

**MONTANA UNIVERSITY SYSTEM  
RETIREMENT PROGRAM**

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**MONTANA UNIVERSITY SYSTEM**  
**RETIREMENT PROGRAM**

**ARTICLE I.**  
**ESTABLISHMENT AND RESTATEMENT OF PLAN**

**Section 1.01. Plan Establishment and History.**

(a) The Board of Regents of Montana University System ("Board"), created pursuant to Article X, section 9, subsection (2) of the Constitution of the State of Montana, established the Montana University System Retirement Program ("Plan"), effective January 1, 1988, to provide retirement benefits for eligible employees of certain institutions of higher education within the meaning of Section 170(b)(1)(A)(ii) of the Internal Revenue Code ("Code").

(b) The Plan is, and is intended to remain, a defined contribution plan qualified under Code Section 401(a) that is a money purchase pension plan. The Plan is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(c) The Plan was most recently restated effective January 1, 2014.

**Section 1.02. Plan Restatement.**

(a) The Plan is now being amended and restated effective January 1, 2018, except as otherwise specifically provided herein.

(b) Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2018, and to transactions under the Plan on and after January 1, 2018. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2018, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

**Section 1.03. Plan Funding.** The Plan is funded exclusively through the purchase of Funding Vehicles from the Vendor(s) identified in Appendix A attached hereto, as that Appendix may be modified from time to time. The terms and conditions of the Funding Vehicles shall be considered part of, and shall be construed as having been incorporated into, this Plan. To the extent there is any conflict between the terms of any such Funding Vehicles and the terms of the Plan, however, the terms of the Plan shall govern, except as otherwise expressly provided herein.

**ARTICLE II.**  
**RULES OF CONSTRUCTION AND DEFINITIONS**

**Section 2.01. Rules of Construction and Governing Law.**

(a) This Plan shall be interpreted, enforced, and administered in accordance with the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Montana without regard to conflict of law principles.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and *vice versa*, and words used herein in the singular or plural shall be construed as being in the plural or singular, where appropriate, and *vice versa*.

(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute a qualified plan under the provisions of Code Section 401 with the earnings of the Trust exempt from income tax under Code Section 501, (ii) be a governmental plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with all applicable requirements of the Code, shall prevail over any different interpretation.

**Section 2.02. Definitions.** When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "Account" means the separate accounts maintained for the benefit of any Participant or Beneficiary under a Funding Vehicle. The following Accounts shall be established for a Participant or Beneficiary, if applicable:

(1) An Employer Contribution Account to reflect the Participant's interest in a Funding Vehicle attributable to his or her Employer Contributions pursuant to Section 4.01.

(2) A Mandatory Employee Contribution Account to reflect the Participant's interest in a Funding Vehicle attributable to his or her Mandatory Employee Contributions pursuant to Section 4.02.

(3) A Rollover Contribution Account to reflect the Participant's interest in a Funding Vehicle attributable to his or her Rollover Contributions pursuant to Section 4.03.

(b) "Administrator" means the Office of the Commissioner of Higher Education, Employee Benefits; provided, however, that to the extent that the Office of the Commissioner of Higher Education, Employee Benefits has delegated any of its responsibilities as Administrator to any other person or persons, the term Administrator shall be deemed to refer to that person or persons.

(c) "Annual Addition" means the annual addition as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines annual addition as the sum of the following amounts credited to a Participant's accounts for the Limitation Year under this Plan and any other defined contribution plan maintained by the Employer:

- (1) Employee contributions, including Mandatory Employee Contributions under Section 4.02;
- (2) Employer contributions, including Employer Contributions under Section 4.01;
- (3) forfeitures;
- (4) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer or a Related Employer, or both, as applicable; and
- (5) mandatory employee contributions to a defined benefit plan maintained by the Employer, unless the contributions are picked up by the Employer pursuant to Code Section 414(h)(2).

Annual Additions shall not include Rollover Contributions or transfer contributions.

(d) "Applicable Form" means the appropriate form as designated and furnished by the Vendor or Administrator to make any election or provide any notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Administrator and/or the Vendor may prescribe an electronic or telephonic form in lieu of or in addition to a written form.

(e) "Beneficiary" means the person, company, trustee, or estate designated by the Participant on the Applicable Form to receive any benefits payable under the Plan in the event of the Participant's death. A designation of an individual as a Beneficiary shall remain in effect until affirmatively revoked by the Participant on a subsequent Applicable Form. Unless otherwise provided in the applicable Funding Vehicle, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's surviving Spouse shall be the Beneficiary. If there is no surviving Spouse, the Administrator shall designate the Beneficiary, in order of priority, as: (i) the Participant's issue, by representation; (ii) the Participant's surviving parents, in equal shares; or (iii) the Participant's estate or a trustee of a trust named as the beneficiary of the residue of the Participant's estate as beneficiary. Persons who are legally adopted shall be treated for all purposes as the children of their adoptive parents. The Administrator's determination of the persons who qualify as Beneficiaries under this Plan shall be binding on all interested parties. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

(f) "Board" means the Board of Regents of the Montana University System.

(g) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(h) "Compensation" means the amount paid by the Employer to a Participant that must be reported as wages on the Participant's Form W-2. Compensation shall also include compensation that is not currently includible in the Participant's gross income because of the application of Code Section 402(g)(3), 125, 457, or 132(f)(4).

(i) "Contributions" means Mandatory Employee Contributions, Employer Contributions, and Rollover Contributions.

(j) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17) or 415(d) for any applicable year.

(k) "Date of Employment or Reemployment" means the effective date of the appointment for an Employee who is a faculty member. For all other Employees, the Date of Employment or Reemployment is the first day upon which an Employee completes an Hour of Service for performance of duties during the Employee's most recent period of service with the Employer.

(l) "Eligible Employee" means an Employee who is

(1) an academic and professional administrative personnel with an individual contract under the authority of the Board, or

(2) employed in a position covered under PERS and who is not a participant in PERS on his or her Date of Employment or Reemployment;

provided, however, that an Eligible Employee does not include (i) a leased employee as defined in Code Section 414(n) or (ii) any individual performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer.

(m) "Employee" means a common law employee of the Employer, and shall not include an individual who is designated in good faith as an independent contractor, as determined by the Employer in its sole and absolute discretion, regardless of whether such individual is later determined to be a common law employee for tax purposes.

(n) "Employer" means the System, as defined in Section 20-25-201, MCA, and the Office of the Commissioner of Higher Education; provided, however, that an Employer shall not include: (i) Dawson Community College as defined in Section 20-15-102, MCA; (ii) Miles Community College as defined in Section 20-15-102, MCA; or (iii) Flathead Valley Community College as defined in Section 20-15-102, MCA.

(o) "Employer Contributions" mean contributions made to the Plan by the Employer on behalf of a Participant in accordance with Section 4.01.

(p) "Excess Annual Additions" mean that portion of a Participant's Mandatory Employee Contributions and Employer Contributions to the Plan and contributions to another 401(a) defined contribution plan sponsored by the Employer or a Related Employer for a Plan Year which exceeds the limits of Code Section 415.

(q) "Former Vendor" means any provider that was approved by the Administrator to receive Contributions under the Plan, but that ceases to be eligible to receive new Contributions under the Plan, but only so long as the provider continues to hold Plan assets.

(r) "Funding Vehicle" means one or more qualified trusts under Code Section 501(a), custodial accounts treated as qualified trusts under Code Section 401(f), and/or annuity contracts treated as qualified trusts under Code Section 401(f), all in accordance with the qualification requirements of the Code.

(s) "HEART" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

(t) "Hour of Service" means each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer.

(u) "Investment Options" mean the investment funds available under the Funding Vehicles provided by the Vendor(s) and specifically approved by the Administrator in its sole and absolute discretion, for use under this Plan.

(v) "Limitation Year" means the Plan Year.

(w) "Mandatory Employee Contributions" mean the contributions required to be made by a Participant to the Plan in accordance with Section 4.02.

(x) "MCA" means the Montana Code Annotated, as amended from time to time.

(y) "Participant" means an individual for whom contributions are currently being made or for whom contributions have previously been made under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

(z) "PERS" means the Public Employees Retirement System provided for in Title 19, Chapter 3, MCA.

(aa) "Plan" means the Montana University System Retirement Program, as amended from time to time.

(bb) "Plan Compensation" means all compensation as defined in Code Section 415(c)(3). In general, Code Section 415(c)(3) defines compensation as all of an Employee's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, Plan Compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125, 403(b), 132(f)(4), 401(k), or 457(b). Plan Compensation for a Plan Year includes compensation paid by the later of (i) 2½ months after an Employee's Severance from Employment, or (ii) the end of the Plan Year that includes the date of the Employee's Severance from Employment, if:

(1) the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular



working hours (*e.g.*, overtime or shift differential), commissions, bonuses, or other similar payments and the payment would have been paid to the Employee prior to a Severance from Employment if the Employee had continued in employment with the Employer; or

(2) the payment is for unused accrued *bona fide* sick, vacation, or other leave, but only if the Employee would have been able to use the leave if the Employee had continued in employment.

Plan Compensation does not include any amounts "picked up" by the Employer within the meaning of Code Section 414(h). Plan Compensation shall not exceed the limits under Code Section 401(a)(17), increased by the Cost of Living Adjustment.

(cc) "Plan Year" means the calendar year.

(dd) "Related Employer" means any entity which is under common control with the Employer under Code Section 414(b), (c), (m), or (o). The Administrator shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under IRS Notice 89-23, 1989-1 C.B. 654.

(ee) "Rollover Contribution" means the contributions made to the Plan pursuant to Section 4.03.

(ff) "Severance from Employment" means the complete termination of the employment relationship between the Employee and the Employer and any Related Employer for any reason.

(gg) "Spouse" means the person to whom an Eligible Employee is legally married under the law of any state.

(hh) "System" means the Montana University System.

(ii) "TRS" means the Teachers' Retirement System, provided for in Title 19, Chapter 20, MCA.

(jj) "Trust" means a trust, a custodial account treated as a qualified trust under Code Section 401(f), and/or an annuity contract treated as a qualified trust under Code Section 401(f), established under the Plan to hold Plan assets.

(kk) "Trust Fund" means the assets of the Plan held pursuant to the terms of the Plan and Trust.

(ll) "Trustee" means the trustee or any successor trustee designated and appointed by the Employer, and includes the entity or person(s) holding the assets of a custodial account or holding an annuity contract in accordance with Code Section 401(f).

(mm) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(nn) "Vendor" means the service provider that has been approved by the Administrator to serve as third party administrator and/or recordkeeper for the Plan and/or to offer Investment

Options to Participants under the Plan. The Vendor is listed in Appendix A, as modified from time to time in the Administrator's sole and absolute discretion. A modification of Appendix A is not an amendment of the Plan.

(oo) "Vest" or "Vested" means the interest of the Participant in his or her Account that is unconditional, legally enforceable, and nonforfeitable.

### **ARTICLE III.** **ELIGIBILITY AND PARTICIPATION**

#### **Section 3.01. Participation.**

(a) An Eligible Employee may become a Participant in the Plan on his or her Date of Employment or Reemployment, as follows:

(1) An Eligible Employee under Section 2.02(1)(1) shall be automatically enrolled in the Plan as a Participant as a condition of employment.

(2) Notwithstanding subsection (1), an Employee who is an active, inactive or retired member of TRS or PERS, and who becomes an Eligible Employee under Section 2.02(1)(1), shall have 30 days from his or her Date of Employment or Reemployment to make a one-time irrevocable election to instead participate in the Plan in accordance with Section 19-21-201, MCA; provided however, that such an election is not available if the Eligible Employee previously elected to remain in TRS or PERS in accordance with Section 19-21-201. The Eligible Employee shall not be eligible to participate in the Plan if he or she does not make a timely election.

(3) An Eligible Employee under Section 2.02(1)(2) must make a one-time irrevocable election on the Applicable Form within twelve months of his or her Date of Employment or Reemployment to enroll in the Plan, in accordance with Section 19-3-2112, MCA. The Eligible Employee shall not be eligible to participate in the Plan if he or she does not make a timely election.

(b) The Employer shall notify an Eligible Employee when he or she is eligible to participate in the Plan. Any elections shall be made by following the procedures prescribed by the Administrator. An Eligible Employee must complete the Applicable Form(s), which may include enrollment and investment election forms, and return them to the Administrator or Vendor, as applicable. An Eligible Employee who has satisfied the participation requirements under Section 3.01(a) and who fails to return the Applicable Form(s) shall be automatically enrolled in the Plan and have his or her Contributions invested in a default Investment Option.

**Section 3.02. Reemployment.** A former Eligible Employee who subsequently becomes an Eligible Employee again shall participate in the Plan in accordance with Section 19-21-201, MCA and Section 19-3-2112, MCA.

**Section 3.03. Cessation of Contributions.** A Participant shall cease to be eligible for Contributions under the Plan when he or she is no longer an Eligible Employee.

**ARTICLE IV.**  
**CONTRIBUTIONS**

**Section 4.01. Employer Contributions.**

(a) The Employer shall make an Employer Contribution to the Plan on behalf of each Participant as follows:

(1) A Participant who is an Eligible Employee under Section 2.02(1)(1) shall receive an Employer Contribution each Plan Year equal to a percentage of his or her Compensation as determined under Section 19-21-203, MCA. The current Employer Contribution is 5.956% of Compensation.

(2) A Participant who is an Eligible Employee under Section 2.02(1)(2) shall receive an Employer Contribution each Plan Year equal to a percentage of his or her Compensation as determined under 19-3-316, MCA. The current Employer Contribution is 8.43% of Compensation.

(b) Employer Contributions shall be paid to the Plan by the Employer within the time required by law for the Plan Year during which they are being made. Employer Contributions shall be allocated to each Participant's Employer Contribution Account as of the date made to the Plan, but no later than the last day of the Plan Year.

**Section 4.02. Mandatory Employee Contributions.**

(a) Each Participant to whom Section 4.01(a)(1) applies is required as a condition of employment to make a Mandatory Employee Contribution to the Plan each Plan Year equal to a percentage of his or her Compensation as determined under Section 19-20-602, MCA. The current Mandatory Employee Contribution is 7.044% of Compensation.

(b) Each Participant to whom Section 4.01(a)(2) applies is required as a condition of employment to make a Mandatory Employee Contribution to the Plan each Plan Year equal to a percentage of his or her Compensation as determined under Section 19-3-315, MCA. The current Mandatory Employee Contribution is 7.9% of Compensation.

(c) Mandatory Employee Contributions shall be picked up by the Employer and treated as paid by the Employer pursuant to Code Section 414(h)(2). The Employer shall remit the picked up Mandatory Employee Contributions directly to the Vendor, instead of paying such amounts to the Participant. A Participant may not elect to receive such Mandatory Employee Contributions directly instead of having them paid by the Employer to the Plan.

(d) Mandatory Employee Contributions shall be paid to the Plan by the Employer each payroll period on a basis consistent with its payroll practices, but no later than as permitted by law for the Plan Year during which they are being made.

**Section 4.03. Rollover Contributions.** Subject to the Funding Vehicles, a Participant may transfer to the Plan as a Rollover Contribution a distribution from a Code Section 401(a) or 403(a) qualified plan (excluding after-tax contributions), a Code Section 403(b) plan (excluding

after-tax contributions), a Code Section 408 individual retirement account or annuity, or a Code Section 457(b) eligible deferred compensation plan which is maintained by an eligible employer described in Code Section 457(e)(1)(A). Any Rollover Contribution (i) shall be subject to the Vendor's determination, in its discretion, that the Rollover Contribution satisfies all applicable requirements of the Code and (ii) shall be made directly from such prior plan, or if such amount was distributed to the Participant, such Rollover Contribution shall be made within sixty (60) days after the Participant receives the rollover amount. Rollover Contributions shall be subject to the Plan's distribution restrictions under Section 10.01.

**Section 4.04. Transfer Contributions.** The Administrator shall accept a transfer of assets to the Plan from PERS on behalf of a Participant who was automatically enrolled as a participant under PERS, but who made a timely one-time irrevocable election to participate in the Plan under Section 3.01(a)(3). The transfer of assets shall consist of all contributions made to PERS on behalf of the Participant adjusted for earnings as determined in the sole and absolute discretion of PERS.

**Section 4.05. Leave of Absence.** During a paid leave of absence, Contributions shall continue to be made for a Participant on the basis of Compensation paid by the Employer during the leave. No Contributions shall be made during an unpaid leave of absence.

**Section 4.06. Expenses of Plan.** All reasonable expenses of administering the Plan shall be charged against and paid from the Participant's Accounts, subject to the terms of the applicable Funding Vehicles, unless paid by the Employer. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with rules promulgated by the Internal Revenue Service.

## **ARTICLE V.** **LIMITATIONS ON CONTRIBUTIONS**

### **Section 5.01. Code Section 415(c) Limits.**

(a) Notwithstanding any provision of the Plan to the contrary, Annual Additions to the Plan and any other Code Section 401(a) plan maintained by the Employer or a Related Employer for a Participant in a Limitation Year shall not exceed the limitations set forth in Code Section 415(c).

(b) The Code Section 415(c) limit for any Plan Year is the lesser of:

- (1) \$55,000 for 2018, increased by the Cost of Living Adjustment thereafter; or
- (2) 100% of the Participant's Plan Compensation for the Plan Year.

**Section 5.02. Excess Annual Additions.** If a Participant has Excess Annual Additions for a Plan Year, an adjustment to comply with this Article shall be made pursuant to this Plan as soon as administratively possible, but no later than the time permitted under Internal Revenue Service guidance.

**ARTICLE VI.**  
**NONDISCRIMINATION**

**Section 6.01. Compensation Limitation.**

(a) For Plan Years beginning on or after January 1, 1996, Compensation and Plan Compensation during any Plan Year shall not exceed the Code Section 401(a)(17) limit (as increased by the Cost of Living Adjustment for the year). Notwithstanding anything in the Plan to the contrary, Compensation and Plan Compensation during a Plan Year shall be limited as follows:

(1) Effective for Plan Years beginning before January 1, 1996, the limitation on Compensation and Plan Compensation under Code Section 401(a)(17) shall be deemed to be satisfied in accordance with the applicable rules and regulations prescribed by the Secretary of Treasury for governmental plans.

(2) For Plan Years beginning on or after January 1, 1996, if and to the extent, required by Code Section 401(a)(17) for a governmental plan, Compensation and Plan Compensation taken into account under the Plan for any Plan Year for a Participant who was not a Participant on or before December 31, 1995, shall not exceed (i) for Plan Years beginning after 1995 and before 2002, \$150,000 (as increased by the Cost of Living Adjustment for the year) and (ii) for Plan Years beginning after December 31, 2001, \$200,000 (as increased by the Cost of Living Adjustment for the year).

(3) For Plan Years beginning on or after January 1, 1996, as provided in the transitional rule of P.L. 103-66, § 13212(d)(3), Compensation and Plan Compensation taken into account under the Plan for any Plan Year for an individual who became a Participant on or before December 31, 1995 (an eligible participant within the meaning of P.L. 103-66, § 13212(d)(3)(B)) shall be limited to the greater of (i) the maximum amount of Compensation or Plan Compensation permitted to be taken into account under the Plan as in effect on July 1, 1993, or (ii), (A) for Plan Years beginning after 1995 and before 2002, \$150,000 (as increased by the Cost of Living Adjustment for the year), or, (B) for Plan Years beginning after December 31, 2001, \$200,000 (as increased by the Cost of Living Adjustment for the year). If the terms of the Plan as in effect on July 1, 1993, did not impose a limitation on the maximum amount of Compensation that could be taken into account under the Plan, there shall be no limitation on the maximum amount of Compensation that Participants can make as described in this subparagraph.

**ARTICLE VII.**  
**ACCOUNTING**

**Section 7.01. Participant Accounts.** The Vendor(s) shall establish and maintain adequate records to reflect the Accounts of each Participant and Beneficiary. Credits and charges shall be made to such Accounts to reflect additions, distributions, and withdrawals, and to reflect gains or losses pursuant to the terms of each Funding Vehicle. The maintenance of individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

**Section 7.02. Participant Statements.** The Vendor(s) shall provide to each Participant a quarterly statement reflecting the value of the Participant's Account as of the end of each quarter, and shall provide similar information to the Administrator upon its request.

**Section 7.03. Value of Account.** The value of the Account of a Participant as of any valuation date is the value of the Account balance as determined by the Vendor. The valuation date shall be the last day of the Plan Year and each other date designated by the Administrator or Vendor in a uniform and nondiscriminatory manner. All transactions and Account records shall be based on fair market value.

## **ARTICLE VIII.** **INVESTMENT OF CONTRIBUTIONS**

### **Section 8.01. Vendors and Investment Options.**

(a) All Contributions under the Plan shall be transferred to the Vendor(s) to be held, managed, invested, and distributed in accordance with the provisions of the Plan and the Funding Vehicles as applicable.

(b) Participants' Accounts shall be invested in one or more of the Investment Options available to Participants from a Vendor(s) approved under this Plan, as selected by the Administrator and communicated to Participants. The current Vendor(s) are listed in Appendix A. The Administrator's current selection of Vendor(s) and Investment Options is not intended to limit future additions or deletions of Vendor(s) or Investment Options.

(c) A Participant shall have the right to direct the investment of his or her Accounts by filing the Applicable Form with the Vendor(s). A Participant may change his or her investment election as often as determined by the Vendor(s). A Participant may elect to transfer all or any portion of his or her Accounts invested in any one Investment Option to another Investment Option, regardless of whether offered by the same or a different Vendor, subject to the limitations of the Funding Vehicle(s), by filing a request on the Applicable Form with the Vendor(s) or by such other means that may be provided for by the Vendor(s). A Participant may also elect to transfer all or any portion of his or her Accounts invested in an Investment Option with a Former Vendor to an Investment Option with a Vendor, subject to the terms of the Funding Vehicles.

(d) An investment change that includes an investment with a Former Vendor or other vendor that is not eligible to receive Contributions under the Plan is not permitted.

**Section 8.02. Default Investments.** If a Participant does not have a valid and complete investment direction on file with the Vendor on the Applicable Form, Contributions will be invested in a default fund selected by the Administrator in its sole and absolute discretion, until the Participant makes an affirmative election regarding the investment of his or her Account.

## **ARTICLE IX.** **TRUST**

**Section 9.01. Trust Fund.** All Contributions under the Plan shall be transferred to the Trustee to be held in Trust as part of the Trust Fund in accordance with the provisions of the Plan

and the Funding Vehicles, as applicable. All assets held in connection with the Plan, including all Contributions, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property or rights, shall be held in, managed, invested and distributed in Trust as part of the Trust Fund, in accordance with the provisions of the Plan. All benefits under the Plan shall be distributed solely from the Trust Fund, and the Employer shall have no liability for any such benefits other than the obligation to make Contributions as provided in the Plan.

**Section 9.02. Trust Status.** The Trust Fund shall be held in Trust for the exclusive benefit of Participants and Beneficiaries under the Plan in accordance with Code Section 501(a). No part of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries, and for defraying the reasonable expenses of the Plan and Trust. The Trust is exempt from tax pursuant to Code Sections 401(a) and 501(a).

## **ARTICLE X.** **DISTRIBUTIONS**

### **Section 10.01. Commencement of Distributions.**

(a) Subject to the terms of the Funding Vehicles, a Participant or, if applicable, a Beneficiary, is eligible to receive a distribution from the Plan following a 30 day period after the Participant's Severance from Employment.

(b) The Participant or Beneficiary may submit a request for a distribution to the Vendor on the Applicable Form. The Employer shall certify that the Participant has had a Severance from Employment.

**Section 10.02. Form of Distribution.** A Participant who is eligible to receive a distribution under Section 10.01 may elect to receive a distribution under any payment option available under the Funding Vehicle. Subject to the terms of the Funding Vehicles, these include, but are not necessarily limited to, a single lump sum, annuity payments, and installment payments. All forms of payment shall be subject to the limitations of the applicable Funding Vehicles.

**Section 10.03. Reemployment.** If a Participant who is a former Employee subsequently becomes an Employee again after distribution of his or her Accounts has begun under a payment option other than annuity payments, such distributions shall immediately cease, and the Employee shall not receive any benefits under the Plan until the Employee is entitled to a distribution under Section 10.01.

**Section 10.04. Death Benefits.** If a Participant dies before distribution of his or her entire Account, his or her Accounts shall be payable to his or her Beneficiary(ies) under the distribution options available under the Funding Vehicle(s), subject to Code Section 401(a)(9).

**Section 10.05. Required Distribution Rules.** The provisions of this Section 10.05 take precedence over any inconsistent provisions of the Plan or of any Funding Vehicle. All distributions under this Plan shall be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G), and shall comply with the following rules.

(a) Distributions may only be made over one of the following periods (or a combination thereof):

- (1) The life of the Participant;
- (2) The life of the Participant and a designated Beneficiary;
- (3) A period certain not extending beyond the life expectancy of the Participant;

or

(4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary.

(b) A Participant's Accounts shall be distributed to the Participant beginning no later than 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 that the Participant has a Severance from Employment.

(c) Upon the death of the Participant, the following distribution provisions shall take effect:

(1) If the Participant dies after distribution of his or her Account(s) begins, any remaining portion of the Account(s) shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(2) If the Participant dies before distributions of his or her Account(s) begins and the Participant has no designated Beneficiary(ies), the Participant's Account(s) under the Plan shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) If the Participant dies before distributions of his or her Account(s) begins and any portion of his or her Account(s) are payable to a designated Beneficiary, the designated Beneficiary may elect for the Participant's Account(s) to be distributed (i) by December 31 of the calendar year containing the fifth anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. If the designated Beneficiary is the surviving Spouse, the Beneficiary may elect to delay payment under item (ii) until December 31 of the calendar year in which the Participant would have attained age 70½. If the designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (i).

(4) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this Section 10.05(c).

(d) Each Vendor shall be separately and solely responsible for complying with the provisions of this Section 10.05 with respect to its Funding Vehicles under the Plan. The



Vendor(s) shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions at least 60 days prior to the date distributions must begin.

(e) Effective January 1, 2009, for 2009, unless otherwise provided in the Funding Vehicles, the minimum required distribution requirements set forth in Section 10.05 shall be satisfied as provided in either subparagraph (1) or (2) below, as determined by the Vendor responsible for the Participant's required minimum distribution and in accordance with the Funding Vehicles:

(1) A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least ten (10) years ("extended 2009 RMDs") will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

(2) A Participant or Beneficiary who would have been required to receive 2009 RMDs, and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) Extended 2009 RMDs, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

Further, subject to the Funding Vehicles, the 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

#### **Section 10.06. Additional Tax on Early Withdrawals.**

(a) Generally, and except as described in paragraph (b), if a Participant receives any amount under the Plan, his or her tax for the taxable year in which such amount is received is increased by an amount equal to 10% of the portion of such amount which is includible in gross income. Such amount shall be included in gross income to the extent allocable to income on the Funding Vehicle and shall not be included in gross income to the extent allocable to the investment in the Funding Vehicle as provided in Code Section 72(e)(2)(b).

(b) The penalty described in paragraph (a) generally does not apply to any distribution (i) made on or after the date on which the Participant attains age 59½, (ii) made on or after the death of the Participant, (iii) attributable to the Participant becoming disabled within the meaning of Code Section 72(m)(7), (iv) which is part of a series of substantially equal periodic payments made (not less frequently than annually) for the life or life expectancy of the Participant or the joint lives (or joint life expectancies) of such Participant and his or her designated Beneficiary, (v)

made to a Participant after Severance from Employment following the attainment of age 55, (vi) which is a qualified reservist distribution within the meaning of Code Section 72(t)(2)(G)(iii), or (vii) any other circumstance permitted by the Code or the Internal Revenue Service.

**ARTICLE XI.**  
**LOANS**

Loans are not permitted from the Plan.

**ARTICLE XII.**  
**VESTING**

A Participant shall be 100% Vested in his or her Accounts at all times.

**ARTICLE XIII.**  
**ROLLOVERS FROM THIS PLAN**

**Section 13.01. Definitions for this Article.** For purposes of this Article, the following definitions shall apply.

(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.

(b) "Distributee" means a Participant, the Spouse of the Participant, the Participant's former Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p), and, effective January 1, 2008, a Participant's non-Spouse Beneficiary, any of whom is eligible to receive a distribution from the Plan.

(c) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means:

- (1) an individual retirement account described in Code Section 408(a);
- (2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);
- (3) any annuity plan described in Code Section 403(a);
- (4) a plan described in Code Section 403(b);
- (5) a qualified plan described in Code Section 401(a);
- (6) a Code Section 457(b) eligible deferred compensation plan 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; and
- (7) effective January 1, 2008, a Roth individual retirement account described in Code Section 408A(e) provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs.

Effective January 1, 2008, in the case of a distribution to a Participant's non-Spouse Beneficiary, an Eligible Retirement Plan shall mean the plans described in subparagraphs (1) and (2) only, to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(d) "Eligible Rollover Distribution," as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under this Plan, except that an Eligible Rollover Distribution does not include:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a period of ten years or more;

(2) any distribution to the extent such distribution is required under Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; provided, however, effective January 1, 2002, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only:

(i) to an individual retirement account or annuity described in Code Section 408(a) or 408(b), respectively, or to a qualified defined contribution plan described in Code Section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of such distribution which is not so includible;

(ii) to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(iii) to a Roth IRA described in Code Section 408A;

(4) any distribution which is made upon the financial hardship of the Participant; and

(5) other items designated by regulations, or by the Commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

**Section 13.02. Direct Transfer of Eligible Rollover Distribution.** A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner

prescribed by the Vendor. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 403, or 408.

**Section 13.03. Mandatory Withholding of Eligible Rollover Distributions.**

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory 20% federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e).

(b) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the sixtieth day following the day on which the Distributee received the distribution.

(c) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

**Section 13.04. Explanation of Plan Distribution and Withholding Requirements.** Not fewer than 30 days nor more than 180 days before an Eligible Rollover Distribution, the Vendor shall provide each Distributee a written explanation as required under Code Section 402(f), which explains the rules:

(a) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

(b) that require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan;

(c) that provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within 60 days after the date the Distributee receives the distribution; and

(d) if applicable, certain special rules regarding taxation of the distribution as described in Code Sections 402(d) and (e).

Notwithstanding the above, a distribution may begin fewer than 30 days after the notice discussed in the preceding sentence is given, provided that the Vendor clearly informs the Participant that he or she has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution and the Participant, after receiving a notice, affirmatively elects a distribution.

**ARTICLE XIV.**  
**PLAN ADMINISTRATION**

**Section 14.01. Authority of the Administrator.** The Administrator shall have the authority to control and manage the operation and administration of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. The Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan.

**Section 14.02. Powers of the Administrator.** The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claim procedures, the Administrator shall be the sole and final judge of such expediency. Benefits are payable under the Plan only if the Administrator, in its sole and absolute discretion, determines the benefits are payable under the provisions the Plan.

**Section 14.03. Delegation by Administrator.** The Administrator may from time to time delegate in writing to a committee or any duly authorized officer certain of its fiduciary duties or other responsibilities under the Plan. Any such committee or officer delegated fiduciary duties shall be a fiduciary until the Administrator revokes such delegation. A delegation of the Administrator's duties or responsibilities may be revoked without cause or advance notice. To the extent permitted under applicable law, such committee or officer shall have the same power and authority with respect to such delegated fiduciary or other responsibilities as the Administrator has under the Plan. The Administrator shall not be liable for any act or omission of such fiduciary in carrying out such responsibilities.

**Section 14.04. Employment of Consultants.** The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

**ARTICLE XV.**  
**CLAIMS PROCEDURES**

**Section 15.01. Claim for Benefits.** If a Participant makes a written claim for benefits under the Plan to the Administrator or Vendor, as applicable, and the written request is denied in whole or part, the Administrator or Vendor, as applicable, shall within 60 days provide a written denial to the Participant. It shall include the specific reasons for denial, the provisions of the Plan and/or Funding Vehicles on which the denial is based, and how to apply for a review of the denied claim. Where appropriate, it shall also include a description of any material which is needed to complete or perfect a claim and why such material is necessary. If the Participant does not receive a timely denial from the Administrator or Vendor, then the Participant's claim for benefits shall be deemed denied.

**Section 15.02. Review of Denial.** Within 60 days after the Participant receives notification of the denial, a Participant may request in writing a review of a claim denied by the Administrator or Vendor, as applicable, and review pertinent documents and submit issues and comments in writing to the Administrator or Vendor, as applicable. The Participant shall receive a written decision upon such request for review of a denied claim within 60 days following receipt of the request. The decision shall set forth the specific reasons and specific Plan provisions on which the Administrator or Vendor based its decision. If the Participant does not receive a timely denial from the Administrator or Vendor, then the Participant's request for review of his or her claim shall be deemed denied.

## **ARTICLE XVI.** **AMENDMENT AND TERMINATION**

### **Section 16.01. Amendment and Termination.**

(a) While it is expected that the Plan shall continue indefinitely, the Board reserves the right to amend, freeze, or terminate the Plan, or to discontinue any further Contributions to the Plan at any time. Upon termination of the Plan or complete discontinuance of Employer Contributions to the Plan, the Accounts of all Participants shall become fully Vested to the extent then funded.

(b) It is the intent of the Board that the Plan shall be and remain qualified for tax purposes under the Code. The Board may make any modifications, alterations, or amendments to the Plan necessary to obtain and retain approval of the Secretary of the Treasury as may be necessary to establish and maintain the status of the Plan as qualified under the provisions of the Code, as now in effect or hereafter enacted, and the regulations issues thereunder. Any modification, alteration, or amendment of the Plan, made in accordance with this Section, may be made retroactively, if necessary or appropriate. Any such amendment shall be effective as of the date set forth in such amendment, and the Participants, Beneficiaries, and all others having any interest in the Plan shall be bound thereby.

**Section 16.02. Adverse Effects.** Any amendment or termination of the Plan cannot adversely affect the benefits accrued by Participants prior to the date of amendment or termination. The Plan may not be amended in a manner that violates any provision of the Code.

**Section 16.03. Distribution Upon Termination of the Plan.** The Board shall have the right to completely terminate this Plan, subject to any statutory requirements, at any time and in its sole and absolute discretion. In such a case, the Board shall arrange for suitable distribution of Plan assets, including the possibility of transfer to another 401(a) plan or plans. The Trustee shall not be required to pay out any asset of the Trust Fund to Participants and Beneficiaries or a successor plan upon termination of the Trust until the Trustee has received written confirmation from the Board (i) that all provisions of the law with respect to such termination have been complied with, and (ii), after the Trustee has made a determination of the fair market value of the assets of the Plan, that the assets of the Plan are sufficient to discharge when due all obligations of the Plan required by law. The Trustee shall rely conclusively upon such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

**ARTICLE XVII.**  
**MISCELLANEOUS**

**Section 17.01. Non-Alienation.**

(a) A Participant's Account under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.

(b) Notwithstanding paragraph (a), the Plan shall comply with any judgment, decree or order ("domestic relations order") which establishes the right of an alternate payee within the meaning of Code Section 414(p)(8) to all or a portion of a Participant's benefit under the Plan to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p). The Administrator or the Vendor shall establish reasonable written procedures to determine whether a domestic relations order is a QDRO and to administer the distribution of benefits with respect to such orders, which procedures may be amended from time to time, and which shall be provided to Participants upon request. Notwithstanding any other provisions in the Plan, the Plan may make an immediate distribution to the alternate payee pursuant to a QDRO.

(c) Notwithstanding paragraph (a), the Plan shall offset from the benefit otherwise payable to a Participant or his or her Spouse such amounts as are permitted to be offset under a court order, civil judgment, or settlement agreement in accordance with Code Section 401(a)(13)(C).

**Section 17.02. Military Service.**

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with USERRA, HEART, Code Section 414(u), and effective January 1, 2007, Code Section 401(a)(37). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(b) If a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service under Code Section 414(u), timely resumes employment with the Employer in accordance with USERRA as an Eligible Employee, the Participant may elect to make the Mandatory Employee Contributions upon resumption of employment with the Employer that would have been required (at the same level of Compensation) without the interruption of leave. Except to the extent provided under Code Section 414(u), this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). Such Mandatory Employee Contributions may only be made during such period and while the Participant is reemployed by the Employer. Such Mandatory Employee Contributions shall be picked up by the Employer and treated as paid by the Employer pursuant to Code Section 414(h)(2).

(c) If a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service under Code Section 414(u), timely resumes employment with the Employer in accordance with USERRA as an Eligible Employee, the Employer shall make the Employer Contributions that would have been made if the Participant had remained employed during the Participant's qualified military service. Contributions must be made no later than 90 days after the date of reemployment or when the Employer Contributions are normally due for the year in which the qualified military service was performed, if later.

(d) Effective January 1, 2007, to the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

(e) Effective January 1, 2009, differential wage payments within the meaning of Code Section 414(u)(12)(D) shall be treated as Plan Compensation under the Plan.

**Section 17.03. Limitation of Rights and Obligations.** Neither the establishment nor maintenance of the Plan, nor any amendment thereof, nor the purchase of any insurance contract, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) as conferring upon any Participant, Beneficiary or any other person a right or claim against the Trust, Administrator, or Employer, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as a contract or agreement between the Employer and any Participant or other person; or

(c) as an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Employee to continue or terminate the employment relationship at any time.

**Section 17.04. Federal and State Taxes.** It is intended that Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries. However, the Administrator does not guarantee that any particular Federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

**Section 17.05. Erroneous Payments.** If the Administrator or Vendor makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Vendor, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or Vendor may deduct it when making any future payments directly to that Participant.



**Section 17.06. Liability and Indemnification.** The Employer shall indemnify, defend, and hold harmless any members of the Board or any person to whom any power, authority or responsibility of the Employer is delegated pursuant to Section 14.03, except a Vendor or other service provider, from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by the Employer or any of its officers or employees, which may occur during or which may arise out of the operation or administration of the Plan. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the System, under any provision of law, or under any other agreement.

**Section 17.07. No Reversion.** Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the Employer, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, if Contributions are made by the Employer by mistake of fact, these amounts and, if applicable, any interest earned therein, may be returned to the Employer within one year of the date that they were made.

**Section 17.08. Merger; Transfer of Assets.**

(a) If the Employer merges or consolidates with or into another entity, or if substantially all the assets of the Employer are transferred to another entity, the Plan shall terminate on the effective date of the merger, consolidation, or transfer. However, if the surviving entity resulting from the merger or consolidation, or the entity to which the assets have been transferred, adopts this Plan, the Plan shall continue and the successor entity shall succeed to all rights, powers, and duties of the Employer under the Plan, and the employment of any Employee who is continued in the successor entity's employ shall not be deemed to have been terminated for any purpose under the Plan.

(b) This Plan shall not be merged or consolidated with any other employee benefit plan, nor shall there be any transfer of assets or liabilities from this Plan to any other plan, unless, immediately after the merger, consolidation, or transfer, each Participant's benefits, if the other plan were then to terminate, are at least equal to the benefits to which the Participant would have been entitled had this Plan been terminated immediately before the merger, consolidation, or transfer.

**Section 17.09. Finality of Determination.** All determinations with respect to crediting of service under the Plan are made on the basis of the records of the Employer, and all determinations made are final and conclusive upon Employees, former Employees, Eligible Employees, former Eligible Employees, and all other persons claiming a benefit under the Plan.

**Section 17.10. Counterparts.** The Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be evidenced by any one counterpart.

IN WITNESS WHEREOF, the Board has caused this amended and restated Plan to be executed by its duly authorized representative as of the date written below, but effective as of January 1, 2018.

**THE BOARD OF REGENTS OF MONTANA  
UNIVERSITY SYSTEM**

By:  \_\_\_\_\_

Printed Name: Clayton T. Christian

Title: Commissioner of Higher Education

Date: May 29, 2018

# **MONTANA UNIVERSITY SYSTEM RETIREMENT PROGRAM**

## **APPENDIX A**

### **APPROVED VENDORS**

The current selection of Vendor(s) is not intended to limit future additions or deletions of Vendor(s). The Administrator from time to time may add or delete Vendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in a revised Appendix A.

#### **1.1 Approved Vendors**

As of January 1, 2018, the Administrator has approved Teachers Insurance and Annuity Association ("TIAA") as the Vendor under the Plan.

#### **1.2 Former Vendors**

As of January 1, 2018, there are no Former Vendors under the Plan.