

**COLUMBIA UNIVERSITY
RETIREMENT PLAN - LOCAL 241
TRANSPORT WORKERS UNION OF AMERICA**

**As Amended and Restated
Effective January 1, 2021**

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ARTICLE I **INTRODUCTION**

1.1 **Plan Establishment.** The Board of Trustees of Columbia University (the “University”) established the Columbia University Retirement Plan – Local 241, Transport Workers Union of America (the “Plan”) effective July 1, 1972. The Plan is maintained pursuant to a collective bargaining agreement between the University and Local 241 of the Transport Workers Union of America, AFL-CIO (“Local 241 Agreement”).

1.2 **Plan Purpose.** The Plan is a defined benefit pension plan providing pension benefits for Employees whose employment is covered under the Local 241 Agreement. The Plan is fully funded through University contributions and the assets of the Plan shall be administered, distributed, forfeited and otherwise governed by the provisions of the Plan, which is to be administered by the Administrator, the Plan Trustees and the Pension Committee for the exclusive benefit of Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan.

1.3 **Plan Amendment and Restatement.** The Effective Date of this amended and restated Plan document shall be January 1, 2021, except as otherwise specified in the Plan. This amendment and restatement, made and entered into by the University, reflects all amendments to the Plan as approved by the Board of Trustees through March 6, 2020. The provisions of this document are intended to comply with Code Sections 401(a) and 501.

1.4 **Plan Applicability.** The provisions of this Plan document generally apply to Covered Employees and Participants who have completed at least one Hour of Employment for the University on or after January 1, 2021, except as provided herein or required by law. The rights and benefits, if any, of Covered Employees or Participants whose employment terminated with the University or whose membership terminated under the Local 241 Agreement before January 1, 2021 (unless he or she is later reemployed by the University) shall be determined in accordance with the provisions of the Plan document in effect upon such termination except as provided herein or required by law.

ARTICLE II
DEFINITIONS

As used herein, the following capitalized terms have the respective meanings set forth below, unless the context clearly indicates a different meaning:

2.1 **Accrued Benefit.** “Accrued Benefit” means the amount of a Participant’s Base Monthly Pension accrued under Article IV as of the date of reference.

2.2 **Actuarial Equivalent.** “Actuarial Equivalent” means a benefit of value equivalent to the value of the benefit replaced, applying the following assumptions:

(a) A 6% interest per annum and mortality determined under the 1965 Group Annuity Table, using female rates for all Participants and male rates for all Beneficiaries.

(b) Effective October 1, 1998 and notwithstanding subsection (a) above, to the extent it produces a larger benefit, the Actuarial Equivalent of a Pension payable in the form of lump sum shall be determined on the basis of the Applicable Mortality Table and the Applicable Interest Rate as defined below:

(i) For Pensions paid in the form of a lump sum on or after July 1, 2003, the Applicable Mortality Table is the mortality table under Revenue Ruling 2001-62, 1995-1 C.B. 80 or such other mortality table prescribed by the Commissioner of Internal Revenue for purposes of Code Section 417(e)(3), any of which shall be incorporated herein by this reference. Before July 1, 2003 and on or after October 1, 1998, the Applicable Mortality Table is the mortality table under Revenue Ruling 95-6, 1995-1 C.B. 80 or such other mortality table prescribed by the Commissioner of Internal Revenue for purposes of Code Section 417(e)(3).

(ii) For Pensions paid in the form of a lump sum on or after July 1, 2008, the Applicable Interest Rate shall be the interest rate described in Code Section 417(e)(3), the provisions of which are incorporated herein by this reference; provided, however that the interest rate shall be the rate for the fourth calendar month preceding the first day of the Plan Year that contains the Annuity Starting Date, and the “applicable percentages” shall be as follows:

Distribution Plan Year	30-Year Treasury Rate	Code Section 417(e)(3) Rate
2009	60%	40%
2010	40%	60%
2011	20%	80%
2012 and after	0%	100%

(iii) Before July 1, 2008 and on or after October 1, 1998, the Applicable Interest Rate is the annual rate of interest on 30-year Treasury securities as specified by the Commissioner of Internal Revenue for the fourth calendar month preceding the first day of the Plan Year that contains the Annuity Starting Date for the distribution and for which the Applicable Interest Rate remains constant.

(iv) If a Plan amendment changes the date for determining the Applicable Interest Rate (including an indirect change as a result of a change in the Plan Year), such amendment shall not be given effect with respect to any distribution during the period commencing one year after the later of the amendment's effective date or adoption date, if, during such period and as a result of such amendment, the Participant's distribution would be reduced.

This subsection (b) shall not apply to the extent it would cause the Plan to fail to satisfy Code Section 415.

2.3 **Administrator**. "Administrator" means the person appointed under Section 10.1 to administer the Plan.

2.4 **Alternate Payee**. "Alternate Payee" means a person defined in Code Section 414(p)(8) who is entitled to benefits under the Plan pursuant to a Qualified Domestic Relations Order, in accordance with Section 14.4.

2.5 **Annuity Starting Date**. "Annuity Starting Date" means the first day of the first period for which a Participant's benefit is paid as an annuity or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such benefit payment.

2.6 **Average Monthly Compensation**. "Average Monthly Compensation" means the average of a Participant's Monthly Compensation for his or her final 60 consecutive months of Covered Employment during which Monthly Compensation was not zero. If a Participant has fewer than 60 months of Monthly Compensation, then Average Monthly Compensation shall be calculated as the average of all Monthly Compensation.

2.7 **Base Monthly Pension**. "Base Monthly Pension" means a Participant's monthly pension determined under Article IV.

2.8 **Beneficiary**. "Beneficiary" or "Beneficiaries" means the person or persons last designated by the Participant to receive the interest, if any, of a deceased Participant under Section 8.2. Upon the divorce of a Participant, a prior designation of a spouse as a Beneficiary shall be null and void and the Plan shall not be liable to the former spouse except to the extent required to treat him or her as a spouse under a Qualified Domestic Relations Order.

2.9 **Board of Trustees**. "Board of Trustees" means the Trustees of Columbia University, or a duly appointed committee thereof, as each may from time to time be constituted.

2.10 **Break in Service.** “Break in Service” means the following:

(a) For purposes of:

(i) **Vesting Service.** A Plan Year during which a Participant or former Participant fails to complete at least 501 Hours of Employment (a “1-Year Break in Service”). If a Participant incurs at least five consecutive 1-Year Breaks in Service on or after July 1, 1987, he or she shall be treated as having incurred a “5-Year Break in Vesting Service.”

(ii) **Final Pay Service.** A 12-consecutive-month-period beginning on the earlier of (i) the date the Participant incurs a Severance; or (ii) the first anniversary of the date the Participant first becomes absent from University employment for any other reason during which a Participant or former Participant does not complete at least one Hour of Employment (a “1-Year Break in Final Pay Service”). If a Participant incurs at least five consecutive 1-Year Breaks in Final Pay Service on or after July 1, 1987, he or she shall be treated as having incurred a “5-Year Break in Final Pay Service.”

(b) In determining whether a Participant or Covered Employee has incurred a Break in Service for a Plan Year or a 12-consecutive-month-period described in subsection (a)(ii) above, as applicable, the following rules shall apply:

(i) For purposes of subsection (a)(i) above only, the Plan Year during which a Covered Employee first becomes a Participant in accordance with Section 3.1(b) shall not constitute a Break in Service regardless of the number of Hours of Employment he or she completes during such Plan Year.

(ii) For purposes of subsection (a)(i) above and Section 3.3 (pertaining to Breaks in Eligibility Service), a Participant shall be deemed to complete during a Maternity/Paternity Absence which begins on or after July 1, 1987 the same number of Hours of Employment as he or she was regularly scheduled to work during a normal work week before the beginning of such Maternity/Paternity Absence (or eight hours for each normal working day in the Maternity/Paternity Absence if the Administrator is unable to determine the Participant’s regularly scheduled hours of work); provided, however, in no event shall more than 501 Hours of Employment be credited for any Maternity/Paternity Absence. Hours of Employment credited under this subsection shall first be credited to the Plan Year or Eligibility Computation Period in which the Maternity/Paternity Absence begins if the crediting is necessary to prevent a Break in Service or Break in Eligibility Service for that period and then to the following Plan Year or Eligibility Computation Period. For purposes of subsection (a)(ii) above, a Participant shall be deemed to have been employed throughout the first 12 months of a Maternity/Paternity Absence.

(1) A Maternity/Paternity Absence means a period during which a Participant is initially absent from work (i) by reason of the Participant's pregnancy; (ii) by reason of the birth of a child of the Participant; (iii) by reason of the placement of a child with the Participant in connection with the Participant's adoption of the child; or (iv) for purposes of caring for a child described in (ii) or (iii) herein for a period beginning immediately following the birth or placement.

(2) This paragraph (ii) shall not apply unless a Participant timely provides such information as the Administrator may reasonably require to establish that his or her absence from work was a Maternity/Paternity Absence and the number of days of such Maternity/Paternity Absence.

(iii) For purposes of subsection (a) above and Section 3.3 (pertaining to Breaks in Eligibility Service), a Participant shall be deemed to complete during a FMLA Leave the same number of Hours of Employment as he or she was regularly scheduled to work during a normal work week before the beginning of such FMLA Leave, but only to the extent required by the Family and Medical Leave Act of 1993. Hours of Employment credited under this subsection shall be credited to Plan Years and Eligibility Computation Periods. This paragraph (iii) shall not apply unless a Participant timely provides such information as the Administrator may reasonably require to establish that his or her absence from work was a FMLA Leave and the number of days of such FMLA Leave.

2.11 **Career Formula.** "Career Formula" means the formula under which a Participant's Base Monthly Pension is determined under Section 4.2.

2.12 **Code.** "Code" means the Internal Revenue Code of 1986, as amended from time to time. "Treasury Regulations" mean the regulations issued under the Code by the Secretary of the Treasury. All references to any Section of the Code or Treasury Regulation shall be deemed to refer not only to such Section but also to any amendment thereof and any successor statutory or regulatory provision.

2.13 **Covered Employee.** "Covered Employee" means any Employee whose terms of employment are the subject of collective bargaining between the University and Local 241 of the Transport Workers Union of America, AFL-CIO. An individual's status as a Covered Employee shall be determined by the Administrator in its sole discretion and such determination shall be conclusive and binding on all persons notwithstanding any contrary determination by any court or governmental agency.

2.14 **Date of Employment.** "Date of Employment" means the first day an Employee completes an Hour of Employment for the University.

2.15 **Date of Reemployment.** "Date of Reemployment" means the first day an Employee completes an Hour of Employment for the University following a Severance.

2.16 **Disability.** “Disability” means a physical or mental condition which totally and presumably permanently prevents a Participant from engaging in any substantial gainful activity and is expected to last for at least 12 months or to result in death determined on the basis of a medical examination by a physician designated by the Administrator.

2.17 **Disability Pension.** “Disability Pension” means a Vested Participant’s Base Monthly Pension that is payable as a Disability Pension under Article VII.

2.18 **Effective Date.** “Effective Date” means, for this amended and restated Plan document, January 1, 2021. The Plan’s original effective date was July 1, 1972.

2.19 **Eligibility Computation Period.** “Eligibility Computation Period” means the 12-consecutive-month-period beginning on a Covered Employee’s Date of Employment and each anniversary thereof, except as provided in Section 3.2. If a Covered Employee incurs a Severance before becoming a Participant and is reemployed after his or her initial Eligibility Computation Period (the 12-month period beginning on his or her Date of Employment), then his or her Eligibility Computation Period shall be the 12-consecutive-month-period beginning on his or her Date of Reemployment and each anniversary thereof, and the 12-month period beginning on his or her Date of Reemployment shall be treated as his or her initial Eligibility Computation Period.

2.20 **Eligible Rollover Distribution.** “Eligible Rollover Distribution” means any distribution of all or any portion of the balance to the credit of the Distributee except that an Eligible Rollover Distribution shall not include:

(a) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s designated joint annuitant;

(b) Any distribution that is one of a series of payments made for a specified period of 10 years or more; or

(c) Any distribution required under Code Section 401(a)(9).

For purposes of this Section, “Distributee” means any Participant receiving a distribution from the Plan, the Participant’s surviving spouse and the Participant’s former spouse who is an Alternate Payee. In addition, a Beneficiary who is a designated beneficiary as defined in Code Section 401(a)(9)(E) is a Distributee with regard to the Beneficiary’s interest in the Plan.

2.21 **Employee.** “Employee” means any individual employed by the University as a common law employee as determined by the payroll or personnel records maintained by the University. No judicial or administrative reclassification, or reclassification by the University, of an individual as a common law employee shall be applied to grant retroactive eligibility to any individual under the Plan.

2.22 **ERISA.** “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time. “Labor Regulations” mean the regulations issued under ERISA by the Secretary of the Department of Labor. All references to any Section of ERISA or the Labor

Regulations shall be deemed to refer not only to such Section but also to any amendment thereof and any successor statutory or regulatory provision.

2.23 **Fiduciary.** “Fiduciary” means the University, the Administrator, the Retirement Committee, the Pension Committee, the Plan Trustee and the Board of Trustees, but only to the extent of the specific duties and responsibilities of each under the terms of the Plan and Trust Agreement that cause such person(s), entity or entities to be a “fiduciary” within the meaning of ERISA Section 3(21)(A).

2.24 **Final Pay Formula.** “Final Pay Formula” means the Plan’s minimum benefit formula under which a Participant’s Base Monthly Pension is determined pursuant to Section 4.3.

2.25 **Final Pay Service.** “Final Pay Service” means the number of full Plan Years during which a Participant is employed as a Covered Employee regardless of the number of Hours of Covered Employment completed during such Plan Years and, in the case of a Participant who is not employed as a Covered Employee throughout a Plan Year, one-twelfth of such Plan Year for each month or partial month during which he or she was employed as a Covered Employee.

2.26 **Hour of Covered Employment.** “Hour of Covered Employment” means each Hour of Employment credited to an Employee while he or she is a Covered Employee.

2.27 **Hour of Employment.** “Hour of Employment” means:

(a) Each hour for which an Employee is paid or entitled to payment by the University for the performance of duties. These hours shall be credited to the Employee for the Plan Year or applicable computation period in which the duties are performed.

(b) Each hour (up to a maximum of 501 hours for any single continuous period during which the Employee performs no duties) for which an Employee is paid or entitled to payment by the University for reasons (such as vacation, holidays, sickness, disability or paid Leave of Absence) other than for the performance of duties. These hours shall be credited to the Employee for the Plan Year or applicable computation period for which payment is made or amounts payable to the Employee become due.

(c) Each hour for which back pay (whether pursuant to an award or by agreement and irrespective of mitigation of damages) has been either awarded or agreed to by the University. These hours shall be credited to the Employee for the Plan Year or applicable computation period to which the award or agreement pertains rather than the Plan Year or applicable computation period in which the payment is made.

(d) Each hour for an unpaid Leave of Absence equal to the number of Hours of Employment as the Employee was regularly scheduled to work during a normal work week before the beginning of such unpaid Leave of Absence, but not to exceed six months within any three-year period.

(e) Each hour for a Military Leave equal to the number of Hours of Employment as the Employee was regularly scheduled to work during a normal work week before the beginning of such Military Leave, but only to the extent required by Code

Section 414(u), the Uniformed Services Employment and Reemployment Rights Act of 1994 and any other related legislation. For purposes of determining a Participant's Months of Service, a Participant shall be deemed to have been employed throughout a Military Leave. This subsection (e) shall not apply unless an Employee timely provides such information as the Administrator may reasonably require to establish that his or her absence from work was a Military Leave and the number of days of such Military Leave.

(f) In each case, there shall be no duplication of credit for any Hour of Employment credited under the subsections above.

Hours of Employment shall be determined without regard to whether payment therefor is at a straight-time rate, at an overtime rate, at a shift or holiday premium rate or in the form of a weekly or monthly salary.

The rate or manner used for crediting Hours of Employment may be changed at the direction of the Administrator from time to time to facilitate administration and to equitably reflect the purpose of the Plan. Hours of Employment shall be credited and determined in compliance with Labor Regulation Sections 2530.200b-2(b) and (c), as may be amended from time to time, or such other Federal regulations as may be applicable from time to time.

2.28 **Leave of Absence.** "Leave of Absence" means any absence from employment duly authorized by the University pursuant to its leave of absence policy applicable to all persons similarly situated, including but not limited to the following:

(a) **FMLA Leave.** A Leave of Absence that is described under the Family and Medical Leave Act of 1993 that begins on or after August 5, 1993.

(b) **Military Leave.** A Leave of Absence that is described under Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994 and related legislation, as amended from time to time.

A FMLA Leave and a Military Leave shall be duly authorized by the University only if a Covered Employee or Participant timely provides such information as the Administrator may reasonably require to establish that his or her absence from work is on account of a FMLA or Military Leave and the number of days of such FMLA or Military Leave.

2.29 **Month of Service.** "Month of Service" means, effective July 1, 1976, each calendar month in which the Participant is credited with at least one Hour of Covered Employment and, in the case of a Participant who was a Covered Employee on June 30, 1976 and remained a Covered Employee thereafter, his or her Months of Service under the Plan as of that date determined in accordance with the provisions of the Plan then in effect.

2.30 **Monthly Compensation.** “Monthly Compensation” means one-twelfth of a Participant’s highest annual rate of pay in effect during a Month of Service. The amount of a Participant’s Monthly Compensation for Plan Years beginning on or after July 1, 2002 shall not exceed one-twelfth of the Code Section 401(a)(17) dollar limitation for such Plan Year, as such dollar limitation may be adjusted for the cost-of-living under Code Section 401(a)(17)(B). For Plan Years beginning in 2001 and prior, limits on Monthly Compensation for a Plan Year shall be determined in accordance with the provisions of the Plan then in effect.

2.31 **Non-Vested Participant.** “Non-Vested Participant” means any Participant who has no vested interest in his or her Accrued Benefit pursuant to Section 5.1.

2.32 **Normal Retirement Age.** “Normal Retirement Age” means, for purposes of Section 5.1, the later of (i) a Participant’s 65th birthday; or (ii) the fifth anniversary of the date he or she first became a Participant. In the case of an Employee who first became a Participant before July 1, 1988, “Normal Retirement Age” means his or her 65th birthday.

2.33 **Normal Retirement Date.** “Normal Retirement Date” means the first day of the calendar month coinciding with or next following the Participant’s Normal Retirement Age.

2.34 **Participant.** “Participant” means a Covered Employee or former Covered Employee who meets the requirements of Section 3.1 for participation in the Plan. A Participant shall remain a Participant so long as a Pension is payable to the Participant or his or her co-annuitant (as described in Article VI) or a Survivor Pension is payable to his or her Beneficiary. A Non-Vested Participant shall cease to be a Participant upon the forfeiture of his or her Accrued Benefit following a Severance as provided under Section 5.3; provided, that such former Participant shall be reinstated as a Participant if required under Section 5.3.

2.35 **Pension.** “Pension” means a Vested Participant’s Base Monthly Pension that is payable as an annuity or in a single lump sum under Article VI.

2.36 **Pension Committee.** “Pension Committee” means the committee appointed pursuant to Section 10.2.

2.37 **Plan.** “Plan” means this Columbia University Retirement Plan - Local 241 Transport Workers Union of America, as amended from time to time.

2.38 **Plan Trustee.** “Plan Trustee” means the person, persons or entity acting at any time as a trustee under the Trust Agreement.

2.39 **Plan Year.** “Plan Year” means the fiscal year of the University ending on each June 30th.

2.40 **Qualified Domestic Relations Order.** “Qualified Domestic Relations Order” means a judicial order described in Code Section 414(p) and ERISA Section 206(d)(3), as determined by the Administrator (or its delegate), which assigns all or a portion of a Participant’s Accrued Benefit to an Alternate Payee in accordance with Section 14.4.

2.41 **Required Beginning Date.** “Required Beginning Date” means April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or, if later, April 1 of the calendar year following the calendar year in which the Participant incurs a Severance or, in the case of Participant who attained age 70½ on or after January 1, 1988 and during a Plan Year beginning prior to January 1, 1997, April 1 of the calendar year following the calendar year in which the Participant attained age 70½.

2.42 **Retirement Committee.** “Retirement Committee” means the committee appointed pursuant to Section 10.2.

2.43 **Severance.** “Severance” means the termination of an Employee’s employment with the University by reason of such Employee’s death, retirement, resignation or discharge.

2.44 **Survivor Pension.** “Survivor Pension” means the amount of a Vested Participant’s Base Monthly Pension that is payable as an annuity or in a single lump sum under Article VIII.

2.45 **Trust Agreement.** “Trust Agreement” means an agreement described in Section 11.2 and which constitutes a part of the Plan.

2.46 **Trust Fund.** “Trust Fund” means the trust fund established and maintained pursuant to a Trust Agreement for the purpose of funding benefits under the Plan.

2.47 **University.** “University” means Columbia University.

2.48 **Vested Participant.** “Vested Participant” means any Participant who is fully vested pursuant to Section 5.1.

2.49 **Vesting Service.** “Vesting Service” means, effective July 1, 1976, the aggregate number of Plan Years (or a portion thereof) during which a Participant completes at least 1,000 Hours of Employment and, in the case of a Participant who completes less than 1,000 Hours of Employment during a Plan Year, a fraction of a Plan Year equal to his or her Hours of Employment for such Plan Year divided by 1,000. Notwithstanding the foregoing:

(a) If a Covered Employee becomes a Participant under Section 3.1(b) during the Plan Year, he or she shall accrue one full year of Vesting Service regardless of the number of Hours of Employment he or she completed during such Plan Year.

(b) In the case of a Participant who was a Covered Employee on June 30, 1976 and was a Covered Employee at any time thereafter, Vesting Service shall include his or her service under the Plan as of that date determined in accordance with the provisions of the Plan then in effect.

ARTICLE III
PARTICIPATION

3.1 **Participation Requirements.** Any Covered Employee or former Covered Employee who was a Participant in the Plan on December 31, 2020 shall continue to be a Participant as of January 1, 2021. Any other Covered Employee shall become a Participant as follows:

(a) A Covered Employee shall become a Participant on the first day he or she is regularly scheduled to work 12 months per year and at least 20 hours per week.

(b) Any other Covered Employee who is not regularly scheduled to work 12 months per year and at least 20 hours per week shall become a Participant as of the first day of the first Eligibility Computation Period during which he or she completes at least 1,000 Hours of Employment; provided, he or she is employed as a Covered Employee on the last day of that Eligibility Computation Period. A Covered Employee can satisfy the requirements of this subsection (b) by completing Hours of Employment or Hours of Covered Employment; provided, that there shall be no duplication of credit for an Hour of Employment.

3.2 **Participation Upon Reemployment.** If a Participant incurs a Severance, the following rules shall apply:

(a) A Participant who is reemployed as a Covered Employee who is scheduled to work 12 months per year and at least 20 hours per week shall recommence active participation in the Plan on his or her Date of Reemployment.

(b) A Participant who is reemployed as a Covered Employee who is not scheduled to work 12 months per year and at least 20 hours per week shall recommence active participation in the Plan on his or her Date of Reemployment if (i) he or she was a Vested Participant before Severance; or (ii) he or she is reemployed before incurring a 5-Year Break in Eligibility Service (as defined in Section 3.3 below).

If a former Participant is not eligible to recommence active participation in the Plan under this Section, then he or she shall be treated as a newly hired Covered Employee and shall commence participation in the Plan upon meeting the participation requirements under Section 3.1.

3.3 **Break in Eligibility Service.** Notwithstanding the foregoing, the provisions of this Section shall not apply to a Vested Participant. A Non-Vested Participant shall incur a “5-Year Break in Eligibility Service” following a Severance if he or she fails to complete at least 501 Hours of Employment during five or more consecutive Eligibility Computation Periods. For purposes of this Section, (i) both Hours of Employment and Hours of Covered Employment shall be taken into account; provided, that there shall be no duplication of credit for an Hour of Employment; and (ii) whether a Non-Vested Participant has incurred a 5-Year Break in Eligibility Service shall be subject to Section 2.10(b) to the extent provided therein. In the case of a Break in Eligibility Service that began before July 1, 1987, the rules of this Section shall be applied in accordance with the terms of the Plan then in effect.

ARTICLE IV
BASE MONTHLY PENSION

4.1 **Base Monthly Pension.** A Vested Participant's Base Monthly Pension, payable at Normal Retirement Date and ending on the first day of the month in which he or she dies, shall be equal to the greater of the amount determined under (i) the Career Formula described in Section 4.2; or (ii) the Final Pay Formula described in Section 4.3.

4.2 **Career Formula.** A Participant's Base Monthly Pension determined under the Career Formula shall be as follows:

(a) **On or After July 1, 2008.** The Base Monthly Pension for a Participant who completes at least one Hour of Covered Employment on or after July 1, 2008 shall be equal to one-twelfth of the sum of paragraphs (i), (ii) and (iii) below:

(i) 2.00% of such Participant's Monthly Compensation for each Month of Service up to and including 120 Months of Service; *plus*

(ii) 2.20% of such Participant's Monthly Compensation for each of the next 240 Months of Service (Months of Service in excess of 120 Months of Service and up to and including 360 Months of Service); *plus*

(iii) 2.30% of such Participant's Monthly Compensation for each Month of Service in excess of 360 Months of Service.

(b) **On or After January 1, 1999 and Before July 1, 2008.** If a Participant does not meet the requirements under subsection (a) above, the Base Monthly Pension for a Participant who completes at least one Hour of Covered Employment on or after January 1, 1999 shall be equal to one-twelfth of the sum of 2.00% of such Participant's Monthly Compensation for each Month of Service.

(c) **On or After January 1, 1990 and Before January 1, 1999.** If a Participant does not meet the requirements of subsections (a) and (b) above, the Base Monthly Pension for a Participant who completes at least one Hour of Covered Employment on or after January 1, 1990 shall be equal to one-twelfth of the sum of 1.75% of such Participant's Monthly Compensation for each Month of Service.

(d) **Before January 1, 1990.** The Base Monthly Pension for any other Participant shall be equal to one-twelfth of the sum of paragraphs (i) and (ii) below:

(i) For Months of Service beginning on or after October 1, 1989, 1.75% of the Participant's Monthly Compensation for each Month of Service included in the period October 1, 1989 through December 31, 1989; and

(ii) For Months of Service before October 1, 1989, the sum of:

(A) 1.25% of the Participant's Monthly Compensation up to \$550 for each Month of Service; *plus*

(B) 1.50% of the Participant's Monthly Compensation that exceeds \$550 but does not exceed \$650 for each Month of Service; *plus*

(C) 1.75% of the Participant's Monthly Compensation that exceeds \$650 for each Month of Service.

For purposes of the Career Formula, a Participant's Monthly Compensation for any Plan Year ending before July 1, 1965 shall be calculated on the basis of the rate of base compensation (exclusive of compensation for overtime work and compensation in the form of shift and holiday premiums) in effect for him or her on July 1, 1965 (or the latest date before July 1, 1965 on which such Participant was a Covered Employee); provided, however, that for the period ending before July 1, 1965, a Participant's Monthly Compensation shall be adjusted, as applicable, to take into account each Plan Year or partial Plan Year, if any, during which the Participant was employed on the basis of less than 40 hours per week and each Plan Year or partial Plan Year, if any, during which the Participant was employed on the basis of at least 40 hours per week. Effective July 1, 1988, a Participant's Base Monthly Pension under the Career Formula shall be determined by taking into account Months of Service and Monthly Compensation rendered and earned on and after the Participant's Normal Retirement Date, including Months of Service and Monthly Compensation rendered and earned on and after the Participant's Normal Retirement Date and before July 1, 1988.

4.3 **Final Pay Formula.** A Participant's Base Monthly Pension determined under the Final Pay Formula shall be 1.2% of his or her Average Monthly Compensation multiplied by his or her Final Pay Service. Effective July 1, 1988, a Participant's Base Monthly Pension under the Final Pay Formula shall be determined by taking into account Final Pay Service and Monthly Compensation credited and earned on and after the Participant's Normal Retirement Date, including Final Pay Service and Monthly Compensation credited and earned on and after the Participant's Normal Retirement Date and before July 1, 1988.

4.4 **Break in Service.** All Months of Service and Final Pay Service shall be taken into account in determining a Participant's Base Monthly Pension except as follows:

(a) **Months of Service.** If a Non-Vested Participant incurs a 5-Year Break in Vesting Service as defined in Section 2.10(a)(i) and the number of his or her 1-Year Breaks in Vesting Service equals or exceeds the number of his or her years of Vesting Service determined at the beginning of the initial 1-Year Break in Vesting Service, Months of Service credited before such 5-Year Break in Vesting Service shall be disregarded.

(b) **Final Pay Service.** If a Non-Vested Participant incurs a 5-Year Break in Final Pay Service as defined in Section 2.10(a)(ii) and the number of his or her 1-Year Breaks in Final Pay Service equals or exceeds the number of his or her years of Final Pay Service determined at the beginning of the initial 1-Year Break in Final Pay Service, Final Pay Service credited before such 5-Year Break in Final Pay Service shall be disregarded.

(c) Before July 1, 1987. In the case of a Break in Service that ended before July 1, 1987, the rules of this Section shall be applied in accordance with the terms of the Plan then in effect.

4.5 **Additional Pension for Participants Who Participated in the Voluntary Early Retirement Incentive Program.** Any Participant who was offered the opportunity in writing under conditions set forth by the University to participate in, and who elected to retire under, the voluntary early retirement incentive program authorized on March 26, 1999 pursuant to the collective bargaining agreement between the University and Local 241 of the Transport Workers Union of America (the “Program”) shall be entitled to receive an early retirement incentive benefit (“Incentive Benefit”) in addition to his or her Base Monthly Pension. Such Incentive Benefit shall be determined and payable as follows:

(a) The Incentive Benefit shall be a single life annuity commencing at age 65 (or in the case of eligible Participants already older than age 65, payable immediately), the present value of which is \$10,000 (\$25,000 for Participants age 65 and older) as of the Participant’s effective date of retirement and termination of employment from the University as determined under the Program.

(b) The Incentive Benefit shall be payable in such form of payment as provided under Section 6.3; provided, that a Participant may, upon making a Qualified Election in accordance with Section 6.5, elect that his or her Incentive Benefit be paid in the form of a single lump sum.

(c) In the case of a Participant who retired and terminated employment under the Program before his or her Normal Retirement Date, the payment of the Incentive Benefit may be deferred until such time the Participant reaches his or her Normal Retirement Date.

ARTICLE V
VESTING

5.1 **Vesting Schedule.** A Participant shall be entitled to receive a Pension under the Plan only if he or she is a Vested Participant:

(a) **On or After July 1, 1989.** A Participant who completes at least one Hour of Employment on or after July 1, 1989 shall become a Vested Participant upon the earlier of his or her (i) completion of five years of Vesting Service; (ii) attainment of Normal Retirement Age; provided that he or she attains such Normal Retirement Age while employed by the University; or (iii) effective on or after January 1, 2007, death while performing qualified military service (as defined in Code Section 414(u)(5)).

(b) **Before July 1, 1989.** Except as otherwise provided under the terms of the Plan in effect on a Participant's date of Severance, if a Participant does not meet the requirements of subsection (a) above, he or she shall become a Vested Participant upon the earlier of his or her (i) completion of 10 years of Vesting Service; or (ii) attainment of Normal Retirement Age; provided that he or she attains Normal Retirement Age while employed by the University.

5.2 **Break in Vesting Service.** All years of Vesting Service shall be taken into account in determining whether a Participant is a Vested Participant except as follows:

(a) **On or After July 1, 1987.** If a Non-Vested Participant incurs a 5-Year Break in Vesting Service as defined in Section 2.10(a)(i) and the number of his or her 1-Year Breaks in Vesting Service equals or exceeds the number of his or her years of Vesting Service determined at the beginning of the initial 1-Year Break in Vesting Service, Vesting Service credited before such 5-Year Break in Vesting Service shall be disregarded.

(b) **Before July 1, 1987.** In the case of a Break in Service that began before July 1, 1987, the rules of this Section shall be applied in accordance with the terms of the Plan then in effect.

5.3 **Forfeiture of Accrued Benefit.** If a Participant is a Non-Vested Participant upon Severance, the Participant shall be deemed to have received a distribution of his or her Accrued Benefit upon such Severance and such Accrued Benefit shall be immediately forfeited. The amount forfeited under this Section shall be restored if the former Non-Vested Participant is reemployed by the University before incurring a 5-Year Break in Vesting Service as defined in Section 2.10(a). If a Participant fails to complete an Hour of Employment on or after July 1, 1987, the amount forfeited under this Section shall be restored to the extent provided under the terms of the Plan then in effect.

ARTICLE VI
PAYMENT OF PENSIONS

6.1 **General Provisions.** A Participant shall be entitled to a Pension under this Article only if he or she is a Vested Participant. No Pension shall be payable to a Non-Vested Participant. For purposes of this Article, any references to “Participant” mean a Vested Participant.

6.2 **Amount of Pension.** The monthly amount of Pension payable to a Participant shall be determined by reference to his or her Base Monthly Pension.

(a) **Normal Retirement Pension.** A Participant who incurs a Severance shall be entitled to receive a Pension commencing on his or her Normal Retirement Date or, if later, the first day of the calendar month following the day a Qualified Election (as described in Section 6.5) is received by the Administrator. The amount of such Pension shall be equal to the monthly amount of the Participant’s Base Monthly Pension determined under Article IV. If a Participant does not make a Qualified Election before his or her Normal Retirement Date, the failure to do so shall be deemed an election to defer the payment of his or her Normal Retirement Pension beyond his or her Normal Retirement Date but in no event later than his or her Required Beginning Date.

(b) **Early Retirement Pension.** A Participant who incurs a Severance before his or her Normal Retirement Age shall be entitled to receive a Pension commencing (i) on his or her Normal Retirement Date as described in subsection (a); or (ii) on the first day of any calendar month beginning on or after his or her 55th birthday (60th birthday for Annuity Starting Dates before January 1, 1999); provided, that in each case, a Qualified Election (as described in Section 6.5) is received by the Administrator before such date. If such Pension commences before the Participant’s Normal Retirement Date, the Participant’s Base Monthly Pension shall be reduced by 5% for each full year by which the Annuity Starting Date of the Pension precedes the Participant’s Normal Retirement Date and by a proportionate percentage for any fraction of a year. Notwithstanding the preceding sentence, a Participant’s Base Monthly Pension shall not be reduced for an Annuity Starting Date before his or her Normal Retirement Date if the Participant incurred a Severance after both attaining age 62 and completing 240 Months of Service (300 Months of Service if such Participant did not complete at least one Hour of Covered Employment on or after October 1, 1989).

(c) **Deferred Retirement Pension.** A Participant who, in accordance with University personnel policies and procedures, continues as an Employee beyond his or her Normal Retirement Date shall be entitled to a Pension commencing on the first day of the calendar month next following his or her Severance (“Deferred Retirement Date”). A Pension payable under this subsection (c) shall be the greater of (i) his or her benefit determined at his or her Deferred Retirement Date, taking into account the Participant’s Monthly Compensation, Months of Service and Final Pay Service at that date; or (ii) the Actuarial Equivalent of the Participant’s Normal Retirement Pension. This subsection (c) shall not be applied to provide a benefit greater than that required under Code Section 401(a)(9)(C).

(d) In-Service Age 70½ Retirement Pension. A Participant who, in accordance with University personnel policies and procedures, continues as an Employee beyond his or her Required Beginning Date may make a one-time election that his or her Pension commence no later than the April 1st next following the calendar year in which the Participant reaches age 70½. A Pension payable under this subsection (d) shall be adjusted on the first day of each succeeding Plan Year. Such annual adjustment shall include any increase (but not any decrease) in the Participant's Accrued Benefit, determined in accordance with Article IV, taking into account additional Monthly Compensation, Months of Service and Final Pay Service since the Participant's Annuity Starting Date or last such annual adjustment, whichever applies. In addition, such annual adjustment shall be reduced (but not below zero) by the Actuarial Equivalent of any payment made to the Participant since his or her Annuity Starting Date or last annual adjustment, as applicable.

(e) Small Pensions. Notwithstanding anything in this Section to the contrary, if the Actuarial Equivalent of a Participant's Accrued Benefit is less than \$100,000 as determined on his or her Annuity Starting Date, such Participant may make a Qualified Election (as described in Section 6.5) to elect that his or her Pension be paid or commence as soon as administratively practicable following his or her Severance, but in no event later than his or her Normal Retirement Date.

Notwithstanding anything to the contrary, a Participant's Pension shall be properly and equitably adjusted by the actuarial equivalent of any payments theretofore made to him or her under the Plan.

6.3 Forms of Pension. A Participant's Pension shall be paid in accordance with this Section. If such Pension is paid in the form of a single life annuity as described in subsection (b)(i) below, each monthly payment shall be equal to that amount as determined under Section 6.2. If such Pension is paid in any form other than a single life annuity, the monthly payment shall be the Actuarial Equivalent of the Participant's Pension.

(a) Required Forms of Payment. A Participant's Pension shall be automatically paid in the form of a (i) single life annuity if a Participant is not married on his or her Annuity Starting Date; or (ii) 50% joint and survivor annuity with his or her spouse as co-annuitant if a Participant is married on his or her Annuity Starting Date.

(b) Optional Forms of Payment. A Participant may, upon making a Qualified Election under Section 6.5, choose one of the optional forms of payment described in paragraph (i) or (ii) below or, if eligible, the optional form of payment described in paragraph (iii) below.

(i) Single Life Annuity. A Pension paid as a single life annuity consists of equal monthly payments commencing on an Annuity Starting Date determined under Section 6.2 and ending on the first day of the month in which the Participant dies.

(ii) Joint and Survivor Annuity. A Pension paid as a joint and survivor annuity consists of (A) equal reduced monthly payments to the Participant,

commencing on an Annuity Starting Date determined under Section 6.2 and ending on the first day of the month in which such Participant dies; and thereafter (B) if such Participant is survived by his or her co-annuitant, monthly payments to such co-annuitant, each of which, as elected by the Participant, shall be equal to 50%, 75% or 100% of the monthly payments theretofore made to such Participant, commencing on the first day of the month immediately following the month in which such Participant dies and ending on the first day of the month in which such co-annuitant dies.

(iii) Single Lump Sum. A Pension paid as a single lump sum is a lump sum payment equal to the Actuarial Equivalent of a Participant's Accrued Benefit that at the election of the Participant, all or any portion shall be paid directly to the Participant or as a Direct Rollover under Section 6.6 below. A Participant may elect this form of payment only if the Actuarial Equivalent of his or her Accrued Benefit is less than \$100,000 on his or her Annuity Starting Date.

(c) Administrative Convenience. If the monthly amount of a Pension determined under this Article is less than \$25, the Administrator may, at his or her discretion, direct that such Pension be paid in equivalent quarterly, semiannual or annual installments.

6.4 **Minimum Required Distributions.** Notwithstanding anything in the Plan to the contrary, the distribution of benefits under the Plan shall be made in accordance with Code Section 401(a)(9) and the final Treasury Regulations thereunder and the provisions of Article IX shall override any distribution option in the Plan inconsistent with Code Section 401(a)(9).

6.5 **Qualified Election.** A Participant must consent to the payment or commencement of his or her Pension before his or her Normal Retirement Date and may waive the required annuity form of payment described in Section 6.3 and elect an optional form of payment as follows:

(a) Consent For Early Payment. A Participant's Pension shall not commence before the Participant's Normal Retirement Date unless the Participant and, if applicable, his or her spouse consents in writing, or in such other form as may be permitted under the Code or ERISA and any guidance issued thereunder, to receive payment before such date.

(b) Waiver of Required Annuity Form of Payment. A Participant may waive the required annuity form of payment or, in the case of a Participant who is married, may waive the required annuity form of payment with the consent of his or her spouse, and elect an optional form of payment described in Section 6.3(b).

(c) Required Explanation. Any elections made hereunder shall not be a Qualified Election unless the Administrator provides the Participant with an explanation in writing, or in such other form as may be permitted under the Code or ERISA and any guidance issued thereunder, that conforms to the requirements of the Code and ERISA; provided, that such explanation shall include: (i) the terms and conditions of the required form of payment; (ii) the Participant's right to make, and the effect of, an election to waive the required form of payment; (iii) the Participant's right to make, and the effect of, a

revocation of a previous election to waive the required form of payment; (iv) a general description of the material features and an explanation of the relative values of the available optional forms of payment under the Plan; (v) a statement that the Participant has the right to defer the payment of his or her Pension until his or her Normal Retirement Date and a description of the consequences of failing to do so; and (vi) the rights of the Participant's spouse to refuse to consent to the payment of the Participant's Pension before the Participant's Normal Retirement Date or to the Participant's waiver of the required form of payment.

(d) Spousal Consent. Any elections made hereunder shall not be a Qualified Election with respect to a married Participant unless: (i) the Participant's spouse consents in writing, or in such other form as may be permitted under the Code or ERISA and any guidance issued thereunder, to the Participant's election; (ii) such election designates the form of benefit unless the spouse expressly permits designations by the Participant without any further spousal consent; (iii) the Participant's spouse acknowledges the effect of the Participant's election; and (iv) the spouse's consent is witnessed by a Plan representative or notary public. A waiver that permits a Participant to designate another form of benefit without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific form of benefit and a specific co-annuitant and that the spouse voluntarily elects to relinquish such rights. If the Administrator determines there is no spouse, the spouse cannot be located or because of such other circumstances as the Treasury Regulations may prescribe, an election by the Participant alone shall be deemed a Qualified Election. Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) shall (i) be effective only with respect to such spouse; and (ii) be irrevocable; provided, however, a Participant may revoke a Qualified Election without the consent of the spouse at any time before distribution is made or distributions commence.

(e) Election Period. A Participant may make or revoke in a writing any election made hereunder during the election period established by the Administrator. Such election period shall begin when the explanation described in subsection (c) above is furnished to the Participant and shall end, with no opportunity for a further election or revocation, on the Annuity Starting Date.

(i) The Administrator, to the extent required, shall provide the explanation and election forms described in the above subsections no less than 30 days and no more than 180 days before the Participant's Annuity Starting Date.

(ii) Notwithstanding paragraph (i) above, the explanation and election forms may be provided to the Participant less than 30 days before his or her Annuity Starting Date if the explanation: (A) clearly indicates that the Participant has at least 30 days to consider whether to waive his or her required form of payment and to elect with spousal consent, if applicable, an optional form of payment; (B) the Participant is permitted to revoke any affirmative distribution election at least until the Participant's Annuity Starting Date or, if later, at any time before the expiration of the seven-day period that begins the day after the explanation is provided to the

Participant; and (C) the Participant's Annuity Starting Date is after the date the explanation was provided to the Participant.

6.6 **Direct Rollovers.** A Participant (or his or her surviving spouse) or an Alternate Payee whose Pension is paid in a single lump sum may elect a direct rollover of any portion of such lump sum distribution that is an Eligible Rollover Distribution to (i) an individual retirement account described in Code Section 408(a), including a Roth individual retirement account described in Code Section 408A; (ii) an individual retirement annuity described in Code Section 408(b); (iii) a qualified trust described in Code Section 401(a); (iv) an annuity plan or contract described in Code Section 403(a) or 403(b); and (v) an eligible plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into such plan from this Plan. A plan or contract described in (iii), (iv) and (v) herein may be elected only if such plan or contract accepts direct rollovers. Any election to make a direct rollover pursuant to this Section shall be filed with the Administrator in such form and manner as may be prescribed by the Administrator.

6.7 **Lapsed Benefits.** If a Vested Participant fails to file a claim for his or her Pension on or after his or her Normal Retirement Date and, after reasonable efforts by the Administrator or his or her delegate, the Participant cannot be located, the Participant shall be presumed dead and his or her Pension forfeited or a Survivor Pension shall be paid to the Participant's surviving spouse or Beneficiary, as applicable. If, after reasonable efforts by the University, such surviving spouse or Beneficiary cannot be located, then the surviving spouse or Beneficiary shall be presumed to have predeceased the Participant. Notwithstanding the foregoing:

(a) If, after such a forfeiture, the Participant shall claim the forfeited Pension or a surviving spouse or Beneficiary shall claim the Survivor Pension (a "claimant"), the amount forfeited shall be reinstated and paid to the claimant as soon as practical following the claimant's production of reasonable proof of his or her identity and entitlement to the benefit (determined pursuant to the Plan's claims and claims review procedures under Article X).

(b) For purposes of this Section, the Administrator or his or her delegate may use any reasonable measures to locate a Participant, surviving spouse or Beneficiary, including using certified mail, governmental letter-forwarding services, internet search tools or commercial locator services, and may consider the cost of the measures relative to the benefit when determining which measures to use.

ARTICLE VII
DISABILITY PENSION

7.1 **General Provisions.** A Vested Participant who incurs a Severance on account of Disability before his or her Normal Retirement Date shall be entitled to a Disability Pension in accordance with this Article. A Disability Pension shall not be payable to a Non-Vested Participant or to a Vested Participant who incurs a Disability following Severance. For purposes of this Article, any references to “Participant” mean a Vested Participant.

7.2 **Amount of Disability Pension.** The monthly amount of Disability Pension payable to a Participant shall be equal to his or her Accrued Benefit determined as of the day immediately preceding his or her Severance, without reduction for commencement of payment before his or her Normal Retirement Date.

7.3 **Forms of Disability Pension.** A Participant’s Disability Pension shall be paid in such form as provided in Section 6.3(a), unless the Participant elects an optional form of payment under Section 6.3(b) and shall otherwise be paid in accordance with Article VI except as follows:

(a) **Elimination of Single Lump Sum Form of Payment.** The optional single lump sum form of payment described in Section 6.3(b) shall not apply.

(b) **Joint and Survivor Annuity.** If the Participant elects that his or her Disability Pension be paid in the form of a joint and survivor annuity and the Participant dies before reaching his or her Normal Retirement Date, the survivor annuity shall be paid to his or her co-annuitant commencing on the first day of the month immediately following the month in which such Participant dies; provided, that such co-annuitant survives the Participant. Such survivor annuity shall end on the first day of the month in which the Participant would have reached his or her Normal Retirement Date. Thereafter, there shall be paid to his or her Beneficiary, the Survivor Pension.

(c) **Terminal Illness.** If a Participant is determined to have incurred a Disability on or after July 1, 2008 as a result of a Terminal Illness, a one-time lump sum payment equal to the first six months of the Participant’s Disability Pension shall be paid and if the Participant survives, the Participant’s Disability Pension shall recommence in the form of monthly payments commencing on the first day of the seventh month following the month in which the one-time lump sum payment was made. If the Participant’s Disability Pension is paid in the form of a joint and survivor annuity and the Participant is survived by his or her co-annuitant, a survivor annuity shall be paid to such co-annuitant commencing on the first day of the month immediately following the month in which such Participant dies, the amount of which shall be unaffected by the Participant’s receipt of the one-time lump sum payment should the Participant die within the six-month period following Severance. For purposes of this subsection, a “Terminal Illness” refers to an illness or physical condition that is certified by a physician (approved by the Administrator) to reasonably be expected to result in death in less than 12 months from the date of the Participant’s Severance due to Disability.

of: 7.4 **Cessation of Disability Pension.** A Disability Pension shall cease upon the earlier

(a) The Participant's Normal Retirement Date, at which time his or her Normal Retirement Pension shall be payable to the Participant in accordance with Section 6.2(a).

(b) The Participant's Annuity Starting Date of an Early Retirement Pension under Section 6.2(b).

(c) The Participant's death or, if later, at such time as described in Section 7.3(b). Thereafter, there shall be paid to his or her Beneficiary a Survivor Pension.

(d) The first day of the month during which a Participant is reemployed by the University, engages in any substantial gainful activity other than activity found by the Administrator to be for the primary purpose of rehabilitation or to be otherwise compatible with a finding of Disability, refuses an offer of reemployment by the University made after a finding by the Administrator, on the basis of a medical examination by a physician designated by the Administrator, that he or she is able to engage in regular employment with the University or refuses to undergo any medical examination requested by the Administrator.

7.5 **Effect on Normal Retirement Pension.** Upon the Participant's Normal Retirement Date, his or her Disability Pension shall be payable as a Normal Retirement Pension under Section 6.2(a). Such Normal Retirement Pension shall be paid under the required form of payment as provided in Section 6.3(a) unless the Participant elects an optional form of payment in accordance with Section 6.3(b) and shall otherwise be paid in accordance with Article VI. A Participant's rights with respect to his or her Accrued Benefit shall be unaffected by his or her receipt of a Disability Pension and the monthly amount of the Pension payable to him or her under Article VI shall be determined without regard to his or her receipt of a Disability Pension under this Article.

ARTICLE VIII
SURVIVOR PENSION

8.1 **General Provisions.** If a Vested Participant dies on or after January 1, 1999 and before his or her Pension commences under Article VI, a Survivor Pension shall be payable to his or her Beneficiary in accordance with this Article. If a Vested Participant dies after the commencement of his or her Pension, this Article shall not apply and survivor benefits, if any, shall be determined under the form of payment elected by the Participant during his or her lifetime. A Survivor Pension shall not be payable to a Beneficiary of a Non-Vested Participant. For purposes of this Article, any references to “Participant” mean a Vested Participant.

8.2 **Designation of Beneficiary.** A Participant may designate a Beneficiary to receive his or her Survivor Pension upon his or her death and shall have the right to change such designated Beneficiary at any time in a manner prescribed by the Administrator, subject to the following rules:

(a) In the case of a Participant who is married, his or her Beneficiary shall be his or her surviving spouse unless the Participant designates a single Beneficiary other than his or her spouse by making a Qualified Election under Section 8.4.

(b) If an unmarried Participant dies without designating a Beneficiary, the Survivor Pension shall be paid in equal shares to his or her living children and, if no children survive the Participant, then to his or her parents and, if no parent survives the Participant, then to his or her living siblings, and if no siblings survive the Participant, then to his or her heirs at law (determined in accordance with the laws of the State of New York) as they existed on the date of the Participant’s death. If one of the foregoing designated classes is comprised of multiple Beneficiaries and the Survivor Pension is payable as a life annuity, the oldest Beneficiary shall be treated as the Participant’s Beneficiary for the purpose of calculating the Survivor Pension, but the monthly amount shall be paid in equal shares to each living Beneficiary in the class until the death of the Beneficiary who was treated as the Participant’s Beneficiary for the purpose of calculating the Survivor Pension.

(c) A Non-Vested Participant may designate a Beneficiary subject to the rules of this Section; provided, that a Survivor Pension shall not be payable to his or her Beneficiary unless the Non-Vested Participant subsequently becomes a Vested Participant before his or her death.

8.3 **Survivor Pension.** The Survivor Pension shall be determined and paid as follows:

(a) **Death With Spouse as Beneficiary.** A Survivor Pension shall be equal to the monthly amount that would have been payable to the surviving spouse if the Participant (i) incurred a Severance on the date of his or her death (or, if earlier, the date of his or her actual Severance); (ii) commenced his or her Pension in the form of a 50% joint and survivor annuity with his or her spouse as co-annuitant on the first day of the month coincident with or next following the day the Participant would have attained age 55 (or, if later, the day of his or her death); and (iii) died on the following day thereafter.

(i) If the Actuarial Equivalent of the Survivor Pension determined on the date of the Participant's death is less than \$100,000, then a surviving spouse may elect, subject to Section 8.4(b), to commence a Survivor Pension that begins as early as the first day of the month following the Participant's death, but no later than the Participant's Normal Retirement Date and ends on the first day of the month in which the surviving spouse's death occurs.

(ii) If the Actuarial Equivalent of the Survivor Pension determined on the date of the Participant's death is \$100,000 or more, then a surviving spouse may elect, subject to Section 8.4(b), to commence a Survivor Pension that begins as early as the first day of the month coincident with or next following the day the Participant would have attained age 55 (or the first day of the month following the Participant's death if the Participant dies on or after attaining age 55), but no later than the Participant's Normal Retirement Date and ends on the first day of the month in which the surviving spouse's death occurs.

(iii) If a Survivor Pension is paid before the date the Participant would have attained age 55, the Survivor Pension shall be the Actuarial Equivalent of the Survivor Pension that would otherwise be payable on the first day of the month coincident with or next following the day the Participant would have attained age 55.

(iv) Notwithstanding the foregoing, if the Actuarial Equivalent of a Survivor Pension is less than \$100,000, a surviving spouse may elect that the Survivor Pension be paid in the form of a single lump sum by waiving the lifetime annuity in accordance with Section 8.4(b).

(b) Death With Non-spouse Beneficiary. A Survivor Pension shall be equal to the monthly amount that would have been payable to a Beneficiary if the Participant (i) incurred a Severance on the date of his or her death (or, if earlier, the date of his or her actual Severance); (ii) commenced his or her Pension in the form of a 50% joint and survivor annuity with his or her Beneficiary as co-annuitant on the first day of the month coincident with or next following the day the Participant would have attained age 55 (or, if later, the day of his or her death); and (iii) died on the following day thereafter.

(i) A Beneficiary may elect to commence a Survivor Pension that begins as early as the first day of the month following the Participant's death, but no later than December 31st of the calendar year immediately following the calendar year in which the Participant dies and ends on the first day of the month in which the Beneficiary's death occurs.

(ii) If a Survivor Pension is paid before the date the Participant would have attained age 55, the Survivor Pension shall be the Actuarial Equivalent of the Survivor Pension that would otherwise be payable on the first day of the month coincident with or next following the day the Participant would have attained age 55.

(iii) Notwithstanding the foregoing, if the Actuarial Equivalent of a Survivor Pension is less than \$100,000, a Beneficiary may elect that the Survivor Pension be paid in the form of a single lump sum by waiving the lifetime annuity in accordance with Section 8.4(b).

8.4 **Qualified Elections.**

(a) **Designation of Non-Spouse Beneficiary by Participant.** A married Participant may designate a Beneficiary other than his or her spouse only if the conditions of this subsection (a) are satisfied.

(i) **Waiver of Survivor Pension.** A Participant may designate a Beneficiary other than his or her spouse only if the Participant's spouse in writing, or in such other form as may be permitted under the Code or ERISA and any guidance issued thereunder, (A) waives the Survivor Pension; (B) consents to the Beneficiary (which Beneficiary may not be changed without spousal consent unless the spouse expressly consents to a designation by the Participant without any requirement of further consent by such spouse); and (C) acknowledges the effect of such designation. A waiver that permits a Participant to designate another Beneficiary without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary and that the spouse voluntarily elects to relinquish such rights. Notwithstanding the foregoing, a designation without spousal consent shall be effective if the Administrator determines there is no spouse, the spouse cannot be located or because of such other circumstances as the Treasury Regulations may prescribe. To be valid, the designation and spousal consent must be made within the election period described in paragraph (iii) and the spouse's consent must be witnessed by a notary public or by a Plan representative. Any consent by the spouse (or establishment that the consent of a spouse may not be obtained) under this subsection shall be effective only with respect to such spouse.

(ii) **Required Explanation.** The Administrator shall provide each Participant with an explanation in writing, or in such other form as may be permitted under the Code or ERISA and any guidance issued thereunder, of the (A) terms and conditions of the Survivor Pension; (B) the spouse's rights to the Survivor Pension; (C) Participant's right to have the Survivor Pension paid to a Beneficiary other than his or her spouse; and (D) right to make, and the effect of, a revocation of a previous election to designate a Beneficiary other than his or her spouse within the election period described in paragraph (iii) below. The required explanation shall be provided within the period beginning with the first day of the Plan Year in which the Participant reaches age 32 and ending on the last day of the Plan Year in which the Participant reaches age 34. If a Participant first becomes a Participant during or after the Plan Year in which he or she attains age 34, he or she shall be furnished with the required explanation within 12 months after he or she first becomes a Participant. If a Participant incurs a Severance before he or she attains age 35 or before he or she has received the required explanation, he or she

shall be furnished with the required explanation within 12 months after his or her Severance.

(iii) Election Period. A Participant may elect, or revoke a prior election, to designate a non-spouse Beneficiary at any time within the election period that begins on the later of (A) the first day of the Plan Year in which the Participant attains age 35; or (B) the day the Participant first becomes a Participant. If the Participant incurs a Severance before the first day of the Plan Year in which he or she attains age 35, the election period shall begin on the date of his or her Severance. The election period shall end on the first to occur: (A) the date of the Participant's death; or (B) the date the Participant's Pension commences.

(b) Elections By Surviving Spouse. A Beneficiary who is a surviving spouse must consent to the payment or commencement of the Survivor Pension before the Participant's Normal Retirement Date and, if the Actuarial Equivalent of the Survivor Pension is less than \$100,000, may elect that the Survivor Pension be paid in the form of a single lump sum by waiving the annuity form of payment. For purposes of this subsection (b):

(i) Consent for Early Payment. A Survivor Pension shall not be paid or commenced before the Participant's Normal Retirement Date unless the surviving spouse consents to receive payment before such date in such form and in such manner comparable to that required under Section 6.5(a).

(ii) Waiver of the Annuity Form of Payment. A Survivor Pension shall not be paid in a single lump sum unless the surviving spouse waives the annuity form of payment of the Survivor Pension in such form and in such manner comparable to that required under Section 6.5(b). If a surviving spouse elects a single lump sum by waiving the annuity form of payment hereunder, such lump sum shall be paid as soon as administratively practicable following the Administrator's receipt of the surviving spouse's election and waiver.

(c) Election by Non-Spouse Beneficiary. A non-spouse Beneficiary may elect that the payment of the Survivor Pension be in the form of a single lump sum in such form and in such manner as prescribed by the Administrator if the Actuarial Equivalent of the Survivor Pension is less than \$100,000.

8.5 Direct Rollovers by Beneficiaries.

(a) A Beneficiary who is a surviving spouse and whose Survivor Pension is paid in a single lump sum may elect a direct rollover of any portion of such lump sum distribution that is an Eligible Rollover Distribution in accordance with Section 6.6.

(b) A non-spouse Beneficiary whose Survivor Pension is paid in a single lump sum may elect a direct rollover of any portion of such lump sum distribution that is an Eligible Rollover Distribution to an individual retirement account or annuity that is treated as an inherited account under Code Section 402(c)(11).

8.6 **Minimum Required Distributions.** Notwithstanding anything in the Plan to the contrary, the distribution of benefits under the Plan shall be made in accordance with Code Section 401(a)(9) and the final Treasury Regulations thereunder and the provisions of Article IX shall override any distribution option in the Plan inconsistent with Code Section 401(a)(9).

8.7 **Survivor Benefits Before January 1, 1999.** For Participants dying before January 1, 1999, any survivor benefits shall be determined in accordance with the provisions of the Plan then in effect.

8.8 **Survivor Benefits Related to Military Service.** Effective January 1, 2007, if a Participant dies during a period of qualified military service, as determined under Code Section 414(u), his or her Beneficiary shall be entitled to any additional benefits, other than benefit accruals relating to the period of qualified military service, provided under the Plan as if the Participant was reemployed by the University on the date immediately preceding his or her death and terminated employment on the date of his or her death.

8.9 **Proof of Death.** The Administrator may require and rely upon such proof of death and such evidence of the right of any Beneficiary to receive the Survivor Pension as the Administrator may deem proper and its determination of death and of the right of that Beneficiary to receive payment shall be conclusive.

ARTICLE IX
MINIMUM REQUIRED DISTRIBUTIONS

9.1 **General.** Notwithstanding anything in the Plan to the contrary, for purposes of determining minimum required distributions under the Plan for Distribution Calendar Years beginning with the 2003 calendar year, minimum required distributions shall be made in accordance with this Article and shall otherwise comply with Code Section 401(a)(9) and the Treasury Regulations issued thereunder on June 15, 2004, the provisions of which are incorporated herein by this reference.

9.2 **Time and Manner of Distribution.**

(a) **Required Beginning Date.** The vested portion of a Participant's benefits shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

(b) **Death of Participant Before Distributions Begin.** If a Participant dies before distributions begin, the vested portion of the Participant's benefits shall be distributed, or begin to be distributed, no later than as follows:

(i) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided in Section 9.4, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

(ii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided in Section 9.4, distributions to the Designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection (b), other than paragraph (i) above, shall apply as if the surviving spouse were the Participant.

For purposes of this subsection (b) and Section 9.3(c), unless paragraph (iv) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If paragraph (iv) above applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (i). If, before the Participant's Required Beginning Date, distributions under an annuity purchased from an insurance company irrevocably commence to the Participant (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse

under paragraph (i)), the date distributions are considered to begin is the date distributions actually commence.

9.3 **Minimum Required Distributions.** Unless the Participant's benefits are distributed in a single sum or in the form of an annuity purchased from an insurance company on or before the Required Beginning Date, distributions under the Plan shall be made in accordance with this Section as of the first Distribution Calendar Year. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

(a) **Determination of Amount to be Distributed Each Year.**

(i) **General Annuity Requirements.** If a Participant's benefit is paid in the form of an annuity, payments under the annuity shall satisfy the following requirements:

(1) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year;

(2) The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in subsection (b) or (c); and

(3) Payments shall either be nonincreasing or increase only as permitted under Treasury Regulation Section 1.401(a)(9)-6, Q&A-14.

(ii) **Amount Required to be Distributed by Required Beginning Date.** The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 9.2(b)(i) or (ii)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, *e.g.*, bi-monthly, monthly, semi-annually or annually. All of the Participant's benefit accruals as of the last day of the first Distribution Calendar Year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

(iii) **Additional Accruals After First Distribution Calendar Year.** Any additional benefits accruing to the Participant in a calendar year after the first Distribution Calendar Year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(b) **Requirement for Joint Life Annuities that Commence During Participant's Lifetime Where the Co-Annuitant is Not the Participant's Spouse.** If the Participant's benefit is being distributed in the form of a survivor annuity for the joint lives of the

Participant and a non-spouse co-annuitant, annuity payments to be made on or after the Participant's Required Beginning Date to such co-annuitant after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table under Treasury Regulation Section 1.401(a)(9)-6, Q&A-2. The applicable percentage is based on the adjusted Participant/co-annuitant age difference. The adjusted Participant/co-annuitant age difference is determined by first calculating the excess of the age of the Participant over the age of the co-annuitant based on their ages on their birthdays in a calendar year. If the Participant is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the Participant is younger than age 70 on the Participant's birthday in the calendar year that contains the Annuity Starting Date. In the case of an annuity that provides for increasing payments, the requirement of this subsection (b) will not be violated merely because benefit payments to the co-annuitant increase, provided the increase is determined in the same manner for the Participant and the co-annuitant.

(c) Requirements for Minimum Distributions Where Participant Dies Before Date Distributions Begin.

(i) Participant Survived By Designated Beneficiary. Except as provided in Section 9.4, if the Participant dies before the date distribution of his or her benefit begins and there is a Designated Beneficiary, the Participant's benefit shall be distributed, beginning no later than the time described in Section 9.2(b)(i) or (b)(ii), over the life of the Designated Beneficiary or over a period certain not exceeding:

(1) Unless the Annuity Starting Date is before the first Distribution Calendar Year, the Life Expectancy of the Designated Beneficiary determined using the Designated Beneficiary's age as of the Designated Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(2) If the Annuity Starting Date is before the first Distribution Calendar Year, the Life Expectancy of the Designated Beneficiary determined using the Designated Beneficiary's age as of the Designated Beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

(ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire vested benefit shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her vested benefit begins, the Participant's surviving spouse is the Participant's sole

Designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection (c) shall apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 9.2(b)(i).

(d) Minimum Required Distributions Made or Commencing Before January 1, 2003. Notwithstanding anything in the Plan to the contrary, the distribution of benefits under the Plan shall be made in accordance with Code Section 401(a)(9) and the Treasury Regulations issued thereunder and then in effect, including the minimum distribution incidental benefit requirement of Treasury Regulation Section 1.401(a)(9)-2.

9.4 **Elections**.

(a) Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries. If the Participant dies before distributions begin and there is a Designated Beneficiary, distribution to the Designated Beneficiary is not required to begin by the date specified in Section 9.2(b), but the Participant's entire vested interest in the Plan shall be distributed to the Designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. Participants or Designated Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Section 9.3(c) applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 9.2(b), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Designated Beneficiary makes an election under this subsection, distributions shall be made in accordance with Section 9.3(c). If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to either the Participant or the surviving spouse begin, this election shall apply as if the surviving spouse were the Participant.

(b) Election Under TEFRA Section 242(b)(2). Notwithstanding any provision in this Article to the contrary, distributions under the Plan may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA).

9.5 **Definitions**. For purposes of this Article, the following definitions shall apply:

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

(b) “Distribution Calendar Year” means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant’s Required Beginning Date. For distributions beginning after the Participant’s death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 9.2(b).

(c) “Life Expectancy” means life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.

ARTICLE X
ADMINISTRATION

10.1 **The Administrator.** The Administrator of the Plan shall be the person from time to time holding the office of Vice President for Human Resources or holding such office at the University that shall assume the functions and responsibilities of the Vice President for Human Resources. The Administrator may delegate its authority to perform any act under the Plan, including without limitation, those matters involving the exercise of discretion. The Administrator shall be responsible for the implementation and general administration of the Plan and shall have all the powers necessary to carry out such responsibility including, without limitation, the following powers:

(a) To determine all questions involving the construction and interpretation of the terms of the Plan (including any uncertain terms);

(b) To resolve all questions regarding the administration of the Plan as he or she deems necessary to carry out the terms of the Plan and to establish uniform and nondiscriminatory administrative rules and procedures for the Plan;

(c) To maintain all necessary records for the administration of the Plan other than those maintained by other officers or employees of the University;

(d) To give such instructions and notices, provide such information and make such certifications to the Plan Trustees as shall be necessary or appropriate in the administration of the Plan;

(e) To prescribe such forms and make, publish, amend and repeal such rules and regulations under the Plan, consistent with the terms hereof, as he or she shall from time to time deem necessary;

(f) To prepare, and file or distribute, such reports and descriptive information concerning the Plan as shall be required by ERISA;

(g) To approve, from time to time, the list of individuals or entities authorized to carry out administrative procedures established by the Administrator and to perform administrative functions requested by the Administrator and to monitor, from time to time, the effectiveness of established general administrative procedures and the effectiveness of those authorized to carry out plan administration to ensure that they are performing the requested administrative functions as directed by the Administrator and in accordance with Plan provisions;

(h) To review and approve contracts or other documents that relate to the administration of the Plan and to execute such contracts or other documents (or authorize the execution of such contracts or other documents) on behalf of the University or the Plan;

(i) To appoint, employ or change, when appropriate, accounting, clerical or other consultants to assist in carrying out the administration of the Plan;

(j) To correct any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as he or she deems necessary or advisable to carry out the purpose of the Plan; and

(k) To review and dispose of all claims for benefits under the Plan filed pursuant to Section 10.10 and otherwise to determine all questions involving the construction and interpretation of the terms hereof.

The Administrator shall have no power to add to, subtract from or modify any of the terms of the Plan, to change or add to any benefits provided by the Plan or to waive or fail to apply any requirements of eligibility under the Plan. In carrying out its duties under the Plan, and subject only to the claims procedures under Section 10.10, the Administrator shall have sole and exclusive authority and discretion to carry out all of the administrative duties described in this Section, and benefits under this Plan shall be paid only if and to the extent that the Administrator decides in its sole and complete discretion that the applicant or claimant is entitled to such benefits.

Any action taken or any determination made in good faith by the Administrator in the exercise of authority conferred upon him or her by the Plan shall be final, conclusive and binding upon all parties, the University, the Participants, and all other persons concerned. Any determination made by the Administrator shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious.

10.2 **Plan Committees.** The University, by action of its Board of Trustees, has established the following committees (referred to in this Article as the “Committee” or “Committees,” respectively) for the proper administration of the Plan:

(a) The Retirement Committee shall have authority to decide appeals of any claim denial under Section 10.10(c).

(b) The Pension Committee shall have all discretionary authority and powers necessary to control and manage the assets of the Plan, including, without limitation, the discretionary authority and power to carry out its duties and responsibilities as set forth in the Plan or in its charter. The Pension Committee shall also be the “named fiduciary” with respect to the control or management of the assets of the Plan within the meaning of ERISA Section 402(a)(2). In carrying out its investment duties under the Plan, the Pension Committee shall have sole and exclusive authority and discretion to carry out all of the investment duties described in this Section.

A member of either Committee may resign by delivering a written notice of resignation to the President of the University, and such resignation shall be effective on the date specified in such notice. By resolution duly adopted and recorded in the minutes of its proceedings, the Board of Trustees may remove any member of either Committee, effective on the date specified in such resolution. Vacancies occurring on either Committee may be filled by the Board of Trustees.

10.3 **Committee Action.** Each Committee shall appoint one of its members as its chairperson and shall appoint one of its members or another employee of the University to serve as its secretary (the “Secretary”), to record its proceedings and to maintain a file of all records and documents pertaining to matters submitted to or considered by the Committee. Each Committee

shall meet upon the call of its chairperson and at such other times as the Committee may designate. Any action of each Committee shall be pursuant to a majority vote taken at a meeting, or pursuant to the written consent of a majority of its members without a meeting, and such action shall constitute the action of the Committee and be binding in the same manner as if all members of the Committee had joined therein. The Administrator and any other person dealing with a Committee may conclusively rely upon any certificate or other written instrument signed by its Secretary or any two or more other members of the Committee which purports to have been duly authorized by the Committee. A majority of the members of each Committee shall constitute a quorum. Any action taken or any determination made in good faith by the Retirement Committee or the Pension Committee in the exercise of authority conferred upon it by the Plan or the Board of Trustees shall be final, conclusive and binding upon all parties, the University, the Participants and all other persons concerned. Any exercise of discretionary authority by the Retirement Committee or the Pension Committee shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious.

10.4 **Fiduciary Duties.** Each Fiduciary shall perform its duties under the Plan and the Trust Agreement:

- (a) Solely in the interest of Participants and their Beneficiaries;
- (b) For the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of the Plan and Trust Agreement; and
- (c) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

10.5 **Liability for Breach of Duty by Others.** Except as otherwise provided in ERISA Section 405(a):

- (a) Neither the Administrator nor any member of the Committees shall be answerable or accountable for any act, default, neglect or misconduct of any delegate or of any other person transacting business with the Administrator and/or Committees if such person is selected by the Administrator and/or Committees consistent with its fiduciary duties and responsibilities under ERISA.
- (b) No auditor, accountant or legal counsel retained by the Administrator and/or Committees or any person engaged by the Administrator and/or Committees shall be answerable or accountable under any circumstances whatever except for the breach of responsibilities, obligations or duties specifically imposed upon and allocated to him or her by the Administrator and/or Committees.

10.6 **Information From Participant.** The Administrator may require a Participant to complete and file with the Administrator forms approved by the Administrator, and to furnish all pertinent information requested by the Administrator. The Administrator may rely upon all such information so furnished, including the Participant's current mailing address. Each Participant shall bear the burden of keeping his or her post office address and marital status current with the Administrator.

10.7 **Notification of Participant's Address.** Each Participant, former Participant, Beneficiary and Alternate Payee entitled to benefits under the Plan shall bear the burden of filing with the Administrator or such other person designated by the Administrator, in writing, his or her post office address and each change of post office address. Any communication, statement or notice addressed to such a person at this latest post office address as filed with the Administrator, or its delegate, shall, on deposit in the United States mail with postage prepaid, be binding upon such person for all purposes of the Plan, and the Administrator shall not be obliged to search for, or ascertain the whereabouts of, any such person.

10.8 **Indemnification of Committees and Administrator.** Members of the Board of Trustees, the Committees, the Administrator, the Plan Trustee and any employee of the University who is a Fiduciary within the meaning of ERISA Section 3(21)(A), or who acts at the direction of a Fiduciary, shall be indemnified by the University against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating thereto. Any indemnification under this Section is expressly conditioned on the indemnified person turning over to the University the complete defense of the claim. The University shall direct any such defense in its discretion, including the terms of any claim settlement, and no settlement entered into by the indemnified person shall be indemnified under this Section unless the settlement was entered into with the express written consent of the University. Any individual seeking indemnification under this Section shall provide all relevant documents and complete cooperation to the University in connection with the University's defense of the claim.

10.9 **Action Taken in Good Faith.** To the extent permitted by ERISA, the Administrator and the members of the Committees and each employee, officer and director of the University who are Fiduciaries with respect to the Plan shall be entitled to rely on, and be fully protected with respect to any action taken or suffered by them in good faith in reliance on, all tables, valuations, certificates, reports and opinions furnished by any actuary, accountant or attorney at any time hereunder.

10.10 **Claims Procedure.** A Participant, Beneficiary, or in either case, his or her authorized representative (the "Claimant") shall file a claim for benefits or claim for a Disability Pension ("Disability Pension Claim") under procedures established by the Administrator and the Retirement Committee, as applicable. The Claimant shall bear the burden of proving his or her claim by submitting such documents, records or other proof as the Administrator or the Retirement Committee, as applicable, in its sole discretion, deems necessary to support the claim. The Administrator or the Retirement Committee, as applicable, shall consider all supporting documentation and other information submitted by the Claimant. Benefits under the Plan shall be paid only to the extent that the Administrator or the Retirement Committee, as applicable, determines in its sole discretion that the Claimant is entitled to them. The specific procedures for claim denials and seeking review of a denial or partial denial of a claim for benefits are described in this Section.

(a) **In General.** Any Claimant who wishes to bring a civil action in connection with a claim for benefits under the Plan must first complete each step of the claims procedures set forth in this Section.

(b) Claim For Benefits. A Claimant may file a claim for benefits under the Plan in writing with the Administrator on such forms as he or she shall prescribe and make available upon request, and the Administrator shall process it and approve or disapprove of it in accordance with this subsection (b). The Administrator shall furnish the Claimant with notice of his or her decision with respect to a claim within 90 days (45 days in the case of a Disability Pension Claim) following receipt by the Administrator of a claim and all necessary documents and information. The 90-day period (45-day period in the case of a Disability Pension Claim) may be extended should special circumstances require an extension of time for processing the claim. In the case of a claim other than a Disability Pension Claim, the 90-day period may be extended up to an additional 90 days. In the case of a Disability Pension Claim, the 45-day period may be extended up to an additional 30 days and the first 30-day extension period may be extended for up to an additional 30 days beyond the original extension (for a total of 105 days). The Administrator shall furnish the Claimant with written or electronic notice of the extension before the expiration of the initial period or extension period. The notice shall indicate the special circumstances requiring an extension of time and the date by which a final decision is expected to be rendered. In the event a claim is denied, in whole or in part, the denial shall be stated in writing and hand-delivered, mailed or sent electronically to the Claimant. Such notice shall:

- (i) Be written in a manner that may be understood by the Claimant;
- (ii) In the case of a Disability Pension Claim, be written in a culturally and linguistically appropriate manner;
- (iii) Set forth the specific reasons for the denial;
- (iv) Set out the specific references to the pertinent Plan provisions upon which the Plan adverse determination is based;
- (v) Include a description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary;
- (vi) Include 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;
- (vii) In the case of a Disability Pension Claim, if an internal rule, guideline, protocol, standard or similar criterion was relied upon in making the decision, the notice shall include either the specific rule, guideline, protocol, standard or other similar criterion; or include a statement that such rule, guideline, protocol, standard or other similar criterion was relied upon in making the adverse determination and that a copy shall be provided free of charge upon request;
- (viii) In the case of a Disability Pension Claim, if the decision was based on medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgement for the determination,

applying the Plan's terms to the medical circumstances, or a statement that such an explanation shall be provided free of charge upon request;

(ix) In the case of a Disability Pension Claim, a discussion of the adverse benefit determination including an explanation of the basis for disagreeing with or not following: (A) the views presented to the Plan of health care professionals treating the Claimant or vocational professionals who evaluated the Claimant; (B) the views of the medical or vocational experts whose advice was obtained on behalf of the Plan, without regard to whether the advice was relied upon in making the adverse benefit determination; and (C) a Social Security Administration disability determination presented by the Claimant to the Plan; and

(x) Include an explanation of the Plan's review procedure and the time limits applicable to such review procedure, including a statement of the Claimant's right to bring civil action under ERISA Section 502(a) following an adverse benefit determination upon appeal.

(c) Appeal of Claim Denial. Any Claimant whose claim filed under subsection (b) above has been denied in whole or in part by the Administrator may request the Retirement Committee to review his or her claim. Such Claimant must exhaust the Plan's claim reviews procedures as set forth in this Section before seeking any other form of relief. The Claimant shall file a request for review by the Retirement Committee under procedures established by the Retirement Committee subject to the following.

(i) A Claimant who wishes to use the Plan's claim appeal procedure shall, within 60 days (180 days in the case of a Disability Pension Claim) of receiving the Administrator's notice of denial (or such later date as may be approved by the Retirement Committee taking into account the nature of the benefit subject to the claim, and other attendant circumstances), notify the Retirement Committee in writing that he or she wishes to appeal the claim denial and have the Retirement Committee conduct a full and fair review of the adverse benefit determination. In connection with a claim denial, the Claimant may review all relevant documents relating to his or her claim and submit issues and comments in writing to the Retirement Committee. Upon request, the Claimant shall be provided, free of charge, reasonable access to, and copies of, all documents, records and other information relating to his or her claim for benefits. In the case of a Disability Pension Claim, the Claimant is required to automatically receive (free of charge):

(1) Reasonable access to, and copies of, all documents, records and other information relevant to the claim; and

(2) As soon as possible and sufficiently in advance of the date on which a notice of adverse benefit determination on review is required to be provided, any new or additional evidence considered, relied upon or generated in connection with the Claimant's claim and any new or

additional rationales forming the basis of the Plan's determination of the Claimant's claim.

(ii) The Retirement Committee shall conduct a full and fair review of the claim taking into account all claim related comments, documents, records and other information submitted by the Claimant without regard to whether such information was submitted or considered under the initial determination. In the case of a Disability Pension Claim, if the initial determination was based in whole or in part on a medical judgment, the review will be done in consultation with a healthcare professional who has appropriate training and experience in the relevant field of medicine, who was not consulted in connection with the previous notice of denial and who is not that person's subordinate. By filing a request for review, the Claimant shall be deemed to consent to such consultation and the sharing of pertinent medical claim information. If a medical or vocational expert is contacted in connection with a review, the Claimant shall have the right to learn the identity of such person.

(iii) The Retirement Committee shall furnish the Claimant notice of its decision with respect to a claim within 60 days (45 days in the case of a Disability Pension Claim) following receipt by the Retirement Committee of a request for review and all necessary documents and information. The 60-day period (45-day period in the case of a Disability Pension Claim) may be extended up to an additional 60 days (45 days in the case of a Disability Pension Claim) should special circumstances require an extension of time for processing the claim. The Retirement Committee shall furnish the Claimant with written or electronic notice of the extension before the expiration of the initial period. The notice shall indicate the special circumstances requiring an extension of time and the date by which a final decision is expected to be rendered.

(iv) If the Retirement Committee makes an adverse determination, the determination notice shall be stated in writing and hand-delivered, mailed or sent electronically to the Claimant. Further, the notice shall:

- (1) Be written in a manner that may be understood by the Claimant;
- (2) In the case of a Disability Pension Claim, be written in a culturally and linguistically appropriate manner;
- (3) Set forth the specific reasons for the denial;
- (4) Set out the specific references to the pertinent Plan provisions upon which the Plan adverse determination is based;
- (5) Include 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;

(6) In the case of a Disability Pension Claim, if an internal rule, guideline, protocol, standard or similar criterion was relied upon in making the decision, the notice shall include either the specific rule, guideline, protocol, standard or other similar criterion, or include a statement that such rule, guideline, protocol, standard or other similar criterion was relied upon in making the adverse benefit determination and that a copy shall be provided free of charge;

(7) In the case of a Disability Pension Claim, if the decision was based on medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the Plan's terms to the medical circumstances, or a statement that such an explanation shall be provided free of charge upon request;

(8) In the case of a Disability Pension Claim, a discussion of the adverse benefit determination including an explanation of the basis for disagreeing with or not following: (A) the views presented to the Plan of health care professionals treating the Claimant or vocational professionals who evaluated the Claimant; (B) the views of the medical or vocational experts whose advice was obtained on behalf of the Plan, without regard to whether the advice was relied upon in making the adverse benefit determination; and (C) a Social Security Administration disability determination presented by the Claimant to the Plan;

(9) Contain a statement of the Claimant's right to bring civil action under ERISA Section 502(a) following a denial upon appeal; and

(10) In the case of a Disability Pension Claim, contain a description of any applicable Plan-imposed limitations period, including the calendar date when the limitations period shall expire.

(d) The Administrator may adopt rules for implementing this Section that are consistent with Labor Regulation Section 2560.503-1.

10.11 **Information.** To enable the Retirement Committee to carry out the reviews provided for in Section 10.10, the University shall make its employment records relating to Participants available for inspection by the Retirement Committee and shall supply to the Retirement Committee such other pertinent information as it shall reasonably request.

10.12 **Compensation.** The members of the Committees may, but need not, be employees or officers of the University and shall serve without compensation for their services hereunder. It is intended that the Committees shall each be furnished with such administrative, professional, clerical and other assistance as is necessary in the performance of its duties.

10.13 **Payment of Expenses**. All expenses of administration shall be paid out of the Trust Fund unless paid by the University. Such expenses shall include any expenses incident to the cost of administering the Plan, including, but not limited to, fees of accountants, legal counsel and other specialists and their agents, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund. The University may reimburse the Trust for any administration expense incurred and any administration expense paid to the Trust Fund as a reimbursement shall not be considered an employer contribution.

ARTICLE XI
FUNDING OF BENEFITS

11.1 **Funding Policy and Method.** The Pension Committee shall establish a funding policy and method consistent with the objectives of the Plan and the requirements of ERISA. The University shall contribute each year an amount actuarially determined to be sufficient to provide the benefits under the Plan. No contributions by any Participant shall be required or permitted under the Plan. Any forfeitures arising under the Plan because of Severance before vesting, or for any other reason, shall be applied to reduce the University's contributions under the Plan and not to increase the benefits any Participant would otherwise receive under the Plan.

11.2 **Trust Agreement; Contributions.**

(a) **Trust Agreement.** The University shall enter into a Trust Agreement, providing for the administration of the Trust Fund by the Plan Trustees, in such form and containing such provisions as the University shall deem appropriate, including, but not limited to, provisions with respect to the powers and authority of the Plan Trustees, the right of the University to replace any one or more of the Plan Trustees and appoint a successor or successors thereto, the authority of the University to amend or terminate the Trust Agreement and, to the extent permitted by ERISA, to settle the accounts of the Plan Trustees on behalf of all persons having an interest in the Trust Fund, and a provision that it shall be impossible at any time before the satisfaction of all liabilities under the Plan with respect to Participants and their beneficiaries for any part of the corpus or income of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of Participants and their beneficiaries. The Trust Agreement shall be a part of the Plan, and the rights and duties of any person under the Plan shall be subject to all applicable terms and provisions of the Trust Agreement.

(b) **Contributions.** Benefits under the Plan shall be funded by contributions made by the University in such amounts and at such times as shall be required by the funding policy and method established pursuant to Section 11.1. All such contributions shall be paid to the Plan Trustees, to be held and administered in trust in accordance with the terms and provisions of the Trust Agreement. As provided in the Trust Agreement, the Plan Trustees will, directly or through one or more duly appointed agents, make disbursements from the Trust Fund, pursuant to instructions of the Administrator, in payment of benefits.

11.3 **Management and Control of Assets.** All assets of the Plan shall be held for the exclusive purposes of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of administering the Plan, to the extent such expenses are not paid by the University, and no assets of the Plan shall inure to the benefit of the University before the satisfaction of all liabilities under the Plan with respect to Participants and their beneficiaries, provided, however, that any contribution made by the University by a mistake of fact may be returned to the University within one year after the payment of such contribution. The Trust Agreement requires the Plan Trustees to manage and control the Trust Fund in accordance with the preceding sentence and the provisions of the Trust Agreement.

ARTICLE XII
AMENDMENT AND TERMINATION

12.1 **Authority to Amend or Terminate.** The University intends that the Plan will be permanent. However, the University may amend, suspend or terminate the Plan, in whole or in part, at any time and from time to time, but except as may be required for compliance with ERISA, no such amendment, suspension or termination shall retroactively deprive any Participants or their beneficiaries of any interest under the Plan. If the Plan is amended in any respect, the University shall have no liability or obligation to make any contribution or other payment in respect of any past or future period, except in such manner and amounts as may be specifically provided for in the Plan as so amended or as may be required by ERISA.

12.2 **Vesting on Termination.** Upon the termination or partial termination of the Plan, the rights of each affected Participant to benefits under the Plan shall be non-forfeitable to the extent then funded.

12.3 **Allocation of Funds on Termination.** In the event of termination of the Plan, the assets of the Plan shall be allocated to provide benefits for Participants and their Beneficiaries in accordance with the priorities under ERISA Section 4044 and the Pension Benefit Guaranty Corporation's Regulations thereunder. The benefit of any Highly Compensated Active Employee or Highly Compensated Former Employee (both within the meaning of Code Section 414(q)) shall be limited to a benefit that is nondiscriminatory under Code Section 401(a)(4), and without limiting the generality of the foregoing, if the Secretary of the Treasury (or his or her delegate) determines that any allocation made pursuant to this Section (without regard to this sentence) results in discrimination prohibited by Code Section 401(a)(4), then, if required to prevent the disqualification of the Plan under Code Section 401(a), the assets allocated under ERISA Sections 4044(a)(4)(B), (a)(5) and (a)(6) shall be reallocated to the extent necessary to avoid such discrimination. Effective as of the first day of the sixth Plan Year following the adoption date of this amended and restated Plan, in the event of a termination of the Plan (other than a partial termination), any amount remaining after all fixed and contingent liabilities of the Plan have been satisfied shall revert to the University notwithstanding any provision in the Plan to the contrary. Except as otherwise required by law, the time and manner of distribution of the assets or the time and manner of any reversion of assets to the University shall be determined by the Board of Trustees by amendment to the Plan.

12.4 **Merger with Other Plans.** The Plan shall not be merged or consolidated with, nor transfer its assets or liabilities to, any other plan unless each Participant would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

12.5 **Successor University or Corporation.** In the event of the sale, dissolution, merger, consolidation or reorganization of the University, provision may be made by which the Plan will be continued by the successor university or corporation, as applicable; and in that event, such successor shall be substituted for the University under the Plan. The substitution of the successor shall constitute an assumption of Plan liabilities by the successor, and the successor shall have all of the powers, duties and responsibilities of the University under the Plan.

ARTICLE XIII
CERTAIN LIMITATIONS ON BENEFITS

13.1 **Limitation on Benefits**. Notwithstanding any provision of the Plan to the contrary, retirement benefits payable to a Participant shall not exceed the limitation under Code Section 415(b) and notwithstanding any provision of this Article to the contrary, the limitations, adjustments and other requirements prescribed in this Article shall at all times comply with the provisions of Code Section 415 and the final Treasury Regulations thereunder, the terms of which are specifically incorporated herein by reference. For purposes of this Section:

(a) Benefit increases resulting from the increase in the limitations of Code Section 415(b) after December 31, 2001 shall be provided to any Participant that completes at least one Hour of Employment on or after the first day of the first Limitation Year ending after December 31, 2001.

(b) For purposes of the Plan, compensation for Code Section 415 purposes (“415 Compensation”) means compensation as described in Treasury Regulation § 1.415(c)-2(b) not to exceed the dollar limit under Code Section 401(a)(17). 415 Compensation shall include (i) amounts includible in the gross income of a Participant under the rules of Code Section 409A or Code Section 457(f)(1)(A) or because the amounts are constructively received by the Participant during Limitation Years beginning on or after July 1, 2007 and (ii) differential wage payments (as defined in Code Section 3401(h)(2)) paid to a Participant on or after January 1, 2009 during qualified military service (as defined in Code Section 414(u)(5)). For Limitation Years beginning on or after July 1, 2007, 415 Compensation shall not include any amounts paid after a Participant’s Severance or amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates. For Limitation Years beginning before July 1, 2007, 415 Compensation means 415 Compensation as defined Treasury Regulation Section 1.415-2(d)(2) as in effect for such Limitation Years.

(c) If retirement benefits payable to a Participant are paid in the form of a lump sum during a Plan Year beginning after December 31, 2003, the actuarially equivalent straight life annuity (that is used for demonstrating compliance with Code Section 415) shall be determined as follows:

(i) **Annuity Starting Date in Plan Years Beginning After 2005**. If the Annuity Starting Date of the Participant’s form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (A) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant’s form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; (B) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant’s form of benefit, computed using a 5.5% interest rate assumption and the applicable mortality table defined in the Plan; or (C) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial

present value as the Participant's form of benefit, computed using the applicable interest rate and applicable mortality table defined in the Plan, divided by 1.05.

(ii) Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount: (A) the interest rate and mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; or (B) a 5.5% interest rate assumption and the applicable mortality table defined in the Plan.

(d) The Limitation Year shall be the Plan Year. For purposes of computing the compensation-based limit of Code Section 415(b)(1)(B), a Participant's high three years shall be based on Plan Years.

13.2 Limitations on Benefits Payable to Highly Compensated Participants.

(a) Applicability of the Limitations. Notwithstanding any other provisions of the Plan to the contrary, this Section shall apply to any Participant (and the Beneficiary and co-annuitant deriving benefits through such Participant) who is a Highly Compensated Active Employee or Highly Compensated Former Employee (both within the meaning of Code Section 414).

(b) Nature of the Limitations. During any Plan Year, the annual benefits paid to a Participant (or to the Beneficiary or co-annuitant of a Participant) who is a Highly Compensated Active Employee or Highly Compensated Former Active Employee and is included in the group consisting of the 25 such persons with the greatest compensation for such Plan Year or any prior Plan Year shall not exceed the annual payments that would be made to the Participant (or to the Beneficiary or co-annuitant) under a single life annuity that is the Actuarial Equivalent of the Participant's Accrued Benefit and other benefits under the Plan (other than a social security supplement), plus the annual social security supplement payments that would be made to the Participant, unless (i) after the payment of the benefits for such Plan Year to all such Participants (and to their Beneficiaries and co-annuitants), the value of the assets of the Plan then held by the Plan Trustees equals or exceeds 110% of the value of the Plan's current liabilities (as defined in Code Section 412(l)(7)); (ii) the value of the benefits to be paid for such Plan Year to such a Participant (or to the Participant's Beneficiary or co-annuitant) will be less than 1% of the value of the Plan's current liabilities; or (iii) the value of the benefits to be paid for such Plan Year to such Participant (or to the Participant's Beneficiary or co-annuitant) does not exceed \$3,500. For purposes of the preceding, a Participant's benefits include periodic income, withdrawal values payable to a living employee and any death benefits not provided for by life insurance.

(c) This Section of the Plan has been adopted solely to comply with the requirements of Code Section 401(a)(4) and Treasury Regulation Section 1.401(a)(4)-5(b) and this Section of the Plan shall automatically be void and of no force or effect if the requirements of such Regulation are declared no longer to be applicable or there is a judicial determination that the requirements of such Regulation shall no longer be applicable.

(d) For the Plan Years beginning before July 1, 1998, the provisions of this Section, as in effect immediately before July 1, 1998 shall apply.

13.3 **Benefit Restrictions.** Notwithstanding any other provisions of the Plan, if the Plan's adjusted funding target attainment percentage is less than 80% or if the University is in bankruptcy, the following limitations shall apply:

(a) Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage is Less Than 80%, But Not Less Than 60%. If the Plan's adjusted funding target attainment percentage for a Plan Year is less than 80% (or would be less than 80% to the extent described in paragraph (ii) below) but is not less than 60%, then the limitations set forth in this subsection (a) shall apply.

(i) 50% Limitation on Single Sum Payments, Other Accelerated Forms of Distribution and Other Prohibited Payments. A Participant or Beneficiary shall not be permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable Code Section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, unless the present value of the portion of the benefit that is being paid in a prohibited payment does not exceed the lesser of:

(1) 50% of the present value (determined in accordance with Code Section 417(e)(3)) of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(2) 100% of the PBGC maximum benefit guarantee amount (as defined in Treasury Regulation Section 1.436-1(d)(3)(iii)(C)).

The limitation set forth in this paragraph (i) shall not apply to any payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant. If an optional form of benefit that is otherwise available under the terms of the Plan is not available to a Participant or Beneficiary as of the annuity starting date because of the application of the requirements of this paragraph (i), the Participant or Beneficiary shall be permitted to elect to bifurcate the benefit into unrestricted and restricted portions as described in Treasury Regulation Section 1.436-1(d)(3)(iii)(D). The Participant or Beneficiary may also elect any other optional form of benefit otherwise available under the Plan at that annuity starting date that would satisfy the 50%/100% PBGC

maximum benefit guarantee amount limitation described in this paragraph (i), or may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the Plan.

(ii) Plan Amendments Increasing Liability for Benefits. No amendment to the Plan that has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual or changing the rate at which benefits become nonforfeitable shall take effect in a Plan Year if the adjusted funding target attainment percentage for the Plan Year is:

- (1) Less than 80%; or
- (2) 80% or more, but would be less than 80% if the benefits attributable to the amendment were taken into account in determining the adjusted funding target attainment percentage.

The limitation set forth in this paragraph (ii) shall not apply to any amendment to the Plan that provides a benefit increase under a plan formula that is not based on Annual Compensation; provided, that the rate of such increase does not exceed the contemporaneous rate of increase in the average wages of participants covered by the amendment.

(b) Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage is Less Than 60%. If the Plan's adjusted funding target attainment percentage for a Plan Year is less than 60% (or would be less than 60% to the extent described in paragraph (ii) below), then the limitations in this subsection (b) shall apply.

(i) Single Sums, Other Accelerated Forms of Distribution and Other Prohibited Payments Not Permitted. A Participant or Beneficiary shall not be permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable Code Section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment. The limitation set forth in this paragraph (i) shall not apply to any payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant.

(ii) Shutdown Benefits and Other Unpredictable Contingent Event Benefits Not Permitted to be Paid. An unpredictable contingent event benefit with respect to an unpredictable contingent event occurring during a Plan Year shall not be paid if the adjusted funding target attainment percentage for the Plan Year is:

- (1) Less than 60%; or

(2) 60% or more, but would be less than 60% if the adjusted funding target attainment percentage were re-determined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the Plan Year is 100%.

(iii) Benefit Accruals Frozen. Benefit accruals under the Plan shall cease as of the applicable Code Section 436 measurement date. In addition, if the Plan is required to cease benefit accruals under this paragraph (iii), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits.

(c) Limitations Applicable if the University is in Bankruptcy. A Participant or Beneficiary shall not be permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date that occurs during any period in which the University is a debtor in a case under title 11, United States Code, or similar Federal or State law, except for payments made within a Plan Year with an annuity starting date that occurs on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan Year (determined by not taking into account any adjustment of the segment rates under Code Section 430(h)(2)(C)(iv)) is not less than 100%. In addition, during such period in which the University is a debtor, the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a Plan Year that is on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan Year (determined by not taking into account any adjustment of the segment rates under Code Section 430(h)(2)(C)(iv)) is not less than 100%. The limitation set forth in this subsection (c) shall not apply to any payment of a benefit which under Code Section 411(a)(11) may be immediately distributed without the consent of the Participant.

(d) Provisions Applicable After Limitations Cease to Apply.

(i) Resumption of Prohibited Payments. If a limitation on prohibited payments under subsection (a)(i), (b)(i) or (c) applied to the Plan as of a Code Section 436 measurement date, but that limit no longer applies to the Plan as of a later Code Section 436 measurement date, then that limitation shall not apply to benefits with annuity starting dates that are on or after that later Code Section 436 measurement date.

(ii) Shutdown and Other Unpredictable Contingent Event Benefits. If an unpredictable contingent event benefit with respect to an unpredictable contingent event that occurs during the Plan Year is not permitted to be paid after the occurrence of the event because of the limitation of subsection (b)(ii), but is permitted to be paid later in the same Plan Year (as a result of additional contributions or pursuant to the Plan's enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan Year that meets the requirements of Treasury Regulation Section 1.436-1(g)(5)(ii)(B)), then that

unpredictable contingent event benefit shall be paid, retroactive to the period that benefit would have been payable under the terms of the Plan (determined without regard to subsection (b)(ii)). If the unpredictable contingent event benefit does not become payable during the Plan Year in accordance with the preceding sentence, then the Plan shall be treated as if it does not provide for that benefit.

(iii) Resumption of Benefit Accruals. If a limitation on benefit accruals under subsection (b)(iii) applied to the Plan as of a Code Section 436 measurement date, but that limitation no longer applies to the Plan as of a later Code Section 436 measurement date, then benefit accruals shall resume prospectively and that limitation shall not apply to benefit accruals that are based on service on or after that later Code Section 436 measurement date, except as otherwise provided under the Plan. The Plan shall comply with the rules relating to partial years of participation and the prohibition on double proration under Labor Regulation Sections 2530.204-2(c) and (d).

(iv) Treatment of Plan Amendments That Do Not Take Effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitation of subsection (a)(ii) or (b)(iii), but is permitted to take effect later in the same Plan Year (as a result of additional contributions or pursuant to the Plan's enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan Year that meets the requirements of Treasury Regulation Section 1.436-1(g)(5)(ii)(C)), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the Plan amendment cannot take effect during the same Plan Year, then it shall be treated as if it were never adopted, unless the Plan amendment provides otherwise.

(e) Notice Requirement. In accordance with ERISA Section 101(j), the Administrator shall provide a written notice to Participants and Beneficiaries within 30 days after certain specified dates if the Plan becomes subject to a limitation described in subsection (a)(i), (b) or (c).

(f) Methods to Avoid or Terminate Benefit Limitations. In general, the methods the University may use to avoid or terminate one or more of the benefit limitations under subsections (a) through (c) for a Plan Year include employer contributions and elections to increase the amount of Plan assets which are taken into account in determining the adjusted funding target attainment percentage, making an employer contribution that is specifically designated as a current year contribution that is made to avoid or terminate application of certain of the benefit limitations or providing security to the Plan. For purposes of this subsection (f), Code Sections 436(b)(2), (c)(2), (e)(2) and (f) and Treasury Regulation Section 1.436-1(f) are incorporated herein by this reference.

(g) Special Rules.

(i) Rules of Operation for Periods Before and After Certification of Plan's Adjusted Funding Target Attainment Percentage.

(1) In General. Code Section 436(h) and Treasury Regulation Section 1.436-1(h) set forth a series of presumptions that apply (i) before the Plan's enrolled actuary issues a certification of the Plan's adjusted funding target attainment percentage for the Plan Year; and (ii) if the Plan's enrolled actuary does not issue a certification of the Plan's adjusted funding target attainment percentage for the Plan Year before the first day of the 10th month of the Plan Year (or if the Plan's enrolled actuary issues a range certification for the Plan Year pursuant to Treasury Regulation Section 1.436-1(h)(4)(ii) but does not issue a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of the Plan Year). For any period during which a presumption under Code Section 436(h) and Treasury Regulation Section 1.436-1(h) applies to the Plan, the limitations under subsections (a) through (c) shall be applied to the Plan as if the adjusted funding target attainment percentage for the Plan Year were the presumed adjusted funding target attainment percentage determined under the rules of Code Section 436(h) and Treasury Regulation Section 1.436-1(h)(1), (2) or (3). These presumptions are set forth in clauses (2) through (4) below.

(2) Presumption of Continued Underfunding Beginning First Day of Plan Year. If a limitation under subsections (a), (b) or (c) applied to the Plan on the last day of the preceding Plan Year, then, commencing on the first day of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date clause (3) or (4) below applies to the Plan:

(A) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the adjusted funding target attainment percentage in effect on the last day of the preceding Plan Year; and

(B) The first day of the current Plan Year is a Code Section 436 measurement date.

(3) Presumption of Underfunding Beginning First Day of 4th Month. If the Plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the 4th month of the Plan Year and the Plan's adjusted funding target attainment percentage for the preceding Plan Year was either at least 60% but less than 70% or at least 80% but less than 90%, or is described in Treasury Regulation Section 1.436-1(h)(2)(ii), then, commencing on the

first day of the 4th month of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date clause (4) below applies to the Plan:

(A) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the Plan's adjusted funding target attainment percentage for the preceding Plan Year reduced by 10 percentage points; and

(B) The first day of the 4th month of the current Plan Year is a Code Section 436 measurement date.

(4) Presumption of Underfunding On and After First Day of 10th Month. If the Plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the 10th month of the Plan Year (or if the Plan's enrolled actuary has issued a range certification for the Plan Year pursuant to Treasury Regulation Section 1.436-1(h)(4)(ii) but has not issued a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of the Plan Year), then, commencing on the first day of the 10th month of the current Plan Year and continuing through the end of the Plan Year:

(A) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be less than 60%; and

(B) The first day of the 10th month of the current Plan Year is a Code Section 436 measurement date.

(ii) New Plans, Plan Termination, Certain Frozen Plans and Other Special Rules.

(1) First Five Plan Years. The limitations in subsections (a)(ii), (b)(ii) and (b)(iii) shall not apply to a new plan for the first five Plan Years of the Plan, determined under the rules of Code Section 436(i) and Treasury Regulation Section 1.436-1(a)(3)(i).

(2) Plan Termination. The limitations on prohibited payments in subsections (a)(i), (b)(i) and (c) shall not apply to prohibited payments that are made to carry out the termination of the Plan in accordance with applicable law. Any other limitations under this Section shall not cease to apply as a result of termination of the Plan.

(3) Exception to Limitations on Prohibited Payments Under Certain Frozen Plans. The limitations on prohibited payments under subsections (a)(i), (b)(i) and (c) shall not apply for a Plan Year if the terms of the Plan, as in effect for the period beginning on September 1, 2005, and continuing through the end of the Plan Year, provide for no benefit accruals with respect to any Participants. This clause (3) shall cease to apply as of the date any benefits accrue under the Plan or the date on which a Plan amendment that increases benefits takes effect.

(4) Special Rules Relating to Unpredictable Contingent Event Benefits and Plan Amendments Increasing Benefit Liability. During any period in which none of the presumptions under subsection (g)(i) apply to the Plan and the Plan's enrolled actuary has not yet issued a certification of the Plan's adjusted funding target attainment percentage for the Plan Year, the limitations under subsections (a)(ii) and (b)(ii) shall be based on the inclusive presumed adjusted funding target attainment percentage for the Plan, calculated in accordance with the rules of Treasury Regulation Section 1.436-1(g)(2)(iii).

(iii) Special Rules Under PRA 2010.

(1) Payments Under Social Security Leveling Options. For purposes of determining whether the limitations under subsection (a)(i) or (b)(i) apply to payments under a social security leveling option, within the meaning of Code Section 436(j)(3)(C)(i), the adjusted funding target attainment percentage for a Plan Year shall be determined in accordance with the "Special Rule for Certain Years" under Code Section 436(j)(3) and any Treasury Regulations or other published guidance thereunder issued by the Internal Revenue Service.

(2) Limitation on Benefit Accruals. For purposes of determining whether the accrual limitation under subsection (b)(iii) applies to the Plan, the adjusted funding target attainment percentage for a Plan Year shall be determined in accordance with the "Special Rule for Certain Years" under Code Section 436(j)(3) (except as provided under Section 203(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, if applicable).

(iv) Interpretation of Provisions. The limitations imposed by this subsection (g) shall be interpreted and administered in accordance with Code Section 436 and Treasury Regulation Section 1.436-1.

(h) Definitions. The definitions in the following Treasury Regulations shall apply for purposes of subsections (a) through (h): Treasury Regulation Section 1.436-1(j)(1) defining adjusted funding target attainment percentage; Treasury Regulation Section 1.436-1(j)(2) defining annuity starting date; Treasury Regulation Section 1.436-1(j)(6) defining prohibited payment; Treasury Regulation Section 1.436-1(j)(8) defining

Code Section 436 measurement date; and Treasury Regulation Section 1.436-1(j)(9) defining an unpredictable contingent event and an unpredictable contingent event benefit.

ARTICLE XIV
GENERAL PROVISIONS

14.1 **Limitation of Participant Rights.** The Plan shall not be construed as giving any Employee, Participant or other person any legal or equitable right against the University other than his or her rights as a Participant, Beneficiary or Alternate Payee under the terms of the Plan. Nor shall the Plan be construed as creating or modifying the terms of employment of any Employee or Participant. Nothing contained herein shall be deemed to give any Employee or Participant the right to be retained in the employment of the University.

14.2 **Reliance on Records.** The records of the University as to an Employee's or Participant's period of employment, Severance (and the reason therefore) and reemployment shall be conclusive on all persons unless determined to the Administrator's satisfaction to be incorrect.

14.3 **No Assignment or Alienation.** Except as provided in Section 14.4 below, no interest in the Plan or in any payments to be made hereunder may be assigned, alienated, anticipated or hypothecated and, to the extent permitted by law, no such interest or payments shall be subject to legal process or attachment for the payment of any claims against any person entitled to receive the same.

14.4 **Qualified Domestic Relations Orders.** Section 14.3 above shall not apply to a Qualified Domestic Relations Order as described below:

(a) A "Qualified Domestic Relations Order" is a judgment, decree or order (including approval of a property settlement agreement) which (i) relates to the provision of child support, alimony or marital property rights to a spouse, former spouse, child or other dependent of a Participant (an "Alternate Payee"); (ii) creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the Participant's benefits; (iii) is made pursuant to a State domestic relations law (including a community property law); and (iv) otherwise satisfies the requirements of Code Section 414(p).

(b) A domestic relations order is not a Qualified Domestic Relations Order if it requires: (i) the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan; (ii) the Plan to provide increased benefits; or (iii) the payment of benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a previous Qualified Domestic Relations Order.

(c) A domestic relations order shall not be considered to fail to satisfy the requirements of subsection (b) above with respect to any payment made before a Participant has separated from service solely because the order requires that payment of benefits be made to an Alternate Payee: (i) on or after the date on which the Participant attains (or would have first attained) his or her earliest retirement age (as defined in Code Section 414(p)(4)(B)); (ii) as if the Participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of accrued benefits and not taking into account the present value of any subsidy for early retirement benefits); and (iii) in any form in which such benefits may be paid under the

Plan to the Participant (other than in the form of a joint and survivor annuity with respect to the Alternate Payee and his or her subsequent spouse). Notwithstanding the foregoing, if the Participant dies before his or her earliest retirement age (as defined in Code Section 414(p)(4)(B)), the Alternate Payee is entitled to benefits only if the Qualified Domestic Relations Order requires survivor benefits to be paid to the Alternate Payee.

In accordance with Code Section 414(p), the Administrator shall establish reasonable procedures for notifying a Participant and his or her Alternate Payee of the receipt of a possible Qualified Domestic Relations Order and determining whether the order is a Qualified Domestic Relations Order. If the Administrator acts in accordance with this Section in treating a domestic relations order as being (or not being) a Qualified Domestic Relations Order or taking other action under this Section and applicable law, the Plan's obligation to the Participant and each Alternate Payee shall be discharged to the extent of any payment made.

14.5 **Power of Attorney.** If the Administrator receives, on behalf of a Participant, a power of attorney with respect to such Participant valid under state law, the Administrator shall comply with the instructions of the named attorney to the extent that the Administrator would comply with such instructions if given by the Participant and such instructions are consistent with the power of attorney.

14.6 **Facility of Payment.** When, in the Administrator's discretion, a Participant, Beneficiary or Alternate Payee is under a legal disability or is incapacitated in any way so as to be unable to manage his or her affairs, the Administrator may direct that payments be made:

- (a) Directly to the Participant, Beneficiary or Alternate Payee;
- (b) To a duly appointed guardian or conservator of the Participant, Beneficiary or Alternate Payee;
- (c) To a custodian for the Participant, Beneficiary or Alternate Payee under the Uniform Gifts to Minors Act;
- (d) To an adult relative of the Participant, Beneficiary or Alternate Payee; or
- (e) Directly for the benefit of the Participant, Beneficiary or Alternate Payee.

14.7 **Notices.** Wherever provision is made in the Plan for the filing of any notice, application, election or designation, such action shall, except where expressly provided herein to the contrary, be evidenced by the execution of such form, and on such notice, as the Administrator may specify for the purpose and shall be effective upon receipt unless the Plan otherwise provides. Notwithstanding any provision of the Plan to the contrary, any notice required to be distributed to Participants, Beneficiaries and/or Alternate Payees pursuant to the terms of the Plan may, at the direction of the Administrator, be transmitted electronically to the extent permitted by, and in accordance with any procedures set forth in, applicable law and regulations.

14.8 **Source of Benefit Payments.** All benefits payable under the Plan shall be paid or provided for only from the assets held by the Plan Trustees, and neither the University nor any officer, director or employee of the University shall be liable or responsible therefor.

14.9 **Multiple Capacities.** Any person or group of persons may serve in more than one Fiduciary capacity with respect to the Plan.

14.10 **Construction.** The Plan shall be construed and enforced according to the laws of the State of New York, except to the extent otherwise required by ERISA or necessary for qualification of the Plan under the Code. Headings of Articles, Sections and subsections herein contained are included solely for convenience of reference, and if there be any conflict between such headings and the text hereof, the text shall control. The masculine gender shall be deemed to include the feminine, and the singular may include the plural, unless the context clearly indicates to the contrary. It is intended that this Plan in all respects conform to and be administered and interpreted in a manner consistent with the requirements of ERISA and the Code. Accordingly, any provision required to be included herein, in order that the Plan so conform, shall be deemed, whether or not expressly set forth, to be included in the Plan, at such time as such requirement shall come into effect.

14.11 **Inter-Plan Transfers.** If a Participant becomes eligible to participate in any other pension or retirement plan maintained by the University, or if an Employee becoming a Participant under this Plan shall have been covered by any other pension or retirement plan maintained by the University, his or her rights under this Plan and such other plan shall be determined in accordance with such nondiscriminatory rules of uniform application as the Administrator shall adopt.

14.12 **Incorrect Payment of Benefits.**

(a) If the Plan makes an underpayment of the amount of any benefits due any payee under the Plan, correct payment shall be made as soon as possible after the underpayment is discovered.

(b) If the Plan makes an overpayment or pays a benefit in error, the Plan has the right at any time, as elected by the Administrator, to offset the amount of that overpayment from a future payment under the Plan, recover that overpayment from the person to whom it was made, a combination of both, or pursue any other lawful means of recovering such overpayment.

(i) Any person in receipt of a payment from the Plan promises to reimburse the Plan for any overpayment. Any person in receipt of any benefit paid but not owed has an obligation to immediately notify the Administrator of the overpayment and to return the overpaid benefits to the Plan. The Plan possess a lien on any benefit paid but not owed under the terms of the Plan. The lien is enforceable regardless of the reason for the mistake in payment or the fault or knowledge of the person in possession of the mistakenly paid Plan assets. The lien shall remain in effect until the Plan is repaid in full.

(ii) The Administrator may take whatever action is necessary to enforce the Plan's lien on any overpayments. The Administrator has sole discretion to choose the methods for enforcing the Plan's lien. These methods include, without limitation, the Plan's recoupment of the overpayment from future benefit payments or a court action seeking imposition of a constructive trust and disgorgement of the

overpaid Plan benefits plus interest, or any other claim to recover Plan assets under ERISA or any applicable law.

14.13 **Prohibition Against Profiting From Participant's Death**. If the Administrator, in its sole discretion, determines that a Beneficiary may have intentionally caused the Participant's death, the Administrator in its sole discretion may take any action the Administrator determines appropriate, including but not limited to:

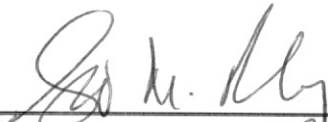
(a) Delaying payments of any benefit to such Beneficiary for any period the Administrator determines appropriate, including until there is a judicial determination of the Beneficiary's guilt or innocence; and

(b) Deciding to pay the benefit otherwise payable to the Beneficiary to another beneficiary.

* * *

[signature page to follow]

IN WITNESS WHEREOF, the University, by action of its duly authorized officer, hereby executes this instrument on this 4th day of March, 2021, evidencing the terms of the Plan as approved by the Board of Trustees effective as of January 1, 2021.

By: 
GERALD M. ROSENBERG
Its: SENIOR EXECUTIVE VICE PRESIDENT