Funding Vehicle offered by TIAA-CREF, provided that contributions on behalf of Participants scheduled to retire on or before June 30, 2009 may continue to be invested in such Funding Vehicles as determined by the Plan Administrator. In the event that a Participant does not modify his or her existing investment direction with respect to any Funding Vehicle offered by TIAA-CREF before such date, the contributions on behalf of such Participant on and after April 1, 2009, shall be invested in a default investment option selected by the Trustee, in accordance with applicable law.

A Participant's right to direct (and redirect) his or her Account among the Funding Vehicles shall be subject to any restrictions imposed by the Funding Vehicles. A Participant who directs the investment of his or her Account shall not by reason thereof be deemed a fiduciary with respect to the Plan and the Trustee, Plan Administrator and other fiduciaries shall not be liable for any losses resulting from the purchase, sale or retention of any assets that are purchased, sold or retained at the direction of a Participant. Nor shall the Trustee, Plan Administrator and other fiduciaries be liable for any losses resulting from the investment of any part of a Participant's

Account that is invested in a default investment option in accordance with applicable law. Once a Participant assumes direction of the investment of his or her Account, the Trustee shall not thereafter be responsible for the investment thereof until the Participant notifies the Trustee in writing that the Trustee is to assume investment responsibility for such Account. Income, expenses, gains and losses, realized and unrealized, attributable to a Participant's investment direction shall not be considered in adjusting the Accounts of other Participants pursuant to Section 5.2, but shall for purposes of such Section be credited to such Participant's Account. A Participant may not cause his or her Account to acquire collectibles (as defined in Section 408(m)(2) of the Code). For purposes of this Section, the term Participant shall be deemed to include a Former Participant, Beneficiary or alternate payee pursuant to a qualified domestic relations order under Section 414(p) of the Code, who is receiving or entitled to receive benefits from the Plan.

Effective July 1, 2002, a Participant shall have the right to direct the Trustee with respect to the reinvestment of his or her Account among the Funding Vehicles offered by each Fund Sponsor. Effective April 1, 2007, a Participant shall have the right to direct the Trustee with respect to the reinvestment of his or her Account from the Funding Vehicles offered by the Teachers Insurance and Annuity Association and the College Retirement Equities Fund ("TIAA-CREF") into the Funding Vehicles offered by other Fund Sponsors. A Participant shall not have the right, however, to direct the Trustee with respect to the reinvestment of his or her Account into Funding Vehicles offered by TIAA-CREF.

11.6 *Trustee Powers.* In addition to and not in limitation of such powers as the Trustee has by law or under any other provisions of the Plan, the Trustee shall have the following powers subject to the provisions of Sections 11.4 and 11.5:

- (a) to establish and maintain a separate Account for each Participant in accordance with Section 5.1.
- (b) to adjust the Participants' Accounts in accordance with Section 5.2.
- (c) to allocate and credit Employer contributions to the Accounts of Participants entitled share therein in accordance with Articles III and V.
- (d) to allocate and credit Rollover Contributions and assets transferred in accordance with Sections 3.8 and 3.9 to the Accounts of Participants in accordance with Article V.
- (e) to invest and reinvest the Trust Fund, without distinction between principal and income, in any shares of stock, bonds, mortgages, notes, mutual fund shares, deposit administration, investment or group annuity contracts issued by a legal reserve life insurance company, qualifying employer securities as defined in Section 407(d)(4) of ERISA, or other property of any kind, real or personal.
- (f) to maintain one or more checking accounts, including checking accounts offered by the Trustee, in the name of the Trust and to make deposits thereto and draw checks thereon to make distributions or loans directed by the Plan Administrator.
- (g) to separately account for such amounts as the Plan Administrator may direct (or require a Custodian to account for such amounts) pending the determination of whether a domes-

tic relations order with respect to a Participant is a qualified domestic relations order within the meaning of Section 414(p)(1)(A) of the Code.

(h) to sell, exchange, mortgage, lease and to make contracts concerning real and personal property for such considerations and upon such terms and conditions as the Trustee may determine, which leases and contracts may extend beyond the terms of the Trust and to execute deeds, transfers, mortgages, releases, assignments, and discharges of mortgages, leases and other instruments of any kind.

(i) to vote, in person or by proxy, any corporate stock or other assets having voting rights; to exercise any conversion privilege, subscription right or any other right or option given to the Trustee as the owner of any asset of the Trust Fund.

(j) to consent to, take any action in connection with, and receive and retain any securities resulting from any reorganization, consolidation, or merger affecting any assets of the Trust Fund.

(k) to cause title to the assets of the Trust Fund to be registered in the name of the Trustee, or the name of any nominee or to retain such assets unregistered or in a form which permits transfer by delivery, provided the records of the Trustee shall at all times indicate that all such assets are part of the Trust Fund.

(l) to borrow such sum or sums as the Trustee may consider necessary or desirable to administer the Trust, provided the Trustee shall not borrow from any person, corporation, partnership or other entity described as a "party in interest" as defined in Section 3(14) of ERISA.

(m) to employ such agents and counsel as may be reasonably necessary in collecting, managing, administering, investing, and distributing the assets of the Trust Fund.

(n) to compromise, adjust and settle any and all claims against or in favor of the Trust.

(o) to make, execute, acknowledge and deliver any and all documents that may be necessary or appropriate to carry out the powers granted herein.

(p) to exercise any of the powers and rights of an individual owner with respect to any assets of the Trust Fund.

(q) to perform any and all other acts which are necessary for the proper administration and investment of the Trust Fund.

11.7 *Distributions.* The Trustee shall, from time to time, make or cause distributions to be made out of the Trust Fund or Funding Vehicles to such persons, in such manner and in such amount or amounts as the Plan Administrator may from time to time direct. Distributions shall be made in cash or in kind or partly in each as directed by the Plan Administrator. The Trustee shall be entitled to rely upon the written directions of the Plan Administrator and shall not be under any liability for any distribution made in accordance therewith.

11.8 *Accounts.* The Trustee shall furnish the Employer with quarterly statements of account which shall, with respect to the Trust Fund, show all receipts, disbursements and other

transactions since the last accounting and the investments, at cost and current fair market value, at the end of the period for which such account is rendered. To the extent permitted by law, the written approval of any account by the Employer shall be final and binding, as to all matters stated therein, upon the Employer and all persons who then are or thereafter become interested in the Trust.

11.9 *Compensation and Expenses of Trustee.* The Trustee shall be entitled to such reasonable compensation as may from time to time be agreed upon, in writing, by the Employer and shall be entitled to reimbursement for its reasonable expenses incurred in connection with the administration of the Trust Fund. The Trustee shall be paid from the Trust Fund unless paid by the Employer. Notwithstanding the foregoing provisions of this Section to the contrary, no person serving as Trustee who receives compensation from the Employer for services rendered as an Employee shall receive compensation from the Plan, except reimbursement of expenses properly and actually incurred and not otherwise reimbursed.

11.10 *Reliance by Trustee.* To the extent permitted by law, the Trustee may rely and act upon the written directions of the Employer, the Plan Administrator or any duly appointed Investment Manager, or other person authorized in writing by the Employer or the Plan Administrator and may rely upon and be protected in acting upon such directions reasonably believed by it to have been executed by a duly authorized person, so long as the Trustee acts in good faith and in accordance with the provisions of this Article.

11.11 *Reliance by Others.* No person dealing with the Trustee shall be bound to see to the application of any money or property paid or delivered to the Trustee or to inquire into the validity or propriety of any transactions, except as otherwise required by law.

11.12 *Advice of Counsel.* The Trustee shall be entitled to advice of counsel, which may be counsel for the Plan or the Employer, concerning any question which may arise with respect to the rights and duties under the Plan, and the Trustee may act in reliance upon such advice.

11.13 *Indemnification.* The Employer agrees to indemnify the Trustee against all liability occasioned by any act or omission if such act or omission is in good faith.

11.14 *Resignation or Removal of the Trustee.* If one or more individuals is appointed to serve as Trustee, such individual may resign at any time by delivering to the Employer a written notice of resignation, to take effect at a date specified therein, which shall not be less than thirty (30) days after delivery thereof, unless such notice shall be waived by the Employer. If such individual resigns, the Employer may appoint an individual to serve as successor Trustee. In the event the Employer fails to appoint an individual to serve as a successor Trustee, the remaining individuals serving as Trustee shall constitute the Trustee. The Employer shall appoint a successor Trustee upon the resignation of the last individual serving as Trustee.

The Employer may remove an individual appointed to serve as Trustee by delivering to such individual a written notice of removal to take effect at a date specified therein, unless the individual waives such notice. In the event of such removal, the Employer may appoint an individual to serve as successor Trustee. In the event the Employer fails to appoint an individual to serve as successor Trustee, the remaining individuals serving as Trustee shall constitute the Trustee. The Employer shall appoint a successor Trustee upon the removal of the last individual serving as Trustee.



In the case of the resignation or removal of an individual appointed to serve as Trustee, such individual, to the extent necessary, shall transfer all right, title and interest in the assets of the Trust Fund to the individual appointed to serve as successor Trustee. Any individual appointed to serve as successor Trustee shall have the same powers and duties hereunder as those conferred upon the initial individual serving as Trustee.

11.15 *Fiscal Year of Trust.* The fiscal year of the Trust shall coincide with the Plan Year.

## **ARTICLE XII Amendment and Termination**

12.1 *Amendment.* The Employer may from time to time amend the Plan, provided no amendment shall, except as otherwise provided in this Plan or authorized by the Code, permit any part of the Trust Fund to revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of the Participants and their Spouses and Beneficiaries.

If the vesting schedule which is in effect under the Plan is amended, each Participant who has completed at least three (3) years of vesting service may elect to have the vested percentage of his or her Account determined without regard to such amendment. The Plan Administrator shall promptly give each such Participant written notice of the adoption of an amendment which modifies the vesting schedule and the availability of the election to have the vested portion of his or her Account determined without regard to such amendment. An election by a Participant shall be in writing and shall be effective if filed with the Plan Administrator at any time during the period beginning with the date such amendment is adopted and ending on the later of (i) the date which is sixty (60) days after the day such amendment is adopted, (ii) the date which is sixty (60) days after the day such amendment becomes effective, or (iii) the date which is sixty (60) days after the day the Participant receives written notice of such amendment. An election once made shall be irrevocable. For purposes of this Section, a "year of vesting service" means an Eligibility Computation Period during which the Participant has completed one thousand (1,000) or more Hours of Service. A Participant shall be considered to have completed three (3) years of vesting service if the Participant has completed three (3) years of vesting service prior to the expiration of the period in which an election could be made.

12.2 *Accounts Not to be Decreased by Amendment.* No amendment shall, except to the extent permitted under Section 412(c)(8) of the Code, decrease a Participant's Account balance or, except to the extent permitted by regulations, eliminate an optional form of benefit. In addition, no amendment shall have the effect of decreasing a Participant's vested interest determined without regard to such amendment as of the later of the date such amendment is adopted or the date it becomes effective.

12.3 *Termination.* The Employer may terminate the Plan at any time by written notice delivered to the Trustee. The Plan shall be deemed terminated if and when the Employer is judicially declared bankrupt, when the Employer permanently discontinues making contributions to the Plan or, if the Employer is a corporation, when the Employer is a party to a merger in which it is not the surviving corporation or when the Employer sells substantially all of the Employer's assets, unless the surviving corporation or purchasing employer continues the Plan, in which case the surviving corporation or purchasing Employer shall be substituted for the Employer under the Plan.

If the Employer permanently discontinues contributions, or the Plan is completely or partially terminated for any reason, each affected Participant shall have a fully vested and nonforfeitable right to his or her Account, and the Trustee or Custodian shall make distributions in such manner as the Plan Administrator directs pursuant to the applicable provisions of Article VII. Notwithstanding any provision of the Plan to the contrary, distribution of a Participant's Account shall be made without the Participant's consent (or the consent of his or her Spouse) following termination of the Plan, unless applicable regulations require that the Account of a Participant who does not consent to a distribution be transferred to another qualified plan maintained by the Employer.

12.4 *Notice of Amendment or Termination.* In the case of an application for an advance determination as to whether a Plan amendment or termination affects the continuing qualification of the Plan, the Plan Administrator shall furnish each interested party (as defined by the regulations prescribed under Section 7476(b)(1) of the Code) with written notice, in the form and manner, and at such time as prescribed by such regulations, of the adoption of any amendment or Plan termination.

### **ARTICLE XIII Nonalienability of Benefits; Qualified Domestic Relations Orders**

13.1 *Nonalienability of Benefits.* Except as expressly provided below, the benefits provided under the Plan shall not be subject to alienation, assignment, garnishment, attachment, execution (other than the collection by the United States on a judgment resulting from an unpaid tax assessment) or levy of any kind (other than a federal tax levy made pursuant to Section 6331 of the Code), and any attempt to cause such benefits to be so subjected will not be recognized.

Notwithstanding the foregoing to the contrary, and effective for judgments, orders, and decrees issued, and settlement agreements entered into on or after August 5, 1997, the nonalienability rule in this Section shall not apply to any offset of a Participant's Account balance against an amount that the Participant is ordered or required to pay to the Plan, and the Plan shall not be treated as failing to meet the requirements of Section 401(a)(13) of the Code solely by reason of such an offset, provided:

- (a) the order or requirement to pay arises:
  - (i) under a judgment of conviction for a crime involving the Plan;
  - (ii) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of Part 4 of subtitle B of Title I of ERISA; or
  - (iii) pursuant to a settlement agreement between the Secretary of Labor and the Participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the Participant, in connection with a violation (or alleged violation) of Part 4 of subtitle B of Title I of ERISA by a fiduciary or any other person;
- (b) the judgment, order, decree or settlement agreement expressly provides for the offset of all or a part of the amount ordered or required to be paid to the Plan against the Participant's Account balance; and
- (c) if the Participant has a Spouse at the time at which the offset is to be made:

(i) either such Spouse has consented in writing to such offset and such consent is witnessed by a notary public (or it is established to the satisfaction of the Plan Administrator that such consent may not be obtained because there is no Spouse or the Spouse cannot be located), or an election to waive the right of the Spouse to either a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity is in effect in accordance with the requirements of Section 417(a) of the Code;

(ii) such Spouse is ordered or required in such judgment, order, decree or settlement to pay an amount to the Plan in connection with a violation of Part 4 of subtitle B of Title I of ERISA; or

(iii) in such judgment, order, decree or settlement, such Spouse retains the right to receive the survivor annuity under a Qualified Joint and Survivor Annuity provided pursuant to Section 401(a)(11)(A)(i) of the Code and under a Qualified Preretirement Survivor Annuity provided pursuant to Section 401(a)(11)(A)(ii) of the Code, determined as if:

(A) the Participant terminated employment on the date of the offset;

(B) there was no offset;

(C) the Plan permitted commencement of benefits only on or after Normal Retirement Age;

(D) the Plan provided only the minimum-required Qualified Joint and Survivor Annuity; and

(E) the amount of the Qualified Preretirement Survivor Annuity is equal to the amount of the survivor annuity payable under the minimum-required Qualified Joint and Survivor Annuity.

For purposes of subsection (c)(iii), the term “minimum-required Qualified Joint and Survivor Annuity” means the Qualified Joint and Survivor Annuity which is the actuarial equivalent of the Participant’s accrued benefit (within the meaning of Section 411(a)(7) of the Code) and under which the survivor annuity is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and his or her Spouse.

13.2 *Qualified Domestic Relations Orders.* The provisions of the immediately preceding Section shall apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, except that said immediately preceding Section shall not apply if the order is determined to be a qualified domestic relations order.

13.3 *Notice.* Upon the receipt of any domestic relations order by the Plan, the Plan Administrator shall promptly notify, in writing, the Participant and any alternate payee named in the domestic relations order (at the address included in the domestic relations order) of the receipt of such order and the Plan’s procedures for determining the qualified status of such domestic relations order.

13.4 *Representative.* Any alternate payee named in a domestic relations order received by the Plan shall have the right to designate, by notice in writing to the Plan Administrator, a representative for the receipt of copies of notices that are sent to the alternate payee with respect to such domestic relations order.

13.5 *Separate Account.*

(a) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the Plan Administrator, by a court of competent jurisdiction, or otherwise), the Plan Administrator shall direct the Trustee and Custodian, if applicable, to separately account for the amounts, if any, which would have been payable to any alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(b) In the event an alternate payee does not receive immediate distribution pursuant to a domestic relations order which is determined by the Plan Administrator or by a court of competent jurisdiction to be a qualified domestic relations order, the Plan Administrator shall direct the Trustee and Custodian, if applicable, to establish a separate account in the Plan in the name of the alternate payee as soon as practicable following such determination. An alternate payee shall have the same rights and protections as a Participant with respect to such account and shall be entitled to receive distribution of such account in accordance with Section 7.6.

13.6 *Determination by Plan Administrator.*

(a) Within ninety (90) days after receipt of a domestic relations order, the Plan Administrator shall determine whether such order is a qualified domestic relations order and shall notify, in writing, the Participant and each alternate payee named in such order of such determination.

(b) If the Plan Administrator shall determine that the domestic relations order is a qualified domestic relations order and such order provides that the benefits required to be paid thereunder are immediately distributable, then the Plan Administrator shall direct the Trustee and Custodian, if applicable, to pay to each alternate payee named in such order, the benefits required to be paid thereunder, including any amounts segregated in accordance with Section 13.5(a) (plus any interest thereon). If the Plan Administrator shall determine that the domestic relations order is a qualified domestic relations order and such order does not provide that the benefits required to be paid thereunder are immediately distributable, then the Plan Administrator shall direct the Trustee and Custodian, if applicable, to establish a separate account in accordance with Section 13.5(b).

(c) If the Plan Administrator shall determine that the domestic relations order is not a qualified domestic relations order, then the notice required by the first paragraph of this Section shall include a statement of the specific reason or reasons for the Plan Administrator's determination and the Plan Administrator shall direct the Trustee and Custodian, if applicable, continue to segregate, in accordance with Section 13.5(a), during the eighteen (18) month period beginning with the date on which the first payment would be required to be made under such domestic relations order, any amounts which would have been payable to any alternate payee during such eighteen (18) month period if the order had been determined to be a qualified domestic relations order, unless such order shall sooner be determined, by the Plan Administrator or a court of

competent jurisdiction, to be a qualified domestic relations order, in which event the Plan Administrator shall direct the Trustee and Custodian, if applicable, to make payment of any such segregated amount (plus any interest thereon) to each alternate payee named in the order in accordance with subsection (b) above. If neither the Plan Administrator nor a court of competent jurisdiction shall determine within said period of eighteen (18) months that such domestic relations order is a qualified domestic relations order; then, upon expiration of said period, the Plan Administrator shall direct the Trustee and Custodian, if applicable, to pay any such segregated amount (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

13.7 *Definitions.* As used in this Article, the following terms shall have the meanings hereinafter set forth:

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

(b) "Domestic relations order" means any judgment, decree or order (including approval of property settlement agreement) which relates to the provisions of child support, alimony payments or marital property rights to a Spouse, former Spouse, child or other dependent of a Participant, and is made pursuant to a state domestic relations law (including a community property law).

(c) "Earliest retirement age" means the earlier of:

(i) the date on which the Participant is entitled to a distribution under the Plan, or

(ii) the later of the date the Participant attains age fifty (50), or the earliest date on which the Participant could begin receiving payments under the Plan if he or she separated from service.

(d) "Qualified domestic relations order" means a domestic relations order which:

(i) creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a Participant under the Plan;

(ii) clearly specifies the name and the last known mailing address (if any) of the Participant and the name and mailing address of each alternate payee covered by the order; the amount or percentage of the Participant's benefits to be paid by the Plan to each such alternate payee, or the manner in which such amount or percentage is to be determined; the number of payments or period to which such order applies; and each plan to which such order applies; and

(iii) does not require the Plan to provide any type or form of benefits, or any option, not otherwise provided under the Plan; to provide increased benefits (determined on the basis of actuarial value); or to pay benefits to an alternate payee which are to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

In the case of any payment to an alternate payee before a Participant has separated from service, a domestic relations order shall not be treated as failing to meet the requirements of subparagraph (iii) solely because such order requires that payment of benefits be made to an alternate payee on or after the date on which the Participant attains (or would have attained) the earliest retirement age; as if the Participant has retired on the date on which such payment is to begin under such order; and in any form in which such benefits may be paid under the Plan to the Participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent Spouse).

Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

#### **ARTICLE XIV Miscellaneous**

14.1 *Merger or Consolidation of Plan.* In case of any merger or consolidation of the Plan with, or transfer of assets and liabilities of the Plan to, any other plan, provision must be made so that each Participant would, if the Plan then terminated, receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had then terminated.

#### 14.2 *Fiduciary Responsibility.*

(a) (a) *Allocation of Responsibility.* All fiduciaries with respect to the Plan and Trust shall be required to meet the prudence, diversification and other fiduciary responsibilities of applicable law to the extent such requirements and responsibilities apply to them, provided each fiduciary shall be responsible for carrying out only the requirements, responsibilities and duties placed upon such fiduciary by provisions of the Plan. In particular:

(i) An Investment Manager shall have full investment responsibility with respect to the assets of the Trust for which it has the power of investment direction and except as otherwise provided by law, the other fiduciaries including, but not limited to, the Trustee and the Employer, shall have no duty or responsibility with respect to the investment of such assets as long as they are subject to the investment direction of such Investment Manager;

(ii) The Trustee shall have full investment responsibility with respect to the assets of the Trust which are not invested pursuant to the direction of the Employer and are not subject to the investment direction of an Investment Manager and, except as otherwise provided by law, the other fiduciaries including, but not limited to, the Employer shall have no duty or responsibility with respect to the investment of such assets to the extent that such assets are not invested pursuant to the direction of such fiduciaries;

(iii) The Trustee shall have no duty or responsibility with respect to investment of assets of the Trust so long as they are invested at the direction of the Employer or a duly appointed Investment Manager;

(iv) The Plan Administrator shall have no duty or responsibility with respect to the investment of the assets of the Trust; and

(v) The fiduciaries, including, but not limited to, the Trustee, the Employer, the Plan Administrator and any Investment Manager shall have no responsibility for the investment directions made by Participants.

(b) *Fiduciary Duties.* Each fiduciary shall exercise the powers granted to it, shall discharge its duties under the Plan solely in the interest of the Participants, their surviving Spouses and Beneficiaries and:

(i) for the exclusive purpose of providing benefits to Participants, their surviving Spouses and Beneficiaries, and defraying reasonable expenses of administering the Plan;

(ii) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(iii) by diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

14.3 *Additional Contributions and Adjustments.* The Employer shall contribute such additional amounts, and shall direct the Trustee or Plan Administrator to make such adjustments to, and distributions from, Participants' Accounts, to the extent necessary to (a) correct any operational defect pursuant to the Internal Revenue Service's Employee Plans Compliance Resolution System or any successor system, policy or program to the foregoing, or (b) effective January 1, 2001, correct any breach of fiduciary responsibility or duty pursuant to the U.S. Department of Labor's Voluntary Fiduciary Correction program or any successor program, system or policy.

14.4 *Prohibited Transactions.* No fiduciary nor any Participant (or former Participant, Surviving Spouse, or Beneficiary) who directs the investment of his or her Account shall engage in a transaction which such person knows or should know is prohibited by Section 406 or 407(a) of ERISA or by Section 4975 of the Code, unless an appropriate exemption or exemptions have been granted by the Department of Labor under Section 408 of ERISA and the Department of the Treasury under Section 4975(c)(2) of the Code.

14.5 *Exclusive Benefit.* Except as otherwise provided, in no event shall any part of the Trust Fund be used for, or diverted to, purposes other than for the exclusive benefit of the Participant's, their surviving Spouses and Beneficiaries.

14.6 *Initial Plan Qualification.* All contributions to the Plan are conditioned on initial qualification of the Plan under Section 401(a) of the Code. If the Plan does not initially qualify, the Trustee shall, upon request of the Employer, return the contributions and any earnings thereon.

14.7 *Service With Predecessor Employer.* Service with a predecessor employer shall, to the extent required by law, be treated as service for the Employer.

14.8 *Employment.* Participation in the Plan shall not give any Participant the right to be retained in the employ of the Employer or any other right not specified herein.

14.9 *Gender.* When necessary to the meaning hereof, and except when otherwise indicated by the context, either the masculine or the neuter pronoun shall be deemed to include the masculine, the feminine, and the neuter.

14.10 *Governing Law.* This Plan shall be governed and construed by the laws of the United States of America. To the extent that the laws of the United States of America shall not be held to have preempted local law, the Plan shall be administered under the laws of the State of Maine.

14.11 *Article and Section Headings and Table of Contents.* The Article and Section headings and Table of Contents are inserted for convenience of reference and shall not be considered in the construction of the Plan.

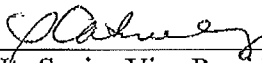
14.12 *Qualified Military Service.* The provisions of this Section supersede any conflicting provision of the Plan on and after the applicable effective date.

(a) Beginning January 1, 2009, a Participant's compensation under the Plan shall include any Differential Wage Payments, and an individual receiving such Differential Wage Payments shall be deemed to be an Employee. The Plan will not be treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Code by reason of any contribution or benefit which is based on a Differential Wage Payment. As used herein, "Differential Wage Payment" means payments to an individual with respect to any period during which the individual is performing Qualified Military Service while on active duty for a period of more than 30 days that represent all or a portion of the wages the individual would have received from the Employer if the individual were performing service for the Employer.

(b) If a Participant dies on or after January 1, 2007, while performing Qualified Military Service, the Participant's Surviving Spouse or other surviving beneficiary shall be entitled to any additional benefits, other than benefit accruals relating to the period of Qualified Military Service, that would have been provided under the Plan if the Participant had resumed employment with an Employer and died immediately thereafter.

27<sup>th</sup> IN WITNESS WHEREOF, the Employer has caused this instrument to be executed this day of January 2014.

BOWDOIN COLLEGE

By:   
Its Senior Vice President for Finance and  
Administration and Treasurer



## **APPENDIX A      Fund Sponsors**

Pursuant to Section 1.18 of the Plan, the following companies have been designated as Fund Sponsors:

1. Fidelity Investments
2. Teachers Insurance and Annuity Association (“TIAA”), subject to the limitations of Section 11.5
3. College Retirement Equities Fund (“CREF”), subject to the limitations of Section 11.5

**APPENDIX B      Trustees**

Pursuant to Section 1.44 of the Plan, the following persons have been appointed by the Employer to serve as Trustees of the Trust:

| Name                 | Title   |
|----------------------|---|
| S. Catherine Longley | Senior Vice President of Finance and Administration and Treasurer |
| Paula J. Volent      | Senior Vice President for Investments                             |
| Cristle Collins Judd | Dean for Academic Affairs   |
| Matthew P. Orlando   | Controller  |
| Tamara Spoerri       | Director of Human Resources                                       |