DUQUESNE UNIVERSITY

403(b) DEFINED CONTRIBUTION RETIREMENT PLAN

Amended and Restated

As of January 1, 2009
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ARTICLE ONE

Effective Date

1.01 Effectively Date: This Plan was originally effective as of January 1, 1964. The Plan subsequently was amended effective January 1, 1996 (to add Fidelity and The Variable Annuity Life Insurance company ("VALIC") as investment options) and July 1, 1997 (to permit Plan loans). The Plan was previously amended and restated as of January 1, 2002 and is amended and restated effective as of January 1, 2009.

1.02 Plan Merger: The DUQUESNE UNIVERSITY TAX-DEFERRED ANNUITY PLAN (the “TDA Plan”) was merged into this Plan on December 1, 2008. The TDA Plan was effective as of January 1, 1976 and was amended and restated as of November 1, 1995 and January 1, 2002.
ARTICLE TWO

Designation of Plan

2.01 403(b) Plan: The Plan and associated Annuity Contracts and Custodial Agreements established hereunder shall be known as the DUQUESNE UNIVERSITY 403(b) DEFINED CONTRIBUTION RETIREMENT PLAN (hereinafter called the “Plan”) and shall be for the exclusive benefit of the Employees. The terms of the Plan are intended to comply with the Internal Revenue Code of 1986, as amended, and Treasury regulations issued in connection therewith. All Plan assets are held in annuity contracts with the Teachers Insurance & Annuity Association ("TIAA") or the College Retirement Equities Fund ("CREF", collectively "TIAA-CREF") or the Variable Annuity Life Insurance Company ("VALIC") or in custodial accounts with TIAA-CREF or Fidelity Investments ("Fidelity"). All assets in the custodial accounts must be invested in regulated investment company stock (mutual funds) in accordance with IRC §403(b)(7).
ARTICLE THREE

Definitions

When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise:

3.01 "Account Balance" shall mean the bookkeeping account maintained for the benefit of a Participant or a Beneficiary under the Plan. A Participant’s “Account Balance” is the sum of all of his Custodial Accounts and Annuity Contracts under the Plan.

3.02 "Alternate Payee" shall mean 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 a plan with respect to such Participant.

3.03 “Annuity Contract” shall mean a nontransferable contract purchased with Plan assets from an insurance company authorized to do business in Pennsylvania that includes payment in the form of an annuity. Annuity Contracts shall comply with the requirements of IRC §403(b)(1).

3.04 "Compensation" shall mean:

(a) Basic Definition: the amount of base compensation paid by the University to a Participant that must be reported as wages on the Participant's Form W-2 and shall:

(i) include compensation that is not currently includable in the Participant's gross income because of the application of IRC §125, §132(f)(4), §457(b) or §403(b) through a salary reduction agreement;

(ii) include payments received while serving as a department chair or as a program director;

(iii) include Mandatory Contributions (5%) that are made by reason of a salary reduction agreement under IRC §3121(a)(5)(D);

(iv) include salary received from sponsored research grants that is made payable for work performed during the summer months by full-time, nine-month faculty and that is approved and funded by the granting agency for retirement benefits;

(v) exclude bonuses, overtime, flex credits under a University cafeteria (IRC §125) plan, overload payments, grant payments (except as provided in paragraph (iv)), stipends, and payments for services not related to the Participant’s primary position;
(vi) exclude any reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation, and welfare benefits;

(vii) exclude any compensation which is paid (or otherwise becomes taxable) to an Employee for services rendered while he was not a Participant in the Plan;

(viii) exclude cash-outs of unused sick time or vacation pay paid to Non-Exempt Employees;

(ix) include cash-outs of unused vacation pay paid to Exempt Employees;

(x) include any differential wage payments within the meaning of IRC §414(u)(12); and

(xi) include salary continuation payments made to employees who have agreed to terminate employment at some future date.

(b) **Highly Compensated Employees and IRC §415 Limit**: For purposes of Sections 3.18, 3.24, and Article Seven, the Participant’s “includible compensation” within the meaning of IRC §403(b)(3), which is the compensation received from the University that is includible in the Participant’s gross compensation for federal income tax purposes for the most recent year that is a Year of Service; provided that:

(i) Effective for Limitation Years beginning after 2007, Compensation shall not include items listed in reg. §1.415(c)-2(c), such as deferred compensation, stock options, and other remunerations which receive special tax benefit. [Prior to January 1, 2008 items listed in reg. §1.415-2(d)(3) were excluded from Compensation.]

(ii) Salary reduction contributions under a §401(k), §403(b), §457(b), §132(f)(4) or cafeteria (§125) plan or arrangement shall be included as Compensation.

(iii) Effective for Limitation Years beginning after 2007, Compensation includes amounts includible in income because of the making of an election under Code §83(b), under Code §409A, or under Code §457(f)(1)(A), or because the amounts are constructively received.

(iv) Compensation includes any amounts not available to a Participant in cash in lieu of group health coverage (in accordance with Revenue Ruling 2002-27) if the University does not request or collect information
regarding the Participant’s other health coverage as part of the enrollment process for the health plan.

(v) Nonqualified deferred compensation which is paid (or otherwise becomes taxable) to a Participant while he or she is still employed by the University (or Related Organization) shall be Compensation when it is paid (or otherwise becomes taxable).

(vi) Effective for Limitation Years beginning after 2007, Compensation for purposes of this section is subject to the limitation of Code §401(a)(17).

(vii) Effective for Limitation Years beginning after 2007, if a Participant terminates employment with the University during a Plan Year, his Compensation for that Plan Year shall include payments made after his termination of employment during the remainder of the Plan Year. In addition, payments that are made during the next Plan Year that are also made within 2½ months of his termination of employment shall be compensation for the next Plan Year. Notwithstanding the above, compensation under this paragraph is limited to: (1) amounts that would have been paid to the Participant prior to termination of employment had he remained an employee of the University (or Related Organization), and (2) cash outs of unused leave that the Participant would have been able to use had he remained employed. This paragraph does not apply to severance, separation, termination, or similar pay, the right to which arises upon termination of employment.

(viii) Effective for Plan Years and Limitation Years beginning after 2008 differential wage payments within the meaning of IRC §414(u)(12) are included in Compensation.

(ix) Compensation shall be determined without regard to exclusions from gross income under IRC §872, §893, §894, §911, §931, and §933.

(c) IRC §401(a)(17) Limit: Notwithstanding the other subsections of this section, the Compensation of a Participant shall not include compensation in excess of two hundred forty-five thousand ($245,000) dollars. This two hundred forty-five thousand ($245,000) dollar limit applies for Plan Years and Limitation Years beginning in 2009 and is adjusted periodically in accordance with IRC §401(a)(17). See Section 15.10. If a Plan Year contains fewer than twelve (12) calendar months, then the dollar limit on Compensation for that Plan Year shall be the limit under IRC §401(a)(17) multiplied by the number of full months in the Plan Year and divided by twelve (12) months.

(d) Former Employees: For purposes of determining the maximum compensation that may be taken into account under Subsections 5.01(a), 6.03(a), 7.01(c), and 7.06(a) but still subject to the other subsections of this Section 3.04, the following
provisions shall apply to former employees. If a Participant terminates employment with the University during a Plan Year, his Compensation for that Plan Year may include payments made after his termination of employment during the remainder of the Plan Year. In addition, payments that are made during the next Plan Year that are also made within 2½ months of his termination of employment shall be Compensation for the next Plan Year. Notwithstanding the above, Compensation under this subsection is limited to: (i) amounts that would have been paid to the Participant prior to termination of employment had he remained an employee of the University (or a Related Organization), and (ii) cash outs of unused leave that the Participant would have been able to use had he remained employed. This subsection does not apply to severance, separation, termination, or similar pay, the right to which arises upon termination of employment.

3.05 "Custodial Account" shall mean the individual or group custodial accounts established in accordance with IRC §403(b)(7) to hold Plan assets invested in regulated investment company stock (a.k.a. mutual funds).

3.06 “Custodian” shall mean the party or parties holding the assets of the Custodial Accounts or Annuity Contracts pursuant to the terms of this Plan. The Custodian shall be selected by the University.

3.07 “Date of Employment” or “Date of Reemployment” means the effective date of appointment for a faculty member. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the University.

3.08 "Distribution Starting Date" shall mean the earlier of the first day of the first period for which an amount is payable as an annuity under the plan or the first date on which all events have occurred that entitle a Participant to a distribution.

3.09 "Domestic Relations Order" shall mean any judgment, decree, or order (including approval of a property settlement agreement) which:

(a) Relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant, and

(b) Is made pursuant to a state domestic relations law (including a community property law).

3.10 “Employee” shall mean any person employed by the University but shall exclude employees who are students, including graduate students, to the extent that they are performing services described in IRC §3121(b)(10). An “Exempt Employee” is an Employee who is exempt from the overtime pay provisions of the Fair Labor Standards Act. A "Non-Exempt Employee" is an Employee who is not an Exempt Employee. Any individual receiving differential wage payments within the meaning of IRC §414(u)(12) shall continue to be treated as an Employee.
3.11 "Eligible Employee" shall mean an employee of the University who may become eligible under Article Four for Mandatory Contributions or Matching Contributions and may be any employee of the University, except adjunct faculty, residents, post and pre-doctoral fellows, graduate assistants, student employees, “on call” employees, and “special assignment employees”.

3.12 "Entry Dates" shall mean the first day of each month.

3.13 "Fiduciary" shall mean any person who exercises any discretionary management of the Plan or exercises any authority or control respecting management or disposition of its assets, renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the Plan, or has authority or responsibility in the administration of the Plan.

3.14 "Five (5%) Percent Owner" shall mean a party which either directly or constructively (as defined in IRC §318(a)(2)(C) where five (5%) percent is used in lieu of fifty (50%) percent) owns more than five (5%) percent of the outstanding stock of the University or a Related Organization, the total combined voting power of all of the stock, or the capital or profits interest of the University or a Related Organization. As of the date of adoption of this Plan document, there were no Five (5%) Percent Owners.

3.15 "Five-Year Break in Service" shall mean a period during which a Participant incurs five (5) consecutive One-Year Breaks in Service.

3.16 "401(a) Defined Contribution Plan" shall mean a plan which meets the requirements of IRC §401 and which provides for an individual account for each participant and for benefits based solely on:

(a) The amount contributed to the participant's account; and

(b) Any income, expenses, gains and losses, and forfeitures of accounts of other participants which may be allocated to the participant's account.

This Plan is not a 401(a) Defined Contribution Plan.

3.17 “403(b) Contribution” shall mean an elective deferral contribution which an employee elects for the University to make on his or her behalf to this Plan.

3.18 “Highly Compensated Employee” shall mean, in accordance with the principles of IRC §414(q):

(a) General Rule: With respect to any Plan Year, any Employee who:

(i) during the Plan Year or the twelve month period preceding the Plan Year (the “lookback year”) was at any time a Five (5%) Percent Owner, or
(ii) received Compensation in excess of $105,000 during the “lookback year”.

The salary level needed to become a Highly Compensated Employee is periodically adjusted in accordance with IRC §414(q)(1). See Section 15.10. Any Employee who is not a "Highly Compensated Employee" is a "non-Highly Compensated Employee".

(b) **Former Employees**: Any former Employee who was a Highly Compensated Employee at any time after attaining age 55 or at the time he separated from service shall be a Highly Compensated former employee. The University shall be deemed to have made whatever elections regarding former employees are necessary so that the definition of Highly Compensated Employee is consistent with such definition in any other benefit plan of the University or a Related Organization to which IRC §414(q) is applicable. For purposes of this subsection, any individual who performed no services for the University or any Related Organization during the relevant period is not a Highly Compensated Employee. For purposes of Article Seven, any individual who performed no services for the University during the relevant Plan Year is not a Highly Compensated Employee.

3.19 **"Hour of Service"** shall mean:

(a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the University. These hours shall be credited to the employee for the computation period in which the duties are performed;

(b) Each hour for which an employee is paid, or entitled to payment, by the University 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 or leave of absence). No more than 501 Hours of Service shall be credited under this subsection. All such hours shall be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor regulations, which are incorporated herein by this reference;

(c) Each hour for which back pay, irrespective of mitigation of damages, is awarded or agreed to by the University. 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). These hours shall be credited to the employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made; and

(d) Each hour for which an individual would have received credit as an employee but for the fact that the individual is absent from work for one of the following reasons:
(i) The pregnancy of the individual,

(ii) The birth of a child of the individual,

(iii) The placement of a child in connection with the adoption of a child by the individual,

(iv) The caring for the child during the period immediately following the birth or placement for adoption, or

(v) A leave of absence pursuant to the Family and Medical Leave Act but only if the employee returns to provide services after such leave.

If the Plan Administrator is unable to determine the hours for which the individual shall receive credit, the individual shall receive credit for eight (8) Hours of Service for each normal workday during the absence. The number of Hours of Service credited under this subsection shall not exceed the number necessary for the individual to be credited with a total of 501 Hours of Service under this section. Service credited under this subsection shall be credited in the Plan Year in which the absence begins if such crediting is necessary to prevent the individual from being credited with less than 501 Hours of Service. Otherwise, service shall be credited in the following Plan Year. The Plan Administrator may refuse to credit service under this subsection unless the individual furnishes information necessary to establish that the absence occurred for one of the reasons listed above and the number of days for which there was such an absence.

3.20 "IRC" shall mean the Internal Revenue Code of 1986, as amended.

3.21 "Limitation Year" shall mean the Plan Year, except to the extent provided in reg. §1.415(j)-1(e).

3.22 "Normal Retirement Age" shall mean age sixty-five (65).

3.23 "Normal Retirement Date" shall mean the first day of the month next following the date the Participant attains Normal Retirement Age.

3.24 "Officer" shall mean an Employee who:

(a) Serves as an administrative executive for the University on a regular and continuous basis; and

(b) Has annual Compensation greater than one hundred thirty ($130,000) thousand dollars for the applicable Plan Year.
The dollar amount in subsection (b) is adjusted periodically in accordance with IRC §416(i)(1)(A). See Section 15.10.

The maximum number of Employees who shall be deemed to be Officers shall be the lesser of either fifty (50), or the greater of either three (3) or ten (10%) percent of all employees (not counting excludable employees) of the University. The number of employees the University has for the Plan Year shall be equal to the greatest number of employees it had during such Plan Year. If the actual number of Officers of the University exceeds the maximum number of employees who are deemed to be Officers under this section, the maximum number of Officers shall include those Officers who had the highest one-year Compensation while serving as an Officer of the University during any applicable Plan Year. For purposes of this section, an excludable employee is any employee who:

- is a nonresident alien who receives no earned income (within the meaning of IRC §911(d)(2)) from the University (or any Related Organization) which constitutes income from sources within the United States,
- normally works less than seventeen and one-half (17½) hours per week (for the period that he works),
- normally works less than six (6) months in any twelve (12) consecutive month period,
- has not worked at least one day in each of six (6) or more months during relevant Plan Year or the preceding twelve (12) consecutive month period,
- has not attained age twenty-one (21), or
- is covered by a collective bargaining agreement (but only to the extent provided in regulations).

3.25 "One-Year Break in Service" shall mean any Vesting Computation Period during which a Participant fails to complete more than five hundred (500) Hours of Service.

3.26 "Participant" shall mean an Employee or former Employee of the University who is participating in the Plan in accordance with Article Four or who is or will be receiving benefits pursuant to Article Eleven. For purposes of Section 15.04 any Employee shall be considered to be a Participant even if the Employee is not yet eligible to participate under Article Four. A former Employee who receives Compensation under Subsection 3.04(d) shall be treated as an Employee, and shall be eligible for allocations under Article Six.

3.27 "Plan" shall mean this Plan as it shall be amended from time to time.

3.28 "Plan Administrator" shall mean the "party or parties" named or appointed as such pursuant to Article Twelve.
3.29 "Plan Year" shall mean the twelve (12) consecutive-month period ending on December 31.

3.30 "Qualified Domestic Relations Order" shall mean a Domestic Relations Order:

(a) Which clearly specifies:

(i) 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,

(ii) 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,

(iii) The number of payments or period to which such Order applies, and

(iv) Each plan to which such Order applies, and

(b) Which:

(i) Does not require the Plan to provide any type or form of benefits or any option, not otherwise provided under the Plan,

(ii) Does not require the Plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) Does not require the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

3.31 "Qualified Joint and Survivor Annuity" shall mean an immediate annuity:

(a) For the life of the Participant with a survivor annuity for the life of his spouse which is fifty (50%) percent of the amount of the annuity which is payable during the joint lives of the Participant and the spouse, and

(b) Which is the actuarial equivalent of a single straight life annuity for the life of the Participant.

3.32 "Qualified Optional Survivor Annuity" shall mean (pursuant to IRC §417(g)) an immediate annuity:

(a) For the life of the Participant with a survivor annuity for the life of his spouse which is seventy-five (75%) percent of the amount of the annuity which is payable during the joint lives of the Participant and the spouse, and

(b) Which is the actuarial equivalent of a single straight life annuity for the life of the Participant.
3.33 "Qualified Preretirement Survivor Annuity" shall mean a single straight life annuity for the life of the surviving spouse.

3.34 "Related Organization" shall mean, to the extent required by law, any corporation, partnership, trade or business, or other organization which is required to be aggregated under IRC §414(b), (c), (m) or (o) with the University.

3.35 "Rollover Amount" shall mean any rollover amount, rollover contribution, or eligible rollover distribution as defined in IRC §402(c)(4), §403(a)(4), §403(b)(8), §408(d)(3), or §457(e)(16) that is rolled into the trust in accordance with Section 15.04.

3.36 "Total Disability" shall mean “disabled” within the meaning of IRC §72(m)(7), which as of the date of adoption of this document meant that the Participant was unable 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 to be of long-continued and indefinite duration.

3.37 “University” shall mean Duquesne University, an organization that is exempt from taxation under IRC §501(c)(3).

3.38 "Valuation Dates" shall mean the last day of the Plan Year and any other date selected by the Plan Administrator. However, to the extent any assets are invested with an insurance or other investment company, Valuation Dates shall be determined in accordance with the investment contract or arrangement.

3.39 “Vested Interest” shall mean that portion of a Participant's Account Balance which has become vested (and therefore is nonforfeitable) in accordance with Article Eight.

3.40 "Vesting Computation Period" shall mean the Plan Year.

3.41 "Year of Service" shall mean:

(a) For purposes of Article Four, a computation period during which an employee completes 1,000 or more Hours of Service. The initial computation period shall be the 12-month period beginning on an employee's Date of Employment or Reemployment, as applicable, and each succeeding computation period shall be the 12-month period beginning on the first day of the Plan Year. For purposes of this subsection if an Eligible Employee has completed at least one year of service with an educational institution: (i) including primary and secondary schools as well as universities, (ii) including the University in the case of a rehire, and (iii) not including vocational or technical schools, he shall be given credit for one Year of Service.

(b) For purposes of Subsections 3.04(b) and 7.05(b) Year of Service shall mean shall mean a “year of service” as defined in IRC §403(b)(4).
ARTICLE FOUR

Eligibility and Participation

4.01 Eligibility Requirements:

(a) 403(b) Contributions: Each Employee of the University is eligible to participate as of the first day of the month next following his or her Date of Employment or Date of Reemployment, as applicable. To begin participation, an Employee must complete a 403(b) election agreement and return it to the University.

(b) Mandatory Contributions v. Matching Contributions: If an “Eligible Employee” completes one Year of Service, and if he or she becomes eligible for Mandatory Contributions (in accordance with subsection (c)), then allocations of Mandatory Contributions shall be made to his or her account in accordance with Subsection 6.03(b).

If an “Eligible Employee” completes one Year of Service, and if he or she is not eligible for Mandatory Contributions (in accordance with subsection (c)), then allocations of Matching Contributions shall be made to his or her account in accordance with Subsection 6.03(a).

Notwithstanding the above, whether allocations will be made to the accounts of union employees is subject to change in accordance with changes to the applicable collective bargaining agreement.

Grandfathered Employees: If a Participant ceases to be an Eligible Employee, no Matching Contributions or Mandatory Contributions shall be based on Compensation paid for services rendered during the period when he or she was not an Eligible Employee. Notwithstanding the prior sentence, the following employees who would otherwise no longer be Eligible Employees shall remain Eligible Employees for Matching Contributions under Subsection 6.03(a) until the employee first ceases to make 403(b) Contributions: Employees who no longer would have been Eligible Employees as of September 1, 2008 if this amended Plan had been effective as of that date and who were actually eligible for Matching Contributions under Subsection 6.03(a) as of December 31, 2008.

(c) Eligibility for Mandatory Contributions: For purposes of this subsection, the job classification of any employee shall be determined in accordance with The Administration Policy (“TAP”) of the University. In addition, except as provided with regard to rehires, the same service may be counted for purposes of meeting the service requirement of subsection (b) and this subsection (c).

(i) Faculty Members, Administrators and Executives: An Eligible Employee who is a Faculty Member, Administrator or Executive is
eligible for Mandatory Contributions upon the completion of one year of continuous service and attainment of age 35.

(ii) **Support Staff**: An Eligible Employee who is Support Staff, is eligible for Mandatory Contributions upon the completion of five consecutive years of continuous service and attainment of age 35.

(iii) **Employees Not Required to Participate**: Notwithstanding the prior paragraphs of this subsection, any employee who ceases to be an Eligible Employee who is employed by the University on a full-time basis is not eligible under this subsection for Mandatory Contributions.

(d) **Entry Dates**: An Eligible Employee becomes eligible for allocations of Matching Contributions in accordance with subsection (b) as of the first day of the calendar month next following the date on which he or she completes the one Year of Service requirement.

An Eligible Employee becomes eligible for Mandatory Contributions in accordance with subsection (c) as of the later of: (i) first day of the month next following the calendar month during which he or she completes the service requirement, or (ii) the first day of the calendar month coincident with or next following the date during which he or she satisfies the age requirement.

(e) **Rehires**:

(i) For purposes of subsection (b), if an Eligible Employee becomes eligible for Matching Contributions, terminates employment, and is rehired, he or she does not need to complete the applicable service requirement of subsection (b) to again become eligible for Matching Contributions. [See the second paragraph of Subsection 3.40(a).]

(ii) For purposes of subsection (c), if an Eligible Employee becomes eligible for Mandatory Contributions, terminates employment, and is rehired, he or she will be treated as a new hire and will need to complete the applicable service requirement of subsection (c) to again become eligible for Mandatory Contributions. However, if the period between the Eligible Employee’s last day of employment with the University and his or her Date of Reemployment as a full-time Eligible Employee is less than two full pay periods, he or she will be treated for purposes of this subsection as if he or she had not terminated employment with the University.

4.02 **Union Employees**: Notwithstanding Section 4.01, the eligibility of union employees to participate is subject to the applicable collective bargaining agreements. The following local union numbers are subject to change from time to time. As of January 1, 2009 Union employees were eligible to participate as follows:
(a) **403(b) Contributions:** A common law union employee of the University is eligible to participate as of the first day of the month next following his or her Date of Employment or Date of Reemployment, as applicable. To begin participation, an employee must complete a 403(b) election agreement and return it to the University.

(b) **SEIU Local 32BJ:** Members of Local 32BJ of the Service Employees International Union who complete one Year of Service are eligible for allocations of Matching Contributions under Subsection 6.03(a). However, if a member of Local 3 completes one year of continuous service, he or she is eligible for allocations of Mandatory Contributions under Subsection 6.03(b) and is not eligible for allocations of Matching Contributions. Notwithstanding the prior sentence, there are five “grandfathered” members of the local who are not eligible for allocations of Mandatory Contributions.

(c) **IUOE Local 95:** Members of Local 95 of the International Union of Operating Engineers who complete one Year of Service are eligible for allocations of Matching Contributions under Subsection 6.03(a). However, if a member of Local 95 completes one year of continuous service, he or she is eligible for allocations of Mandatory Contributions under Subsection 6.03(b) and is not eligible for allocations of Matching Contributions. Notwithstanding the prior sentence, there is one “grandfathered” member of the local who is not eligible for allocations of Mandatory Contributions.

(d) **Teamsters Local 249:** Any member of Local 249 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America who completes one Year of Service is eligible for allocation of Matching Contributions in accordance with Subsection 6.03(a). Members of Local 249 are not eligible for Mandatory Contributions.

(e) **SPFPA Local 502:** Any member of Local 502 of the Security, Police, Fire Professionals of America who completes one Year of Service is eligible for allocation of Matching Contributions in accordance with Subsection 6.03(a). However, if a member of Local 502 completes five consecutive years of continuous service and attains age 35, he or she is eligible for allocations of Mandatory Contributions under Subsection 6.03(b) and is not eligible for allocations of Matching Contributions.

(f) **Entry Date and Rehires:** Except as otherwise provided in the applicable collective bargaining agreement, the rules of Subsection 4.01(e) regarding entry dates and service requirements for rehires shall apply with respect to union employees.

4.03 **Current Employees:** Unless specifically provided elsewhere in the Plan, any Eligible Employee who was eligible to participate in the Plan as of the Effective Date of this
amended and restated Plan (as described in Article One) shall continue to be eligible to participate as of such Effective Date.

4.04 **Computation of Service:** For purposes of this Article:

(a) **Hours of Service:** If the University does not maintain an Employee's employment records by counting actual Hours of Service, the Employee shall be credited with 10 Hours of Service for each day for which said Employee would be required to be credited with at least one Hour of Service under Department of Labor reg. §2530.200b-2.

(b) **Year of Continuous Service:** For purposes of this Article, an Employee shall be credited with a year of continuous service if he remains employed by the University on a full-time basis (in accordance with The Administration Policy of the University) as an Eligible Employee from his Date of Employment (or Date of Reemployment) or an anniversary date thereof until the date immediately preceding the next anniversary date thereof. However, if the period between the Eligible Employee’s last day of employment with the University and his or her Date of Reemployment as a full-time Eligible Employee is less than two full pay periods, he or she will be treated as if he or she had not terminated employment with the University.

(c) **Full-Time Employee:** Whether an employee is a “full-time employee” will be determined in accordance with The Administration Policy, which as of the date of adoption of this document provided that:

(i) An employee who is not a faculty member and whose terms of employment are not covered by a collective bargaining agreement is “full-time” if he or she is scheduled to work a minimum of 35 hours per week and 52 weeks per year, except as otherwise scheduled by terms of appointment, such as 9 or 10 month academic year appointments.” See TAP No. 3.

(ii) A faculty member is “full-time” if his or her employment contract with the University provides that he or she will have full-time teaching or research responsibilities.

(iii) An employee whose terms of employment are covered by a collective bargaining agreement is “full-time” if he or she is regularly scheduled to work a minimum of 40 hours per week and 52 weeks per year (except to the extent that the collective bargaining agreement provides for vacation or other time off).

(d) **FMLA/ Military Leave:** For purposes of determining whether an Eligible Employee is credited with a year of continuous service, an Eligible Employee will not have a break in his continuous service to the extent that he is entitled to
service credit under the Family and Medical Leave Act or the Uniformed Services Employment and Reemployment Rights Act (USERRA). See Section 6.06.

4.05 Leased Employees: Leased employees (as defined in IRC §414(n)) shall not be eligible to participate.

Effective as of January 1, 1997, a leased employee is any person who is not an employee of the University (or any Related Organization) and who provides services to the University if:

(a) the services are provided pursuant to an agreement between the University (or a Related Organization) and any other person (the “leasing organization”),

(b) the person has performed services for the University (or a Related Organization) on a substantially full time basis for a period of at least one year, and

(c) such services are performed under the primary direction or control by the University (or a Related Organization).
ARTICLE FIVE

Contributions

5.01 Employer Contributions:

(a) 403(b) Contributions: 403(b) Contributions are those Contributions made as the result of elections by Participants that money which would otherwise be paid to them as Compensation be instead contributed for their benefit. Such an election shall not apply either to compensation that has already been paid or made available to the Participant or to any amount that is not Compensation under Subsection 3.04(d). The Plan Administrator may require a Participant to elect how his Account will be invested in order to make an election under this subsection.

The Plan Administrator shall establish procedures for Participants to have 403(b) Contributions made by payroll deduction on a prospective basis. The total of 403(b) Contributions credited to a Participant's Account for a Plan Year may not exceed the lesser of one hundred (100%) percent of the Participant's Compensation for the Plan Year or the amount of cash available after withholdings for taxes. In addition, 403(b) Contributions shall be subject to the provisions of Article Seven and such other administrative policies as established by the Plan Administrator from time to time. Such policies shall include the right of a Participant to prospectively change or terminate his election (or deemed election) at least once each calendar year.

(b) Matching Contributions: The University shall make Matching Contributions sufficient to cover the allocations required to be made under Subsection 6.03(a).

(c) Mandatory Contributions: The University shall make a Mandatory Contribution sufficient to cover the allocations required to be made under Subsection 6.03(b).

The term “Mandatory Contribution” covers two types of Contributions. A contribution of 5% of Compensation is made by the Eligible Employees as a condition of employment. As of the time that this document was prepared, the Internal Revenue Service took the position that such contributions were made pursuant to a “salary reduction agreement” under IRC §3121(a)(5)(D). They are not elective deferrals under IRC §402(g). The remaining contributions are University contributions. In effect, certain employees are required to contribute 5% of compensation as a condition of employment, and the University contributes an 8% (or greater) match, but the 8% (or greater) contribution is for purposes of IRC §401(m) and §410(b) a nonelective contribution and not a matching contribution.
(d) *Corrective Contributions:* If there is an operational failure within the meaning of Rev. Proc. 2008-50, the University may make a corrective contribution that is permitted under Rev. Proc. 2008-50. Any reference to Rev. Proc. 2008-50 shall include any successor revenue procedure or IRS notice.

5.02 *Conditions of 403(b) Contributions:* The 403(b) Contributions for any Plan Year shall be paid to the appropriate Custodian as soon as practicable after such Contributions have been determined.

5.03 *After-Tax Contributions Prohibited:* Participants may not make after-tax contributions to the Plan.
ARTICLE SIX

Allocations

6.01 Separate Accounts: The Plan Administrator shall maintain a separate Participant Account for each Participant setting forth the Participant's Account Balance. The Plan Administrator shall separately account for those portions of such Participant Account attributable to 403(b) Contributions, Matching Contributions, Mandatory Contributions made pursuant to a salary reduction agreement, Mandatory Contributions not made pursuant to a salary reduction agreement, rollovers, and transfers, and, if needed, supplemental retirement annuity (SRA) contributions and amounts transferred from the TDA Plan. The Plan Administrator shall make the allocations among such Participant accounts as set forth in this Article. The Plan Administrator may, in accordance with Section 12.05, delegate its duties under this section to the Custodian.

6.02 Allocation of 403(b) Contributions: The 403(b) Contributions shall be allocated among the accounts of Participants on whose behalf the contributions are made.

6.03 Allocation of Matching and Mandatory Contributions:

(a) Matching Contributions: As of each date that 403(b) Contributions are allocated, Matching Contributions shall be allocated among the appropriate Participant Accounts at a rate equal to 8% of the Participant’s Compensation for the pay period.

In order for a Participant's Account to be credited with a Matching Contribution for a pay period, the Participant must have been an Eligible Employee who was eligible for Matching Contributions in accordance with Subsection 4.01(b) or Section 4.02 and must have elected to have 403(b) Contributions of at least 5% of his Compensation for the pay period allocated to his account.

Notwithstanding the above, no Matching Contribution shall be based on any 403(b) Contribution that is distributed to any Participant under Section 7.04 (relating to the IRC §415 limit) or Section 7.05 (relating to the IRC §402(g) limit). Furthermore, no allocation shall be made to an account for any pay period for which an allocation is made under subsection (b) to that account.

(b) Mandatory Contributions: For each pay period that a Participant is an Eligible Employee who is eligible for Mandatory Contributions in accordance with Subsection 4.01(c) or Section 4.02, a Mandatory Contribution of 13% (5% plus 8%) of Compensation shall be allocated to that Participant’s account.

Notwithstanding the above, no allocation shall be made to an account for any pay period for which an allocation is made under subsection (a) to that account.
(c) **Supplemental Contributions:**

(i) **Grandfathered Employee:** For purposes of this subsection a “Grandfathered Employee” is a Participant who: (A) first became an Eligible Employee prior to January 1, 1983, (B) has remained an Eligible Employee since January 1, 1983, and (C) enrolled in the Plan (or a predecessor 403(b) program) no later than September 1, 1967 or, if ineligible at the time, enrolled when eligibility first became available.

(ii) **Grandfathered Allocation:** If, for a Plan Year, an allocation would otherwise be made to the account of a Grandfathered Employee under subsection (a) or (b), then the allocation for that Plan Year shall be the greater of the allocation under subsection (a) or (b) or the alternative allocation under paragraph (iii).

(iii) **Alternative Allocation:** If an allocation would otherwise be made under subsection (a), the alternative allocation under this paragraph is 5% of Compensation plus an additional 1% of Compensation upon the completion of each five years of continuous service (as defined in Subsection 4.04(b)) while participating in the Plan, up to a maximum allocation of 10% of Compensation.

If an allocation would otherwise be made under subsection (b), the alternative allocation under this paragraph is 10% (5% plus 5%) of Compensation plus an additional 1% of Compensation upon the completion of each five years of continuous service (as defined in Subsection 4.04(b)) while participating in the Plan, up to a maximum allocation of 15% (5% plus 10%) of Compensation.

6.04 **Directed Investments:** Each Participant, beneficiary with an Account Balance, and Alternate Payee shall direct the investment of his or her accounts among the investment options available under the Annuity Contracts and Custodial Accounts that hold Plan Assets. All contributions, expenses, income or losses shall be allocated in accordance with the policies established under this section. To the extent that the Participants do not exercise their rights under this section, their accounts shall be invested in the default investment chosen by the fiduciary identified in Section 12.02. To the extent permitted by ERISA, the Custodian and Plan Administrator shall be relieved of any fiduciary responsibility for investment decisions made pursuant to this section, provided however, that the Plan Administrator and/or Custodian have followed the instructions of the Participant and that said instructions are in accordance with ERISA and the IRC. Upon the death or incapacity of the Participant, the powers granted to the Participant under this section shall inure to the benefit of the Participant’s beneficiary, trustee or legal representative.

6.05 **Corrective Allocations:** If there is an operational failure within the meaning of Rev. Proc. 2008-50, and if the University decides to make a corrective contribution that is

6.06 **Veterans:** Effective as of December 12, 1994, if an Employee enlists or is inducted into military service in the Armed Forces of the United States under such circumstances as would entitle him to reemployment rights under governing provisions of law, he shall be deemed to be on an authorized leave of absence unless a resignation is given by him and accepted by the University. Contributions, benefits and service credit with respect to qualified military service (as defined in IRC §414(u)) will be provided in accordance with IRC §414(u) which provides, among other things, that a Participant who is reemployed by the University in accordance with Chapter 43 of Title 38 of the United States Code:

(a) shall be treated with respect to this Plan as not having incurred a Five-Year Break in Service by reason of such Participant’s period of qualified military service;

(b) shall have each period of qualified military service credited as service with the University for purposes of determining the vesting and accrual of the Participant’s Account under the Plan;

(c) shall be permitted to make additional contributions under the Plan in the maximum amount that the Participant would have been permitted to make under the annual plan limitations if the Participant had continued to be employed by the University and received Compensation during his or her period of qualified military service, provided such contributions are made during a period beginning on the first day of reemployment and continuing for the lesser of five (5) years or three (3) times the Participant’s period of qualified military service; and

(d) to the extent that contributions are made in accordance with subsection (c), shall be entitled to the Matching Contributions that would have been allocated had the contributions in subsection (c) been made while the Participant was on military leave.

Nothing in this section shall require any allocation of any investment performance with respect to any Plan contributions before they are made. Participants receiving differential wage payments within the meaning of IRC §414(u)(12) shall continue to participate in the Plan without interruption.
ARTICLE SEVEN

Limits and Nondiscrimination Tests

7.01 Definitions: For purposes of this Article, the following words have the following meanings unless the context clearly indicates otherwise:

(a) "Annual Addition" shall mean the sum of:

(i) University Contributions, including 403(b) Contributions, Matching Contributions, and Mandatory Contributions, made directly or indirectly,

(ii) After-tax contributions,

(iii) Forfeitures,

(iv) Contributions to an "individual medical benefit account" as defined in IRC §415(l), and

(v) In the case of a Key Employee (as defined in IRC §416(i)), contributions for post-retirement medical benefits to a welfare benefit fund, as required by IRC §419A(d).

For purposes of this subsection, a Participant's "Annual Addition" shall include contributions made to an account of the Participant under this or any other 403(b) plan, including contributions made to 403(b) plans of other employers. [If a Participant participates in 403(b) plan of any other employer he has one “415 limit” for all 403(b) plans.] Annual additions under 401(a) Defined Contribution Plans sponsored by the University are not “Annual Additions” under this Plan. Annual additions to Defined Contribution Plans of employers controlled by the Participant (in accordance with IRC §414(b) or (c) as modified by IRC §415(h)) are aggregated. See IRC §415(k)(4). The “Annual Addition" shall include excess contributions that are distributed under Section 7.06. The "Annual Addition" does not include any transfers or Rollover Amounts, any Catch-up Contributions under Subsection 7.05(c), restorative payments (within the meaning of reg. §1.415(c)-1(b)(2)(ii)(C)), or 403(b) Contributions distributed in accordance with Section 7.05.

(b) "Average Contribution Percentage" shall mean for a particular group the sum of all Contribution Percentages of Participants in that group divided by the number of Participants in that group. Only Participants eligible to receive allocations of the type of contribution being tested shall be included in the calculation of an Average Contribution Percentage.
(c) "Contribution Percentage" shall mean the sum of all contributions of the type being tested which are allocated to a Participant's Account for a Plan Year divided by the Participant's Compensation for that Plan Year and then multiplied by one hundred (100%) percent.

Amounts distributed to Participants under Section 7.04 (in order to keep the Plan in compliance with IRC §415) shall not be taken into account for purposes of calculating a Contribution Percentage.

(d) "Gain" shall mean the sum of:

(i) the amount of income (or loss) allocated to the Participant’s Account for the Plan Year, multiplied by the amount of contributions to be distributed, divided by the Participant's Account Balance used for allocating gain or loss for the Plan Year, plus

(ii) ten (10%) percent of the amount determined under clause (i) multiplied by the number of calendar months between the end of the Participant's taxable year and the date of distribution, counting the month of distribution if the distribution occurs after the fifteenth (15th) day of the month; provided that

(iii) paragraph (ii) shall not apply: (A) for purposes of Section 7.04 until such time that application is required by law or regulation; (B) for purposes of Section 7.05 other than for the Plan Year beginning on January 1, 2007; and (C) for purposes of Section 7.06 for Plan Years beginning after 2007.

The amount of Gain shall be calculated taking into consideration only the portion of the Participant's Account attributable to the type of contributions to be distributed.

In the alternative, the Plan Administrator may use any reasonable method for calculating Gain for a Plan Year, provided that the method does not violate IRC §401(a)(4), is used consistently throughout the Plan Year, and is consistent with the method used by the Custodian in order to allocate gain or loss. To the extent that paragraph (ii) applies, Gain must be calculated as of a date that is no more than seven (7) days prior to the date of distribution.

(e) “BASIC LIMIT” shall mean that the Average Contribution Percentage for all Highly Compensated Employees who are Participants shall not exceed the Average Contribution Percentage for non-Highly Compensated Employees (who are Participants) multiplied by 1.25. The Average Contribution Percentage for non-Highly Compensated Employees shall be determined using data from the current Plan Year.
(f) “ALTERNATIVE LIMIT” shall mean that the Average Contribution Percentage for all Highly Compensated Employees who are Participants shall not exceed the lesser of the Average Contribution Percentage for non-Highly Compensated Employees (who are Participants) either:

(i) multiplied by 2.0, or

(ii) increased by two (2) percentage points.

The Average Contribution Percentage for non-Highly Compensated Employees shall be determined using data from the current Plan Year.

(g) “Excess Contributions” shall mean, with respect to the type of contributions being tested, the excess of:

(i) the aggregate amount of contributions actually taken into account in computing the Average Contribution Percentage of Highly Compensated Employees for the Plan Year, over

(ii) the maximum amount of such contributions permitted by the ACP nondiscrimination test (Section 7.06) determined by hypothetically reducing contributions made on behalf of Highly Compensated Employees in order of Contribution Percentages, beginning with the highest of such percentages.

7.02 Limitation on Annual Additions: Notwithstanding any other provision of this Plan or any other 403(b) plan covering the Participant, the Annual Addition with respect to a Participant Account in any Limitation Year may not exceed the lesser of:

(a) Forty-nine thousand ($49,000) dollars; or

(b) One hundred (100%) percent of the Participant's Compensation in the Limitation Year.

Catch-up contributions under IRC §414(v) (Subsection 7.05(c)) shall not count against the limitation of subsection (a). Contributions specified in Paragraphs 7.01(a)(iv) or (v) shall not count against the limitation of subsection (b). The dollar amount in subsection (a) is for the Limitation Year beginning in 2009 and is adjusted periodically in accordance with IRC §415(c) and (d). See Section 15.10. The dollar amount in subsection (a) shall be reduced in accordance with reg. §1.415(j)-1(d) if there is a change in the Limitation Year (including a Plan termination that is effective on a date other than the last day of the Limitation Year).

7.03 Time Annual Additions Deemed Credited: An Annual Addition with respect to a Participant Account shall be deemed credited to such Participant Account with respect to a Limitation Year if it is allocated to such Participant Account under the terms of the Plan as of
any date within such Limitation Year. A contribution may be allocated for a Limitation Year only if it was contributed to the Plan not later than the 15th day of the tenth calendar month following the end of the fiscal year of the University with which or within which the Limitation Year ends. A contribution made pursuant to Section 6.06 is an Annual Addition for the Limitation Year to which the contribution relates, regardless of when the contribution is made.

7.04 Allocation of Excess Amounts: If the Annual Addition for a Participant would otherwise exceed the limitations specified herein, the Plan Administrator has discretion to prospectively reduce the amount of Contributions that would otherwise be allocated to the Participant’s account. Effective for Limitation Years beginning after 2007, if the Annual Addition for any Participant exceeds the limitations specified herein, such Annual Addition shall be reduced in accordance with methods permitted under Rev. Proc. 2008-50 (or its successor). To the extent permitted the Annual Addition shall be reduced by distributing 403(b) contributions (and any attributable Gain) to the Participants to whose accounts the excess amounts were allocate.

If a Participant participates in a 401(a) Defined Contribution Plan that is aggregated with the Participant’s 403(b) contract in accordance with IRC §415(k)(4), the Annual Addition shall be reduced in accordance with the priority required by the regulations (which, as of the date of adoption of this document, required that reductions take place first under this Plan). If the regulations do not require that reductions take place first under this Plan, the reduction shall take place first under the 401(a) Defined Contribution Plan.

7.05 Dollar Limit on 403(b) Contributions:

(a) General Limit: Except as provided in subsections (b) and (c), no more than sixteen thousand five hundred ($16,500) dollars of 403(b) Contributions may be contributed (under this Plan or any other 403(b) Plan of the University or any Related Organization) for any Participant in any calendar year beginning after 2008. (The $16,500 limit applies for 2009 and is periodically adjusted in accordance with the limit under IRC §402(g) for other years. See Section 15.10.)

If the 403(b) Contributions (and other types of contributions listed in IRC §402(g)(3)) for a Participant for a calendar year under all 403(b) plans and qualified plans of the University and any Related Organization exceed the limit under IRC §402(g), then:

(i) The Plan Administrator may distribute the excess 403(b) Contributions (and any attributable Gain) before the end of the calendar year if it is administratively feasible to do so; and

(ii) The Plan Administrator shall distribute the excess 403(b) Contributions (and any attributable Gain) by the following April 15.
If a Participant also participates in another plan which is limited by IRC §402(g) and which is sponsored by an employer which is not the University or a Related Organization, he shall have until March 1st to notify the plan administrators in writing regarding how much he wants distributed from each plan, and the Plan Administrator shall make the appropriate distribution.

Prior to distributing any 403(b) Contributions under this section, the Plan Administrator shall reclassify 403(b) Contributions (that would otherwise be distributed) as Catch-up Contributions to the extent permitted under Subsection 7.05(c).

Gain shall include “gap period income” to the extent required by regulations. See reg. §1.402(g)-1(e)(5).

(b) **15 Years of Service:** If an employee has at least 15 Years of Service with the University (not counting service with any organization that is not a “qualified organization” under IRC §402(g)(7)(B)), the dollar limit in subsection (a) shall be increased by the least of the following:

(i) $3,000;

(ii) $15,000 reduced by amounts not included in gross income for prior years by reason of IRC §402(g)(7)(A)(ii)(I) and (II);

(iii) the excess of $5,000 multiplied by the number of Years of Service of the Participant over the Participant’s 403(b) Contributions for prior years, not including Catch-up Contributions under subsection (c), to this Plan or any other 403(b) plan of the University.

This subsection shall not apply to a Participant unless the Participant has at least 15 Years of Service with the University and any Related Organizations. The dollar amounts in this subsection will be automatically adjusted in accordance with changes in the dollar amounts under IRC §402(g)(7). See Section 15.10.

(c) **Catch-up Contributions:** Notwithstanding subsections (a) and (b), if a Participant has attained (or will attain) age 50 by the end of a Plan Year, the limitation under Subsection 7.05(a), after adjustment under subsection (b), if applicable, for that Participant shall be increased by an additional five thousand five hundred ($5,500) dollars. Contributions made in accordance with this subsection are referred to as “Catch-up Contributions”. The adjustment under subsection (b) must be made before the adjustment under this subsection.

The limitation under this subsection is adjusted periodically in accordance with IRC §414(v). See Section 15.10. Furthermore, the sum of all 403(b) Contributions (including Catch-up Contributions) allocated to a Participant’s
account for a Plan Year may not exceed his Compensation (determined under Subsection 3.04(b)) for the Plan Year. The Plan Administrator may account for Catch-up Contributions separately.

7.06 Limitation Regarding Matching Contributions:

(a) ACP Nondiscrimination Test: For each Plan Year, the allocation of Matching Contributions shall satisfy the requirements of either the BASIC LIMIT or the ALTERNATIVE LIMIT.

The Plan Administrator shall implement rules limiting the amount of Matching Contributions that may be allocated to accounts of Highly Compensated Employees so that this limitation is satisfied. The Plan Administrator shall maintain adequate records to demonstrate compliance with the above limitation.

(b) Distribution of Excess Contributions: If the limitation of subsection (a) is exceeded for any Plan Year, the Plan Administrator shall have the right to distribute to Highly Compensated Employees a sufficient amount of Matching Contributions (and any attributable Gain) so that the limitation of subsection (a) is satisfied. The distribution of such Contributions (and any attributable Gain) should be made within two and one-half (2½) months (in order to avoid an excise tax) and must be made within twelve (12) months (in order to avoid disqualification) after the end of the Plan Year. The distribution of such Contributions (and any attributable Gain) shall be made in accordance with the following procedure:

(i) The Plan Administrator shall calculate the total dollar amount of Excess Contributions for all affected Highly Compensated Employee in the manner described in IRC §401(m)(6)(B) and reg. §1.401(m)-2(b)(2).

(ii) The distribution of contributions (and any attributable Gain) shall be made by a leveling process, not in order of Contribution Percentages, but in order of dollars of Matching Contributions, starting with whichever Highly Compensated Employee(s) has (have) the highest dollar amounts of Matching Contributions. At any point in the return process, the next dollar to be returned will be returned to whichever Highly Compensated Employee(s) has (have) the highest dollar amount of Matching Contributions.

(c) Aggregation or Disaggregation of Plans or Contributions: If the University sponsors two or more 403(b) plans which are treated as one plan for purposes of IRC §401(a)(4) or §410(b)(1)(A) or (B), all arrangements subject to IRC §401(m) under those plans must be aggregated for purposes of the nondiscrimination test of subsection (a). If the University sponsors a 401(a) Defined Contribution Plan that includes after-tax or matching contributions, that plan may be aggregated
with this Plan for purposes of the nondiscrimination test of subsection (a). [Note: The Plan Administrator may not aggregate plans that use inconsistent testing methods for purposes of the ACP test.]

If a Highly Compensated Employee participates in two or more 403(b) arrangements subject to IRC §401(m) and sponsored by the University or a Related Organization, his Contribution Percentage shall be determined by treating all such arrangements subject to IRC §401(m) as one such arrangement. Contribution Percentages shall be determined based on the Plan Year of this Plan regardless of the year on which the other arrangements operate. If this Plan contains two or more components (such as union and non-union components) that must be disaggregated for purposes of testing under IRC §410(b), then this section shall apply separately to each component. Any union component is not subject to this section.
ARTICLE EIGHT

Vested Interest

8.01 **100% Vesting**: A Participant shall at all times have a Vested Interest in one hundred (100%) percent of his Account Balance.
ARTICLE NINE

Retirement Benefits

9.01 Normal Retirement Benefit: A Participant may retire at his Normal Retirement Date after which his Vested Interest shall be distributed to him in the manner and at the time provided in Article Eleven. A Participant may continue to work (and participate in the Plan) as long as he and the University agree as to the terms and conditions of the employment. The University shall act in a uniform and nondiscriminatory manner in applying the terms and conditions of employment after the Normal Retirement Date and in accordance with any and all federal and state laws regarding retirement.

9.02 Benefit Upon Termination: If a Participant's employment is terminated for a reason other than death or retirement, he shall be paid a benefit equal to the amount of his Vested Interest. Such benefit shall be distributed to such terminated Participant in the manner and at the time provided in Article Eleven.
ARTICLE TEN

Death Benefits

10.01 Death Benefit: If a Participant dies, a benefit equal to his Vested Interest shall be paid to his designated beneficiary in the manner and at the time provided in Article Eleven.

10.02 Beneficiary Designation: Each Participant may from time to time file with the Custodian a designation of one or more primary or secondary beneficiaries to whom the death benefit shall be paid. The most recent of such designations shall control. Notwithstanding this designation, if the Participant has a surviving spouse, that spouse shall automatically be designated sole beneficiary unless the spouse has consented in a writing witnessed by a Plan representative or notary public to waive his or her right to be sole beneficiary. The spouse’s consent shall be irrevocable, but a new spousal consent is needed if the Participant changes his beneficiary designation to someone other than the spouse. The spouse may condition his or her consent upon a particular party or parties being named as beneficiary.

Except as otherwise provided in a Qualified Domestic Relations Order, if a Participant divorces his spouse, any beneficiary designation naming his former spouse as beneficiary that became effective prior to the date of the divorce shall become void as of the effective date of the divorce.

For purposes of this Article and Article XI, marital status will be determined in a manner consistent with the Defense of Marriage Act.

10.03 Lack of Beneficiary Designation: Upon notification of the death of a Participant, the Plan Administrator shall direct the Custodian to distribute the death benefit to the beneficiary or beneficiaries currently designated by the Participant subject to Section 10.02. If no such designation has been made or deemed to have been made, or if all beneficiaries so designated have predeceased the Participant, then the Plan Administrator shall direct the Custodian to distribute the death benefit to the Participant’s estate.

10.04 Alternate Payees Under Qualified Domestic Relations Orders: An Alternate Payee under a Qualified Domestic Relations Order will be considered to be a designated beneficiary to the extent needed to comply with the Order as provided in Section 11.08.
ARTICLE ELEVEN

Payment Of Benefits

11.01 Valuation of Account Balance: Upon determining that a distribution shall be made to a Participant pursuant to Section 11.04, the Plan Administrator shall determine the fair market value of the Participant's Account Balance as of the last Valuation Date preceding or coincident with the date on which such distribution shall begin. That portion of such Account Balance to which such Participant is entitled according to the provisions of this Plan shall be paid to him or her as set forth in this Article. The Plan Administrator may, in accordance with Section 12.05, delegate its duties under this section to the Custodian.

11.02 Method of Distribution: Except as otherwise provided, the Custodian shall distribute a Participant's entire Vested Interest by the purchase of an annuity. Any annuity distributed by the Trustee shall be non-transferable and shall comply with the terms of this Plan and the requirements of IRC §401(a)(9).

(a) Married Participants: Unless the Participant (or his surviving spouse) has waived the annuity form of benefit in accordance with Section 11.09,

(i) Any distribution to a married Participant shall be in the form of a Qualified Joint and Survivor Annuity; and

(ii) Any distribution to the surviving spouse of a deceased Participant shall be in the form of a Qualified Preretirement Survivor Annuity. If the Participant (or his surviving spouse) has waived the annuity form of benefit, distribution of his Vested Interest shall be made in a lump sum or any optional form of benefit available under subsection (d).

(iii) Spousal Consent: The spouse must consent each time a Participant elects to receive any form of distribution other than a Qualified Joint and Survivor Annuity. A spouse's consent does not limit a Participant's right to revoke his election. A spouse must receive a notification of her rights and must consent within the time periods specified under Section 11.09.

(b) Single Participants: Any distribution to a Participant who is not married on the date of distribution shall be in the form of a single life annuity for the life of the Participant. However, the Participant may elect to receive a lump-sum distribution or any optional form of benefit available under subsection (d).

(c) Death Benefits: Any benefit payable to a non-spouse beneficiary as a result of the death of a Participant shall be paid in the form of a lump sum or any optional form of benefit available under subsection (d).
(d) **Directed Investment Options:** A Participant may elect to have his or her Account Balance (or portion thereof) distributed in any method available from the investment organization which holds the assets of his account (or portion thereof), provided:

(i) A Participant may not elect any option that violates IRC §401(a)(9);

(ii) A Participant may not elect any option which either the Plan Administrator or the investment organization has decided not to make available to all similarly situated Participants in the Plan;

(iii) To the extent that a Participant divides his Account Balance among different investment options (whether or not with the same investment organization), the Participant shall be subject to whatever limitations on transfers or distributions which the investment organization has chosen to apply to the investment options which the Participant has elected.

(e) **Annuities:** If an investment organization offers any annuity form of distribution, it must offer married Participants the opportunity to receive a Joint and 50% Survivor Annuity or a Qualified Optional Survivor Annuity, and a married Participant must, in accordance with Section 11.09, waive his right to receive a Joint and 50% Survivor Annuity in order to receive any other form of annuity.

(f) **Lump Sums:** For purposes of this Article, a lump-sum distribution may include a distribution of an Annuity Contract, a rollover, a direct rollover, or a transfer.

(g) **Tax Withholding:** A Custodian may withhold taxes from any distribution in accordance with applicable law.

11.03 **Segregated Accounts:** The Plan Administrator may direct the Trustee to segregate any undistributed portion of the Participant Account of any Participant who has terminated employment with the University. Any segregation of assets under this section will normally take place as of a Valuation Date.

11.04 **Time of Payment:** Except as provided by subsection (c) and Sections 11.06 and 11.08, no distribution shall be made before a Participant dies or terminates employment with the University (including any Related Organization). For purposes of this Article, a Participant does not “terminate employment” if he transfers to a Related Organization or becomes a leased employee (as defined in IRC §414(n)(2)) of the University or any Related Organization. Such a transferring Participant will be treated as terminating employment when he terminates employment with the Related Organization or Organizations. Benefits under this Plan will be paid only if the Plan Administrator decides in its discretion that the applicant is entitled to them. The determination of the time of distribution shall be made by the Plan Administrator subject to the other sections of this Article and to the following restrictions:
(a) **General Rule:** Distribution of a Participant's Vested Interest shall begin by his Required Beginning Date as specified in subsection (d).

(b) **Participant Election:** A Participant who has terminated employment with the University may elect to receive a distribution. The Plan Administrator (or a Custodian) may impose reasonable administrative limits on the ability of Participants to elect to receive distributions, and the election process must be consistent with the notice and joint and survivor annuity requirements of Sections 11.09 and 11.10.

(c) **Death:** If a Participant dies, regardless of whether he is employed by the University at death, the Beneficiary may elect to take a distribution at any time subject to whatever restrictions are imposed by the investment organization with which the account is invested and subject to the requirements of IRC §401(a)(9).

(d) **Minimum Required Distributions:** Notwithstanding any provision in this Plan to the contrary, the distribution of a Participant’s Vested Interest shall be made in accordance with the requirements and conditions of and shall otherwise comply with IRC §401(a)(9) and the regulations issued thereunder (§1.401(a)(9)-1 through §1.401(a)(9)-9).

(i) Distribution of a Participant’s Vested Interest shall begin not later than April 1st of the calendar year following the later of:

(1) the calendar year in which the Participant attains age seventy and one-half (70½), or

(2) the calendar year in which the Participant retires.

(ii) If a Participant fails to make any election by his Required Beginning Date, distribution will be made in accordance with Subsection 11.02.

(iii) If a Participant elects to receive installment payments, distributions shall be made over a period not exceeding the life of the Participant or the joint lives a Participant and his beneficiary. Life expectancies shall be determined in accordance with regulations §1.401(a)(9)-1 through §1.401(a)(9)-9. If there is more than one beneficiary, or if the beneficiary is not the Participant’s spouse, or if the beneficiary is the Participant’s spouse and is not more than ten years younger than the Participant, the maximum distribution period will not be more than the period determined in accordance with the Uniform Lifetime Table under regulation §1.401(a)(9)-9 A-2.
(iv) Distributions to a Participant and his beneficiaries shall only be made in accordance with the incidental death benefit requirements of IRC §401(a)(9)(G) and regulation §1.401(a)(9)-6.

(v) **Death After Distribution Has Begun:** If a Participant dies after distribution of his Vested Interest has begun but before his entire Vested Interest has been distributed, the remainder of the Vested Interest must be distributed at least as rapidly as if the Participant had not died.

(vi) **Death Before Distribution Has Begun:** If a Participant dies before distribution of his Vested Interest has begun, his entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of his death, except:

(A) If there is a designated beneficiary and if the Participant’s spouse is not the sole designated beneficiary, distribution must begin not later than December 31 of the calendar year following the calendar year of the Participant's death, and

(B) If the Participant’s surviving spouse is the sole designated beneficiary, distributions shall begin by the later of the date determined under subparagraph (A) or December 31 of the calendar year in which the Participant would have attained age 70½.

(C) If the surviving spouse dies before the distribution begins, the Vested Interest will be distributed as if the surviving spouse were the Participant and this paragraph (vi), other than subparagraph (B), shall apply.

(D) For purposes of this subsection, any amount distributed to a child of the Participant shall be treated as if it had been distributed to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

Notwithstanding the above paragraph, for purposes of IRC §401(a)(9) all of an individual’s 403(b) annuity contracts and custodial accounts are aggregated. Therefore, a Participant is not required to take a distribution from this Plan if he takes a distribution sufficient to comply with IRC §401(a)(9) from a 403(b) annuity contract or custodial account of a plan of another employer.

(e) **Military Service:** A Participant shall be treated as having terminated from employment for purposes of this section during any period that the Participant is performing service in the uniformed services described in Code §3401(h)(2)(A) and shall be eligible during such period for a distribution of any voluntary 403(b)
Contributions made by the Participant under the Plan. If a Participant elects to receive a distribution by reason of this subsection, the Participant may not make any voluntary 403(b) Contributions under the Plan during the six-month period beginning on the date of the distribution.

(f) **Plan Termination:** If the Plan is terminated, all assets may be distributed in accordance with reg. §1.403(b)-10.

11.05 **Direct Rollovers:** Notwithstanding anything to the contrary herein, whenever a Participant, a spousal beneficiary, or an Alternate Payee (who is a spouse or former spouse of the Participant) is eligible in accordance with Section 11.04, 11.06, or 11.08 to receive within a year "eligible rollover distributions" of at least two hundred ($200) dollars, he may elect that the Custodian transfer all or part (provided that the part is at least five hundred ($500) dollars) of the Participant's Vested Interest to any qualified trust, custodial account, individual retirement account (IRA), individual retirement annuity, or 403(b) annuity contract, or eligible plan under IRC §457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that is capable of accepting such amounts. (A surviving spouse may make a rollover to another qualified plan.) In order to make an election under this section, an individual must be given notice of his rights and options not more than one hundred eighty (180) days before the date of the transfer. The Plan Administrator may require of the trustee or custodian of the recipient trust or account such assurances and representations as it may deem necessary. An “eligible rollover distribution” is any distribution under the Plan except any annuity distribution, any distribution of excess contributions under Section 7.05 or 7.06, any minimum required distribution under IRC §401(a)(9), any hardship distribution, any loan offset or any distribution that is one of a series of substantially equal periodic distributions over a period of ten (10) years or more. The Plan Administrator shall have the right to eliminate any rights available under the prior sentences of this section to the extent that the rights are not protected by ERISA §204(g) or IRC §403(b)(10). Effective as of January 1, 2002, after-tax contributions may be part of an “eligible rollover distribution” if such contributions are transferred to a 401(a) Defined Contribution Plan, §403(a) plan, (effective as of January 1, 2007) §403(b) annuity contract, IRA, or individual retirement annuity that separately accounts for them.

If a distribution to a non-spouse beneficiary would otherwise be an “eligible rollover distribution”, the distribution may be transferred to an individual retirement account or individual retirement plan to the extent permitted by IRC §402(c)(11).

Effective as of January 1, 2008 an “eligible rollover distribution” may be transferred (under the terms of this Plan) to a Roth IRA or Roth individual retirement annuity. [Note: Depending on the Internal Revenue Code at the time of the direct rollover, the IRS may regard such a direct rollover as a taxable “conversion”, and a transfer may not be permitted because of requirements related to Roth IRAs.]
11.06 **In-Service Withdrawals and Distributions:**

(a) **In General:** Notwithstanding anything to the contrary in the preceding sections of this Article and subject to the provisions of this section, a Participant who is still employed by the University shall have the right to elect to withdraw all or a portion of his Vested Interest.

Withdrawals under this section shall be made in accordance with procedures adopted by the Plan Administrator and shall be subject to the following conditions:

(i) A Participant may make a withdrawal only once during a Plan Year except to make tuition payments;

(ii) Each withdrawal must be for a minimum of one thousand ($1000) dollars;

(iii) A withdrawal shall be paid in the form of a single payment; and

(iv) A married Participant must obtain spousal consent in accordance with Section 11.09 before making a withdrawal.

(b) **Reasons for Withdrawals:** A Participant shall have the right to make a withdrawal or receive an in-service distribution if he qualifies under any of the following paragraphs:

(i) **Hardship:** If a Participant has a hardship as defined in subsection (c), he may withdraw the portion of his Vested Interest attributable to 403(b) Contributions (not including any accumulated gain).

(ii) **Age 59½:** A Participant who has attained age 59½ and who is no longer an Eligible Employee may withdraw all or part of his Vested Interest.

(iii) **Total Disability:** If a Participant suffers a Total Disability, he may elect to withdraw all or part of his Vested Interest.

(iv) **Loan Defaults:** If a Participant is in default on a loan from this Plan, the Plan Administrator or Custodian may offset the Participant’s Vested Interest by the amount in default to the extent that the collateral backing the loan is not 403(b) Contributions (or accumulated gain attributable to such contributions). If the Participant has attained age 59½, the Plan Administrator or Custodian may offset the Participant’s Vested Interest by the amount in default without regard to the type of contributions being used as collateral.
(c) **Hardship:** A Participant may make a hardship withdrawal if necessary to satisfy an immediate and heavy financial need of the Participant and if the withdrawal is for the purpose of:

(i) Paying medical expenses for (or to obtain) medical care that would be deductible under IRC §213(d) (without regard to whether the expenses exceed 7.5% of adjusted gross income);

(ii) Purchasing (excluding mortgage payments) property which is to serve as the principal residence of the Participant;

(iii) Financing the cost of tuition, related educational fees, and room and board expenses for the next twelve (12) months for post-secondary school education for the Participant, his spouse, his children or other dependents (as defined in IRC §152 without regard to IRC §152(b)(1), (b)(2) and (d)(1)(B));

(iv) Payment of rent or a mortgage payment in order to prevent eviction from or foreclosure on the Participant's principal residence;

(v) Payment of burial or funeral expenses for the Participant’s deceased parent, spouse, children, or dependent (as defined in IRC §152 without regard to IRC §152(d)(1)(B));

(vi) Payment of expenses for the repair of the Participant’s principal residence that qualify for the casualty tax deduction under IRC §165 (without regard to whether the loss exceeds 10% of adjusted gross income);

(vii) Paying income taxes or penalties on amounts withdrawn for any purpose described in this subsection; or

(viii) Alleviating any extraordinary financial hardship other than those set forth above as may be permissible by the Secretary of the Treasury or his delegate.

A Participant shall not be permitted to make a withdrawal under this subsection unless he has first exhausted his ability to borrow or withdraw under any other provision of this or any other plan of the University (or a Related Organization) provided that a Participant is not required to take any counterproductive actions within the meaning of reg. §1.401(k)-1(d)(3)(iv)(D). A Participant may not withdraw under this subsection more than is necessary to satisfy his immediate and heavy financial need.

A Participant making an application under this section shall have the burden of presenting to the Plan Administrator (or a Custodian, if hardship withdrawals are administered by the Custodians) such evidence of his hardship as the Plan Administrator
(or Custodian) may require. If a Participant's application for a hardship withdrawal is approved, payment of the approved amount shall be made to the Participant as soon as administratively feasible, and for a period of at least six (6) months all 403(b) and 401(k) contributions for the Participant under this Plan or any 403(b) plan, qualified plan, or nonqualified plan of deferred compensation (including stock option and stock purchase plans but not including health and welfare plans) sponsored by the University or any Related Organization and all Mandatory Contributions shall be suspended.

11.07 Participant Loans: A Custodian shall have the power to grant loans to Participants upon the following conditions:

(a) The loan shall be in writing, be commercially acceptable and bear a reasonable rate of interest taking into account prevailing interest rates available from commercial lenders under similar circumstances and the Plan's investment experience, but in no event shall the rate be higher than a generally accepted rate of interest;

(b) The loan shall be secured by up to one-half (½) of a Participant's Vested Interest. A married Participant must obtain his spouse’s consent in accordance with Section 11.09 prior to borrowing.

(c) A repayment schedule shall be established which will assure that the entire principal and the interest thereon is repaid not later than the last day of the five (5) year period immediately following the date of the loan.

Furthermore, the loan must provide for a repayment schedule not slower than substantially level payments (of interest and principal) to be made at least quarterly over the term of the loan. However, loan repayments may be suspended in accordance with IRC §414(u). If a Participant is on an approved leave of absence, the Custodian has discretion to reduce or suspend loan payments for not more than one year, but not beyond the deadline of the prior paragraph.

The repayment deadline in the first paragraph shall not apply to any loan used to acquire or construct any dwelling unit which is to be used within a reasonable time (determined at the time the loan is made) as the principal residence of the Participant.

(d) The loan (when added to the outstanding balance of all previous loans to the Participant) does not exceed the lesser of the following:

(i) $50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan during the one year period ending on the date before the date on which the loan was made over the outstanding balance of loans from the Plan on the date on which the loan was made; or
One-half (½) of the Vested Interest of the Participant.

For purposes of this subsection, a loan or loans from other plans of the University or Related Organizations shall be deemed to have been granted from the Plan.

(e) Each custodian may establish a minimum amount for loans, not to exceed one thousand ($1,000) dollars.

(f) A Participant may borrow only if the University does not need to become involved with the administration of the loan. Therefore, a Participant must arrange to borrow directly from a Custodian and must abide by the terms and conditions imposed by the Custodian. Multiple loans and refinanced loans must comply with the requirements of reg. §1.72(p)-1 Q & A-20.

(g) A Participant may not have more than two (2) outstanding loans at any time and may not borrow at all as long as the Participant has two (2) or more outstanding loans.

The Plan Administrator shall establish procedures in order to administer this section in a feasible manner. The Plan Administrator shall exercise its discretion on a uniform and nondiscriminatory basis taking into account the investment objectives of the Plan, the Plan's liquidity needs and other relevant factors. Further, the Plan Administrator in exercising its discretion shall assure that loans are made available to Participants on a reasonably equivalent basis and are not made available to Highly Compensated Employees in an amount or percentage greater than the amount or percentage made available to other employees.

A default shall occur when a Participant fails to make a required loan payment, and the Custodian shall make a distribution of the amount in default unless it finds extenuating circumstances which are sufficient to protect Plan assets. The distribution shall be a deemed distribution unless an actual distribution may be made under Section 11.04 or 11.06. Unless the Participant has terminated employment with the University, the Custodian shall not make an actual or a deemed distribution until the end of the calendar quarter following the calendar quarter in which the Participant failed to make a level amortization payment as required by subsection (c). Under a deemed distribution the Custodian reports the amount in default as taxable income to the Participant.

11.08 Qualified Domestic Relations Orders: Benefits shall be paid in accordance, with the applicable requirements of any Qualified Domestic Relations Order.

(a) The Plan Administrator shall not treat any Domestic Relations Order as failing to qualify because:
(i) It specifies the time or method of payments, which would otherwise be subject to the Plan Administrator's sole discretion, within the options permitted by this Article, or

(ii) It requires payment as if the Participant has terminated his employment on the earlier of his fiftieth (50th) birthday or the earliest date to which he is entitled to a distribution under this Article.

(b) In the case of any Domestic Relations Order received by the Plan:

(i) The Plan Administrator shall promptly notify the Participant and each Alternate Payee of the receipt of such Order and the Plan’s procedures for determining the qualified status of Domestic Relations Orders, and

(ii) Within a reasonable period after receipt of such Order, the Plan Administrator shall determine whether such Order is a Qualified Domestic Relations Order and notify the Participant and each Alternate Payee of such determination.

(c) The Plan Administrator shall establish reasonable procedures to determine the qualified status of Domestic Relations Orders and to administer distributions under such qualified Orders. Such procedures:

(i) Shall be in writing,

(ii) Shall provide for the notification of each person specified in a Domestic Relations Order as entitled to payment of benefits under the Plan (at the address included in the Domestic Relations Order) of such procedures promptly upon receipt by the Plan of the Domestic Relations Order, and

(iii) Shall permit an Alternate Payee to designate a representative for receipt of copies of notices that are sent to the Alternate Payee with respect to a Domestic Relations Order.

(d) 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 separately account for the amounts which would have been payable to the Alternate Payee during such period if the Order had been determined to be a Qualified Domestic Relations Order.

(i) If within eighteen (18) months the Order (or modification thereof) is determined to be a Qualified Domestic Relations Order, the Plan Administrator shall pay the segregated amounts (plus any interest thereon) to the person or persons entitled thereto.
(ii) If within eighteen (18) months:

(A) It is determined that the Order is not a Qualified Domestic Relations Order, or

(B) The issue as to whether such Order is a Qualified Domestic Relations Order is not resolved,

then the Plan Administrator shall pay or credit the segregated amounts (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no Order.

(iii) Any determination that an Order is a Qualified Domestic Relations Order which is made after the close of the eighteen (18) month period shall be applied prospectively only.

(iv) The eighteen (18) month period referred to in this subsection begins on the date that the first payment would be required to be made under the Domestic Relations Order.

11.09 Waiver of Annuity Form of Benefit: A married Participant (who has received the notice which must be provided to him under Section 11.10) may elect to waive the annuity form of benefit, provided:

(a) The Qualified Joint and Survivor Annuity may be waived only during the one hundred eighty (180) day period ending on the Distribution Starting Date.

(b) The Qualified Preretirement Survivor Annuity may be waived only during the period which:

(i) Begins on the earlier of either the date of the Participant's separation from service or the first day of the Plan Year during which the Participant attains age thirty-five (35), and

(ii) Ends on the date of the Participant's death.

(c) Any waiver may be revoked during the same period in which waiver may be made.

(d) No waiver shall be effective unless:

(i) The spouse of the Participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a Plan representative or notary public, or
(ii) It is established to the satisfaction of a Plan representative that the consent cannot be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury or his delegate may by regulations prescribe.

(e) Any consent shall be effective only with respect to the spouse making the consent.

(f) The spouse may condition his consent upon certain individual(s) being named as beneficiary(ies) or upon the benefit being paid in a certain form, and the spouse must be advised of these rights.

11.10 Notice to Participants Receiving Annuities:

(a) **Qualified Joint and Survivor Annuity**: The Plan Administrator shall provide to each Participant who is to receive a Qualified Joint and Survivor Annuity no less than thirty (30) days (except as provided under reg. §1.417(e)-1(b)(3)) and no more than one hundred eighty (180) days before the Distribution Starting Date (and consistent with such regulations as the Secretary of the Treasury or his delegate may prescribe) a written explanation of:

(i) The terms and conditions of the Qualified Joint and Survivor Annuity and the Qualified Optional Survivor Annuity,

(ii) The Participant's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity,

(iii) The rights of the Participant's spouse under Section 11.09, and

(iv) The right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity.

(b) **Qualified Preretirement Survivor Annuity**: The Plan Administrator shall provide to each Participant a written explanation of the same information specified in subsection (a) above except that the information shall be with respect to a Qualified Preretirement Survivor Annuity rather than a Qualified Joint and Survivor Annuity. This notice must be provided no later than the latest of:

(i) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35.

(ii) a reasonable period ending after the participant becomes a Participant,

(iii) a reasonable period ending after the participant separates from service (in the case of a Participant who separates from service before age 35), or
(iv) a reasonable period ending after the Participant ceases to be eligible for a subsidized benefit.

For purposes of paragraphs (ii), (iii), and (iv), a reasonable period is the period beginning one year before the event described in the paragraph and ending one year after the event. If a Participant terminates employment and is rehired, it may be necessary to redetermine the period during which notice is to be provided.

(c) Exception to Notice Requirement: Notwithstanding subsections (a) and (b), the respective notices prescribed by this section need not be given to a Participant if the Plan fully subsidizes the costs of a Qualified Joint and Survivor Annuity or the costs of a Qualified Preretirement Survivor Annuity. For purposes of this section, the Plan will be treated as fully subsidizing the costs of a benefit if under the Plan the failure to waive such benefit by a Participant would not result in a decrease in any Plan benefit with respect to such Participant and would not result in increased Contributions from the Participant.
ARTICLE TWELVE

Administration Of Plan

12.01 Plan Administrator: Unless the University appoints someone else to act as Plan Administrator, the University shall be the Plan Administrator of this Plan and shall be considered the "named fiduciary" of the Plan and its agent for service of legal process.

12.02 Investment Policy: The University, or a fiduciary chosen by the University, shall determine which Annuity Contracts and Custodial Accounts shall be made available to the Participants as investment options under the Plan and what the default investment option is for Participants who fail to make an investment election. The selection of investment options shall be made in accordance with fiduciary standards under ERISA.

12.03 General Powers and Duties: The Plan Administrator shall administer the Plan in accordance with its terms and shall have all the powers necessary to carry out the terms of the plan, including the power to take appropriate action to correct mistakes. The Plan Administrator shall have discretion to interpret and administer the Plan, to determine any and all benefits under the Plan, and to respond to questions concerning its application and administration. Such determinations shall be binding on all persons except as otherwise provided by law. The Plan Administrator shall give all instructions and directions to the Custodian as shall be necessary to conduct the administration of the Plan.

12.04 Agents and Expenses: The Plan Administrator may employ agents to assist it in its duties and may rely upon the written certificates of any agent, counsel, accountant, investment manager, actuary or physician. The Plan Administrator shall be entitled to reimbursement from Plan assets (unless the University at its discretion makes reimbursement) for all other proper charges and expenses incurred in carrying out its duties under this Plan, including compensation of agents.

12.05 Delegation to Custodian: The University or Plan Administrator may, with the consent of the Custodian, delegate to the Custodian all or any part of the responsibilities of the Plan Administrator under this Plan. Actions of the Custodian in the exercise of such delegated responsibilities shall have the same force and effect as if such action had been taken by the Plan Administrator. The University may at any time revoke such delegation.

As of January 1, 2009 the Custodians were responsible for general Plan recordkeeping, including maintenance of Participants’ Account Balances, processing investment elections, processing beneficiary designations, allocation of investment gain or loss, processing of distributions (including hardship withdrawals and direct rollovers), including tax withholding and preparation of Forms 1099-R, processing loans, and processing Domestic Relations Orders. The University is responsible for compliance with IRC §401(m), §402(g) and §415 and for confirming to the Custodians the employees’ employment and marital status.
12.06 **Uniformity of Discretion:** Wherever, under the provisions of this Plan, the Plan Administrator is granted discretionary powers which shall affect the rights and benefits of Participants, such discretion shall be exercised uniformly so that all Participants similarly situated shall be similarly treated.

12.07 **Records and Reports:** The Plan Administrator shall keep records of all proceedings and actions, shall maintain all such books of account, records, and other data as shall be necessary for the proper administration of the Plan and shall meet the disclosure and reporting requirements of all applicable law.

12.08 **Indemnification:** The University shall indemnify the Plan Administrator and any individual other than a Custodian who may be appointed pursuant to this Article (or is considered to be a fiduciary as a result of duties performed in the ordinary course of his employment by the University) against any and all claims, losses, damages, expenses and liabilities arising from their duties and responsibilities pursuant to the provisions of this Plan, unless the same is determined to be due to gross negligence or willful misconduct.

12.09 **Bonding:** Every Fiduciary of the Plan and every person who handles funds or other property of the Plan shall be bonded for each Plan Year in an amount which is not less than the greater of ten (10%) percent of the assets of the Plan or one thousand ($1,000) dollars but which is not more than five hundred thousand ($500,000) dollars.

12.10 **Claims Procedure:** A claim shall be filed in writing with the Plan Administrator. If any such claim is wholly or partially denied, the Plan Administrator shall provide the claimant with written or electronic notification of any denial. The notification shall be set forth in a manner calculated to be understood by the claimant and shall contain:

(a) specific reasons for the denial,

(b) specific reference to pertinent Plan provisions on which the denial is based,

(c) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and

(d) a description of the Plan's review procedures and the time limits applicable to such procedures. [Under DOL regulations the Plan Administrator must include a statement of the claimant's right to bring a civil action under ERISA §502(a) following an adverse benefit determination on review.]

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

12.11 **Review Procedure:** Within sixty (60) days after the date on which the claimant receives a written notice of a denied claim, such claimant (or his duly authorized representative) may file a written request with the Plan Administrator for a review of his denied claim and may submit written comments and pertinent documents, records and other information.

The claimant shall be provided with a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

The Plan Administrator shall provide the claimant with written or electronic notification of its decision. In the case of an adverse benefit determination, the notification shall be set forth in a manner calculated to be understood by the claimant and shall contain:

(a) specific reasons for the adverse benefit determination,

(b) specific reference to pertinent Plan provisions on which the adverse benefit 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 describing any voluntary appeal procedures offered by the Plan and the claimant's right to obtain the information about such procedures, and a statement of the claimant's right to bring an action under ERISA §502(a).

The decision on review will be made within sixty (60) days after the request for review is received by the Plan Administrator, unless the Plan Administrator determines that special circumstances (such as the need to hold a hearing, if the Plan's procedures provide for a hearing) require an extension of time for processing the claim. If the Plan Administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial sixty (60) day period. In no event shall such extension exceed a period of sixty (60) days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan expects to render the determination on review.

12.12 **Disability Claims:** Notwithstanding Sections 12.10 and 12.11, if a claim for benefits involves a determination as to whether a Participant suffered a Total Disability, the procedures of this section will apply. Any reference to the claimant includes the claimant’s authorized representative.
If the claimant’s claim is denied in whole or in part, the Disability Claims Manager will notify the claimant within a reasonable period of time, but not later than forty-five (45) days after the Disability Claims Manager receives the claim. The forty-five (45) day period will begin to run once a claim is filed, without regard to whether the claimant has provided all the information necessary to make the benefit determination. If the Disability Claims Manager determines that an extension is needed for reasons beyond the Disability Claims Manager’s control, it may take up to two thirty (30) day extensions for consideration of the claim. If the Disability Claims Manager takes an extension, he or she will notify the claimant in writing of the reason for the extension and the date by which a decision is expected before the end of the initial forty-five (45) day period (or, for a second extension, before the end of the first extension). The notice of extension will include an explanation of the standards on which the entitlement to the benefit claimed is based, the unresolved issues that are preventing a decision, and the additional information needed to resolve the issues. If the Disability Claims Manager requests additional information, the claimant will have at least forty-five (45) days after receipt of the notice of extension to provide the information. The period during which the Disability Claims Manager waits for the claimant to respond to the request for information will not count against the thirty (30) day extension period (i.e. the thirty (30) day extension period will be tolled from the date the notice of extension is sent to the claimant to the date on which the claimant responds to the request for additional information).

The Disability Claims Manager’s notice of denial will explain the reason for the denial, refer to the specific Plan provisions on which the denial is based describe any additional information or material needed from the claimant to perfect his or her claim and why this information or material is necessary, and describe the Plan’s claims review procedures and time limits. Additionally, if the Disability Claims Manager relies on an internal rule, guideline, or protocol in denying the claim, it will either provide a copy of the rule, guideline or protocol, or indicate that a rule, guideline or protocol was relied upon and is available free of charge to the claimant on request.

Within one hundred eighty (180) days after receiving the notice of denial, the claimant may submit a written appeal of the denial. The claimant may review and request copies of the relevant documents, records, and other information relevant to the claim free of charge. Further, upon request by the claimant, the identity of any medical or vocational expert whose advice was obtained in connection with the claim will be disclosed, regardless of whether his or her advice was relied upon in making the determination. The claimant’s appeal may include written comments, documents, records, and other information relating to the claim, regardless of whether it was submitted or considered as part of the initial application.

The claimant’s appeal will be reviewed by the Director of Human Resources (the “Reviewing Fiduciary”) who is appointed by the Plan Administrator and who is not a subordinate of the Disability Claims Manager. The Disability Claims Manager’s initial decision shall not be given any deference. If the initial decision was based in whole or in part on a medical judgment, the Reviewing Fiduciary will consult with a health care professional with appropriate training and experience in the medical field involved. The Reviewing Fiduciary will
consult with a health care professional who was consulted in connection with the initial review of the claim or a subordinate of any such professional.

The Reviewing Fiduciary will review the appeal and make a determination within a reasonable period of time, but no more than forty-five (45) days after the Reviewing Fiduciary receives the appeal. If the Reviewing Fiduciary determines that special circumstances require an extension, it will notify the claimant in writing of the special circumstances and the date by which a decision may be expected before the end of the initial forty-five (45) day period. Any such extension may not exceed forty-five (45) days from the end of the initial review period.

The Reviewing Fiduciary will provide a written determination on appeal which will explain the reasons for the decision, refer to the provisions of the Plan on which the decision is based, and inform the claimant of any additional rights the claimant may have. If the Reviewing Fiduciary relies on an internal rule, guideline, or protocol in denying the claim, the Reviewing Fiduciary will either provide a copy of the rule, guideline or protocol, or indicate that rule, guideline or protocol was relied upon and is available free of charge to the claimant on request. The determination on appeal by the Reviewing Fiduciary is the final determination under this claims procedure.
ARTICLE THIRTEEN

Trust Provisions

13.01  **Fiduciary Responsibility:** Contributions paid to a Custodian shall be held in Annuity Contracts or Custodial Accounts. The agreements with the Custodians are incorporated by reference.
ARTICLE FOURTEEN

Amendment and Termination

14.01 Amendment: The University (by action of its Board of Directors) may amend the Plan at any time, such amendment to be effective upon notification of the Custodian, provided, however, that:

(a) No amendment shall affect the rights, responsibilities or duties of the Custodian without the Custodian's written consent;

(b) No amendment shall diminish a Participant's existing rights under the Plan on the later of the date such amendment is adopted or the date such amendment becomes effective;

(c) No amendment shall revise the vesting schedule unless each Participant with three (3) or more Years of Service is permitted to elect within a reasonable period after the adoption of such amendment to have his Vested Interest calculated without regard to such amendment; such reasonable period shall end sixty (60) days after the latest of the date such amendment is adopted, the effective date of such amendment or the date upon which such Participant receives written notice of such amendment;

(d) No amendment shall provide for the use of funds or assets held under the Plan other than for the benefit of Participants or their beneficiaries;

(e) No amendment shall cause the reversion of any assets of the Plan to the University (or a Related Organization); and

(f) In the case of the amendment to suspend contributions or terminate the Plan, the Amendment shall be effective immediately without notification of the Custodian.

14.02 Retroactive Amendment: The University (by action of its Board of Directors) may amend this Plan under the provisions of IRC §403(b), and any such amendment, by its terms, may be effective retroactively.

14.03 Merger, Consolidation or Transfer of Assets: No merger or consolidation of this Plan with, or transfer of assets or liabilities of this Plan to, any other plan shall occur unless each Participant in the Plan 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 would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated).
14.04 **Suspension of Contributions:** The University reserves the right to suspend temporarily (by action of its Board of Directors) contributions to this Plan at any time. Such suspension shall not operate as a termination of the Plan and shall be subject to such terms and conditions as required under the IRC and the regulations promulgated thereunder.

14.05 **Termination:** The University reserves the right to terminate this Plan (in accordance with reg. §1.403(b)-10) at any time by an instrument in writing adopted by the Board of Directors of the University. This Plan shall become terminated if the University shall be dissolved, become insolvent, or be merged with other organizations; provided, however, that in the event of a dissolution, merger or consolidation of the University, provisions may be made by a successor for the continuance of the Plan, or the merger or consolidation of the Plan or the transfer of Plan assets in accordance with Section 14.03, and no termination shall result therefrom.

14.06 **Vesting Upon Termination:** Upon the termination of this Plan, or upon complete discontinuance of contributions under this Plan, the Vested Interest of each affected Participant in his Account Balance as of the date of such termination or discontinuance shall be equal to one hundred (100%) percent of such Account Balance.

14.07 **Distribution of Assets:** If this Plan is terminated, the Account Balance of each Participant shall be distributed to him in accordance with the provisions of Article Eleven.

14.08 **Discontinuance:** If there shall be a complete discontinuance of contributions such that Account Balances become one hundred (100%) percent vested in accordance with Section 14.06, the Plan Administrator, at his discretion, shall decide whether to terminate the Plan, making at that time full distribution of all Account Balances in accordance with Article Eleven, or to continue the Plan, in which case distribution shall be made in accordance with the provisions of this Plan in the usual manner.

14.09 **Reversion of Plan Assets to the University:** Except as provided in Section 15.03, Plan assets shall never revert to the University, its successors, assigns or other representing the interests of the University, or its creditors.
ARTICLE FIFTEEN

Miscellaneous Provisions

15.01 Employment Rights: This Plan shall not be construed to confer upon any Participant or other employee any right of employment or right to alter any contract of employment between the University and its employees. The University reserves and retains the right to deal with its employees, whether or not Participants, and to terminate their employment at any time, to the same extent as though this Plan had not been created.

15.02 Spendthrift: The interests and benefits under this Plan of any Participant or beneficiary shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration or other legal process, or to the claims of creditors, except as provided in Section 11.07, Section 11.08, or ERISA §206(d).

15.03 Return of Certain Contributions: If a contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the deposit of the contribution the Plan Administrator may direct that the amount of the mistaken contribution (adjusted for gain or loss) be returned to the Participant or the University, as appropriate.

15.04 Rollovers:

(a) Acceptance by Custodian: The Custodian may accept a Rollover Amount on behalf of a Participant as permitted under the Internal Revenue Code. A rollover must take place within the sixty (60) day period immediately following the date on which the Participant received the Rollover Amount. The Custodian shall not accept a rollover if the amount must be distributable in a method not available under Article Eleven. The Custodian may require of the Participant such assurances and representations as it may deem necessary.

(b) Rollover Accounts: Any Rollover Amount accepted under subsection (a) shall be held in a separate Rollover Account, and such Account shall at all times be one hundred (100%) percent vested.

(c) After-Tax and Roth Contributions: Notwithstanding the above, the Custodian may not accept any Rollover Amount that includes after-tax contributions, any Roth 401(k) or Roth 403(b) contributions, or any contributions made to a Roth IRA.

15.05 Multiple Fiduciary Capacities: Any person or persons may at any time and from time to time serve in more than one fiduciary capacity with respect to the Plan, including simultaneous service as Custodian and Plan Administrator.
15.06 **Severability**: If any provision of this Plan shall be held by judicial decision to be invalid and unenforceable, the valid and enforceable provisions which remain shall continue to be given effect and to bind the parties hereto.

15.07 **Rule Against Perpetuities**: If the indefinite continuance of this Plan would be in violation of the law, then this Plan and Trust shall continue for the maximum period permitted by law and shall then terminate, whereupon distribution of its assets shall be made as provided by Article Eleven and Article Fourteen.

15.08 **Law Governing**: This Agreement shall be construed according to the laws of the Commonwealth of Pennsylvania to the extent not preempted by the Internal Revenue Code of 1986, as amended, or the Employee Retirement Income Security Act of 1974, as amended.

15.09 **Word Usage**: Words used in the masculine shall apply to the feminine where applicable, and wherever the context dictates, the plural shall be read as the singular and the singular as the plural.

15.10 **Dollar Limits**: Unless otherwise noted, any dollar amount in this Plan shall be deemed to be adjusted periodically, without formal amendment, in accordance with changes in the law or with regulations issued by the Secretary of the Treasury or his delegate.

15.11 **Paperless Technology**: Except as otherwise provided by law or regulation, the Plan Administrator or a Custodian may use electronic media rather than paper in order to administer the Plan.
IN WITNESS WHEREOF, we have set our hands and seal on this __________ day of
____________________, 20__. 

ATTEST: 

DUQUESNE UNIVERSITY 

By______________________________