

**WESTERN ILLINOIS UNIVERSITY  
403(b) SUPPLEMENTAL RETIREMENT PLAN**

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**WESTERN ILLINOIS UNIVERSITY**  
**403(b) SUPPLEMENTAL RETIREMENT PLAN**

**ARTICLE I.**

**PLAN ESTABLISHMENT**

Western Illinois University ("University") is a public university established under Illinois law and an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The University has offered employees the opportunity to voluntarily defer their salary to investment products under a 403(b) program for a number of years. The Board of Trustees of the University now wishes to formalize a plan document.

The Plan is being formalized effective January 1, 2009, except as otherwise provided herein, to update the Plan to comply with final Income Tax Regulations issued under section 403(b) of the Code and to make certain other desired changes. The Plan is a voluntary defined contribution plan designed to have tax favored status under section 403(b) of the Code, and is a governmental plan within the meaning of section 414(d) of the Code and section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

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, 2009, and to transactions under the Plan on and after January 1, 2009.

**ARTICLE II.**

**DEFINITION OF TERMS USED**

The following words and terms, when used in the Plan, have the meaning set forth below.

**Section 2.01.** **Account.** The account(s) maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account. The following Accounts will be established for a Participant or Beneficiary, if applicable: Pre-Tax Accumulation Account, Roth Accumulation Account, and Rollover Account.

**Section 2.02.** **Account Balance.** The balance in all Accounts maintained for each Participant which reflects the aggregate amount credited to or debited from the Participant's Accounts, including Pre-Tax Elective Deferrals, Roth Elective Deferrals, Rollover Contributions, the earnings or losses of each Annuity Contract or Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account will be maintained for each Beneficiary after a Participant's death. A separate Account will be established for an alternate payee (as defined in section 414(p)(8) of the Code).

**Section 2.03. Administrator.** Western Illinois University; provided, however, to the extent that the Western Illinois University has delegated any of its responsibilities as Administrator to any other person or persons, the term "Administrator" will be deemed to refer to that person or persons.

**Section 2.04. Annuity Contract.** A nontransferable contract as defined in section 403(b)(1) of the Code, established for Participants by the University, or by each Participant individually, that is issued by a Vendor who is an insurance company qualified to issue annuities in the State of Illinois and that includes payment in the form of an annuity.

**Section 2.05. Beneficiary.** The designated person or persons, institution, trustee, or estate entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements. In the event the designated Beneficiary predeceases the Participant or there is no Beneficiary designated, the Beneficiary shall be the Participant's surviving spouse, or if none, then the Participant's surviving descendants, per stirpes, or if none, the Participant's estate.

**Section 2.06. Board.** The Western Illinois University Board of Trustees.

**Section 2.07. Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

**Section 2.08. Committee.** The Committee which is the Benefits Committee, consisting of ten members, determined as follows:

- The Benefits Manager (Chairperson)
- One member recommended by the Vice President of Academic Affairs
- One member recommended by the Dean's Council
- Three faculty members recommended by the Faculty Senate
- Two members recommended by the CSEC
- One member recommended by the Council of Administrative Personnel
- One student recommended by the Council on Student Affairs.

No Committee recommendation with respect to this Plan shall be effective without approval of the Vice President for Administrative Services.

**Section 2.09. Compensation.** All cash compensation for services to the University, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross W-2 income for the calendar year, plus amounts that would be cash compensation for services to the University includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election made to reduce compensation in order to have Elective Deferrals under the Plan). Compensation does not include amounts "picked up" by the University within the meaning of section 414(h) of the Code. Compensation includes any

compensation described paragraphs (a) or (b), provided it is paid by the later of 2½ months after the Employee's severance from employment with the University or the end of the calendar year in which the Employee has a severance from employment with the University:

(a) any payment that would have been paid to the Employee prior to a severance from employment if the Employee continued in employment with the University and that is regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(b) a payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the Employee's severance from employment.

Notwithstanding the above, Compensation shall not exceed the limits under section 401(a)(17) of the Code.

**Section 2.10. Custodial Account.** The group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the University, or by each Participant individually, with a Vendor to hold assets of the Plan.

**Section 2.11. Disabled.** The definition of disability provided in the applicable Individual Agreement that satisfies section 72(m)(7) of the Code.

**Section 2.12. Elective Deferral.** The University contributions made to the Plan at the election of the Participant in lieu of receiving cash Compensation; provided, however, that the term "Elective Deferral" will include both Pre-Tax Elective Deferrals and Roth Elective Deferrals except where specifically stated otherwise and subject to approval of Roth Elective Deferrals.

**Section 2.13. Employee.** Each individual who is a common law employee who receives Compensation reportable on a Form W-2 for services provided to the University, except non-resident aliens with no U.S. source income and student employees exempt from FICA taxes. This definition is not applicable unless the employee's Compensation for performing services is paid by the University.

**Section 2.14. Former Vendor.** Any provider that was approved by the University to offer annuity contracts or custodial accounts under the Plan, but that ceases to be eligible to receive new contributions under the Plan on or after January 1, 2005.

**Section 2.15. Funding Vehicles.** The Annuity Contracts and Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the University for use under the Plan.

**Section 2.16. Includible Compensation.** An Employee's compensation received from the University that is includible in the Employee's gross income for Federal income tax purposes (computed without regard to section 911 of the Code) for the most recent period that is a Year of Service. Includible Compensation also includes any amounts excludable from taxable income because of an election under section 403(b), 457(b), 125, 401(k) or 132(f) of the Code (including Elective Deferrals under this Plan). The amount of Includible Compensation is determined without regard to any community property laws. Includible Compensation does not include any amounts "picked-up" by the University within the meaning of section 414(h) of the Code. Includible Compensation includes any compensation described in paragraphs (a) or (b), provided the compensation is paid by the later of 2½ months after the Employee's severance from employment with the University or the end of the calendar year in which the Employee has a severance from employment with the University:

(a) any payment that would have been paid to the Employee prior to a severance from employment if the Employee had continued in employment with the University and that is regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(b) a payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would have been included in the definition of Compensation if paid prior to the Employee's severance from employment.

**Section 2.17. Individual Agreement.** The agreements between a Vendor and the University or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

**Section 2.18. Investment Options.** The mutual funds and other investment options available for investing amounts held in Funding Vehicles under the Plan and specifically approved by the University under the Plan.

**Section 2.19. Participant.** An individual who is or may become eligible to receive a benefit of any type under the Plan, and who has not received a distribution of his or her entire Account under the Plan.

**Section 2.20. Plan.** The Western Illinois University 403(b) Supplemental Retirement Plan, as amended from time to time.

**Section 2.21. Plan Year.** The calendar year.

**Section 2.22. Qualified Distribution.** A distribution from a Roth Accumulation Account after the Participant has satisfied a five year tax holding period and has attained age 59 ½, died, or become disabled, in accordance with section 402A(d) of the Code. The five year tax holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Elective Deferral under



the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed.

**Section 2.23. Related Employer.** The University and any other entity which is under common control with the University under section 414(b), (c) or (m) of the Code. For this purpose, the University will determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

**Section 2.24. Roth Elective Deferral.** An Elective Deferral that is: (a) designated irrevocably by the Participant on the Salary Reduction and/or Redirection Agreement as a Roth Elective Deferral that is being made in lieu of all or a portion of the Pre-Tax Elective Deferrals the Participant is otherwise eligible to make under the Plan; and (b) treated by the University as includible in the Participant's gross income at the time the Participant would have received that amount in cash if the Participant had not made such election.

**Section 2.25. Third Party Administrator.** Means the entity chosen by the University to provide common remitter, recordkeeping and other associated services as identified in the Plan and related contracts.

**Section 2.26. University.** Western Illinois University.

**Section 2.27. Vendor.** The provider of an Annuity Contract or Custodial Account as selected by the Administrator and listed in Appendix A, as amended from time to time in the Administrator's sole discretion.

**Section 2.28. Vesting.** The interest of the Participant in his or her Account that is unconditional, legally enforceable, and nonforfeitable.

**Section 2.29. Valuation Date.** Each business day.

**Section 2.30. Year of Service.** Each employment year during which the Employee is a full-time Employee of the University for the entire year, and a fraction of a year for each part of an employment year during which the Employee is a full-time or part-time Employee of the University, determined in accordance with the rules under section 1.403(b)-4(e) of the Income Tax Regulations.

### **ARTICLE III.**

#### **ELIGIBILITY**

**Section 3.01. Eligibility.** Each Employee is eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf to the Plan immediately upon becoming employed by the University. Participation is voluntary. Employees are not required to join the Plan.

## ARTICLE IV.

### CONTRIBUTIONS

#### Section 4.01. General Rules on Elective Deferrals.

(a) **Elections.** An Employee becomes a Participant by executing an election to reduce or redirect his or her Compensation in any flat dollar amount or whole percentage (and have that amount contributed to the Plan as an Elective Deferral on his or her behalf) and filing it with the Benefits Office of the University. This election will be made on the forms provided by the University under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Employee may also be required to execute an agreement provided by the Vendor designating the Investment Options under the Funding Vehicles to which Elective Deferrals are to be made and designating a Beneficiary, and file it with the Vendor. Any such elections will remain in effect until a new election is filed with the Administrator or Vendor, as applicable.

(b) **Minimum Amount.** The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time.

(c) **Conditions of Elections.** An Employee will become a Participant the first day of a pay period starting as soon as administratively practicable following the date of the Employee's election. A Pre-Tax Accumulation Account and/or Roth Accumulation Account will be established for each Participant. Participation is subject to the rules of the Internal Revenue Service, the Internal Revenue Code and the terms of the Funding Vehicles. Contributions to this Plan are in addition to any contributions which may be made to the State Universities Retirement System.

(d) **Information Provided by the Employee.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

(e) **Change in Elective Deferral Election.** Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation elections, including a change of the amount of his or her Elective Deferrals, termination of all contributions under the Plan, his or her investment direction, and his or her designated Beneficiary. Any change in the Elective Deferral amount will take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in investment direction or Beneficiary designation will take effect when the election is accepted by the Vendor. All changes shall be filed with the Benefits Office of the University and/or the Vendor, as applicable.

(f) **Contributions Made Promptly.** Elective Deferrals under the Plan will be transferred by the Payroll Department to the University to the applicable Third Party Administrator or Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

(g) **Leave of Absence.** Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan will continue to the extent that Compensation continues. No Elective Deferrals will be made during a leave of absence without pay or when an Employee's pay for any period of work is insufficient to cover the whole Elective Deferral amount.

(h) **Designation of Contributions.** A Participant designation of contributions as Pre-Tax Elective Deferrals or Roth Elective Deferrals is irrevocable once the contribution is made. A new designation with respect to future contributions may be made at any time.

**Section 4.02. Pre-Tax Elective Deferrals.** Pre-Tax Elective Deferrals reduce the Participant's salary on a before-tax basis and are not subject to federal income tax when made to the Plan. However, Pre-Tax Elective Deferrals, together with any investment earnings, are subject to federal income tax at the time that they are paid to the Participant (or Beneficiary).

**Section 4.03. Roth Elective Deferrals.** Effective as of a date specified in a Committee action (but no earlier than January 1, 2009), the Plan will accept Roth Elective Deferrals made on behalf of Participants. Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Elective Deferrals for all purposes under the Plan. Roth Elective Deferrals reduce the Participant's salary on an after-tax basis and are subject to federal income tax when made to the Plan. However, Roth Elective Deferrals, together with any investment earnings, are not subject to federal income tax at the time they are paid to the Participant (or Beneficiary), provided that they are Qualified Distributions. A Participant's Roth Elective Deferrals will be allocated to a separate Account maintained for such deferrals as described below:

(a) Contributions and withdrawals of Roth Elective Deferrals will be credited and debited to the Roth Accumulation Account maintained for each Participant.

(b) The Plan Administrator or its designee will maintain a record of the amount of Roth Elective Deferrals in each Participant's Roth Accumulation Account.

(c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Accumulation Account and the Participant's other Accounts under the Plan.

(d) No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to each Participant's Roth Accumulation Account.

**Section 4.04. Protection of Persons Who Serve in a Uniformed Service.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with the

Uniformed Services Employment and Reemployment Rights Act of 1994, as amended; effective January 1, 2009, the Heroes Earnings Assistance and Relief Tax Act of 2008; and section 414(u) of the Code. For this purpose, an Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the University up to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the University had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, 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). Also for this purpose, effective January 1, 2009, an Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code who receives a differential wage payment within the meaning of Section 414(u)(12)(D) from the Employer will be treated as an Employee of the Employer and the differential wage payment will be treated as Compensation and Includible Compensation.

**Section 4.05. Eligible Rollover Contributions to the Plan.**

(a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions will be made in the form of cash only, not in-kind. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. The Plan will accept a rollover contribution to a Roth Accumulation Account only if it is a direct rollover from another Roth Accumulation Account under an applicable retirement plan described in section 402A(e)(1) of the Code and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.

(b) **Eligible Rollover Distribution.** For purposes of Section 4.05(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (i) any installment payment for a period of 10 years or more, (ii) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (iii) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. An eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) **Separate Accounts.** The Vendor will establish and maintain for the Participant a separate Rollover Account for any eligible rollover distribution paid to the Plan. Rollover Contributions to the Plan are subject to the distribution restrictions under Article VIII.

## **ARTICLE V.**

### **LIMITATIONS ON CONTRIBUTIONS**

**Section 5.01. Basic Annual Limitation for Elective Deferrals.** Except as provided in Sections 5.02 and 5.03, the maximum amount of Elective Deferrals contributed to the Plan for any calendar year will not exceed the applicable dollar amount for the calendar year. The applicable dollar amount is the amount established under section 402(g)(1)(B) of the Code, which is \$15,500 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under section 402(g) of the Code.

**Section 5.02. Special Section 403(b) Elective Deferral Catch-up Limitation for Grandfathered Employees With 15 Years of Service.**

(a) This Section is only applicable to those "qualified employees" who are utilizing the special catch-up limit described in this Section 5.02 as of December 31, 2008. For purposes of this Section 5.02, a "qualified employee" means an Employee who has completed at least 15 Years of Service taking into account only employment with the University and who is utilizing this special catch-up limit as of December 31, 2008.

(b) Because the University is a "qualified organization" (within the meaning of section 1.403(b)-4(c)(3)(ii) of the Income Tax Regulations), the applicable dollar amount under Section 5.01 for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:

- (1) \$3,000;
- (2) The excess of:
  - (i) \$15,000, over
  - (ii) The total special 403(b) catch-up Elective Deferrals made for the qualified employee by the University for all prior years of employment with the University; or
- (3) The excess of:
  - (i) \$5,000 multiplied by the number of Years of Service of the qualified employee with the University, over
  - (ii) the total Elective Deferrals made for the qualified employee through the University for prior years.

**Section 5.03. Age 50 Catch-up Elective Deferrals.** A Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals is \$5,000 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under section 414(v) of the Code.

**Section 5.04. Elective Deferral Catch-up Provision Coordination.** Elective Deferrals in excess of the limitation set forth in Section 5.01 will be allocated first to the special 403(b) catch-up under Section 5.02 (if applicable) and next as an age 50 catch-up contribution under Section 5.03 (if applicable).

**Section 5.05. Special Rule for a Participant Covered by Another Defined Contribution Plan.** For purposes of this Article V, if the Participant is or has been a participant in one or more other plans under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans will be considered as one plan for purposes of applying the foregoing limitations of this Article V. For this purpose, the Administrator will take into account any other such plan maintained by any Related Employer and will also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Employer will be taken into account for purposes of Section 5.02 only if the other plan is a section 403(b) plan.

**Section 5.06. Correction of Excess Elective Deferrals.**

(a) If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds these limitations when combined with other amounts deferred by the Participant under another plan of the University under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of the applicable limitations (adjusted for any income or loss in value, if any, allocable thereto), will be distributed to the Participant. If a Participant who made both Pre-Tax Elective Deferrals and Roth Elective Deferrals for a calendar year has excess amounts for that year, unless the Individual Agreements provide otherwise, the excess amounts will be distributed out of the Roth Accumulation Account unless the Participant elects to instead have the excess amounts distributed out of the Pre-Tax Accumulation Account.

(b) Notwithstanding Section 5.06(a), to the extent that the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above only when combined with other amounts deferred by the Participant under a plan of a Related Employer, then the plan of the Related Employer is responsible for distributing the excess amounts for the year.

**Section 5.07. Annual Additions Limitation.**

(a) Notwithstanding any provision of the Plan to the contrary, annual additions to the Plan and to any other section 403(b) plan (or, if required by section 415 of the Code and Income Tax Regulations thereunder, to any other defined contribution plan) for a Participant will not exceed the limitation set forth in section 415(c) of the Code, except to the extent permitted under section 414(v) of the Code.

(b) The limitation on annual additions set forth in section 415(c) of the Code for any calendar year is the lesser of:

- (1) \$40,000, adjusted for cost-of-living to the extent provided under section 415(d) of the Code; or
- (2) 100% of the Participant's Includible Compensation.

(c) For purposes of this Section, "annual addition" has the meaning provided in section 415(c) of the Code, as modified by sections 415(l)(1) and 419A(d)(2) of the Code. In general, section 415(c) of the Code defines the annual addition as the sum of the following amounts credited to a Participant's Accounts for any calendar year under this Plan and to any section 403(b) plan (or, if required by section 415 of the Code and the Income Tax Regulations thereunder, to any other defined contribution plan): (i) University contributions; (ii) employee contributions; and (iii) forfeitures. Annual additions will not include: (i) any Elective Deferrals made by a Participant who is age 50 or older in accordance with, and subject to, section 414(v) of the Code; (ii) excess Elective Deferrals distributed in accordance with section 1.402(g)-1(e)(2) of the Income Tax Regulations; or (iii) rollover contributions. Annual additions will include:

- (1) amounts allocated to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the University or a Related Employer, or both (as applicable); and
- (2) if aggregation is required, mandatory employee contributions to a defined benefit plan maintained by the University, unless the contributions are "picked-up" by the University pursuant to section 414(h)(2) of the Code.

**Section 5.08. Excess Annual Additions.** Excess annual additions will be allocated to an excess annual additions account under the Annuity Contract or Custodial Account in accordance with sections 1.403(b)-3(b)(2) and 1.403(b)-4(f)(2) of the Income Tax Regulations for the year of excess and each year thereafter. Excess annual additions due only to aggregation with a Related Employer's plan shall be treated as an excess annual addition to that other plan.

**ARTICLE VI.**

**VESTING**

A Participant (or in the event of the Participant's death, the Beneficiary) will always be 100% Vested in his or her Account(s) at all times.

## ARTICLE VII.

### LOANS

**Section 7.01. Loans.** Loans will be permitted under the Plan in accordance with section 72(p) of the Code to the extent (i) that the Vendor has been approved by the Administrator to offer loans with respect to its Funding Vehicles and (ii) permitted by the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured. Loans will be subject to separate loan procedures issued by the University as well as any issued by the Vendor under the Plan; provided, however, that (a) no loans are permitted for former Employees who have had a severance from employment with the University, (b) a Participant may not have more than one loan outstanding at any time, (c) a Participant who has defaulted on a loan will not be entitled to a future loan under the Plan. Participants may be charged a reasonable processing fee per loan.

**Section 7.02. Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable Federal and State law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, unless otherwise delegated under separate agreement, the Administrator will take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 7.03, including the collection of information from Vendors and Former Vendors, and transmission of information requested by any Vendor or Former Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the University. The Administrator will also take such steps as may be appropriate to collect information from Vendors and/or Former Vendors, and to transmit any information to any Vendor or Former Vendor, concerning any failure by a Participant to timely repay any loans made to a Participant under the Plan or any other plan of the University.

**Section 7.03. Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of:

(a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or

(b) one half of the value of the Participant's Vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 7.03, any loan from any other section 403(b) plan maintained by the University will be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan will be considered a Vested interest under this Plan; provided, however, that the provisions of this paragraph will not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.



## ARTICLE VIII.

### ACCOUNT DISTRIBUTIONS

#### **Section 8.01. Distribution of Elective Deferrals.**

(a) A Participant may request a distribution of Elective Deferrals from his or her Account at such time that the Participant has a severance from employment within the meaning of section 1.403(b)-2(b)(19) of the Income Tax Regulations, dies, becomes Disabled, attains age 59½, or has a financial hardship as set forth in Section 8.05.

(b) The distribution restrictions in Section 8.01(a) do not apply to Elective Deferrals to the Plan prior to January 1, 1989 (not including earnings thereon) provided such Elective Deferrals are separately accounted for under the Plan.

(c) Participants may elect to have either Roth Elective Deferrals or Pre-Tax Elective Deferrals distributed from the Plan first. Unless provided otherwise under the Individual Agreements, if the Participant fails to make an election, Pre-Tax Elective Deferrals will be distributed from the Plan first.

(d) Effective January 1, 2009, for purposes of this Section 8.01 only, a Participant will be treated as having had a severance from employment during any period the Participant is performing service in the uniformed services described in section 3401(h)(2)(A) of the Code. Effective January 1, 2009, if a Participant performing service in the uniformed services described in section 3401(h)(2)(A) of the Code receives a distribution under the Plan pursuant to this subsection, the Participant may not make Elective Deferrals to the Plan for the six month period beginning on the date of the distribution.

(e) Distributions will otherwise be made in accordance with the terms of the Individual Agreements.

**Section 8.02. Forms of Payment.** A Participant may elect to receive his or her Account under any payment option available under and subject to the terms and conditions of the Individual Agreements.

**Section 8.03. Small Account Balances.** The terms of the Individual Agreement may permit distributions to be made in the form of a lump sum payment without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed \$1,000 (determined without regard to any separate Account that holds Rollover Contributions).

**Section 8.04. Minimum Distributions.** For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions will be made in accordance with the provisions of section 1.408-8 of the Income Tax Regulations, except as provided in section 1.403(b)-6(e) of the Income Tax Regulations. Notwithstanding the preceding sentence, each Vendor will

separately comply with the minimum distribution requirements under section 401(a)(9) of the Code and the regulations thereunder with respect to its Funding Vehicles under the Plan.

**Section 8.05. Hardship Withdrawals.**

(a) Hardship withdrawals of Elective Deferrals will be permitted under the Plan for financial hardship in accordance with (i) the safe harbor rules under sections 1.401(k)-1(d)(3)(iii)(B) and 1.401(k)-1(d)(3)(iv)(E) of the Income Tax Regulations, or (ii) in accordance with the general rule that the distribution both is made on account of an immediate and heavy financial need of the employee and is necessary to satisfy that financial need. However, a hardship withdrawal will be permitted only to the extent (i) that the Vendor has been approved by the Administrator to permit hardship withdrawals with respect to its Funding Vehicles and (ii) permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship. However, notwithstanding the prior provisions of this Section, hardship withdrawals shall be available to a Participant for a financial hardship only if the hardship is incurred by the Participant who is at the time of the hardship withdrawal, an Employee, the Participant's spouse, the Participant's tax dependent, or the Participant's domestic partner established pursuant to the University's Domestic Partner Benefit Program Policy if the partner is the Participant's Beneficiary, and only if permitted by the Vendor and the Funding Vehicle. Hardship distributions will not be allowed for events eligible for reimbursement or payment by insurance. The Participant will be required to provide evidence of the reason for the hardship and the amount of the hardship.

(b) No Elective Deferrals and no additional hardship withdrawals will be allowed under the Plan during the six month period beginning on the date the Participant receives a distribution on account of hardship. Participants are required to complete a new Salary Reduction and/or Redirection Agreement in accordance with Section 4.01 following the end of the six month suspension.

(c) The Individual Agreements will provide for the exchange of information among the University and the Vendors and/or the Former Vendors to the extent necessary to comply with the hardship rules, including the Vendor and/or Former Vendor notifying the University of the withdrawal in order for the University to implement the resulting six month suspension of the Participant's right to make Elective Deferrals under the Plan.

(d) Participants may be charged a reasonable processing fee per hardship withdrawal.

(e) Hardship withdrawals will also be subject to any hardship procedures issued by the University.

**Section 8.06. Death Benefits.** If a Participant dies before the entire distribution of his or her Account has been made, his or her remaining Account, if any, will be distributed to his or her Beneficiary as soon as administratively feasible after the Participant's death, unless the Beneficiary elects a later payment date on the appropriate form as designated and furnished by

the Vendor, subject to the minimum distribution requirements of section 401(a)(9) of the Code and regulations thereunder. A Beneficiary may elect to receive the deceased Participant's Account under any payment option available under and subject to the terms and conditions of the Individual Agreements.

**Section 8.07. Rollover Distributions from Pre-Tax Accumulation Accounts or Roth Accumulation Accounts.**

(a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

(b) Each Vendor will be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

(c) A direct rollover of a distribution from a Roth Accumulation Account under the Plan will only be made to another Roth Accumulation Account under an applicable retirement plan described in section 402A(e)(1) of the Code or to a Roth IRA described in section 408A of the Code, and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.

**ARTICLE IX.**

**TRANSFERS**

**Section 9.01. Permissive Service Credit Transfers.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan; provided, however, that no portion of the Participant's Account Balance attributable to Roth Elective Deferrals may be transferred under this Section. A transfer under this Section may be made before the Participant has had a severance from employment.

(b) A transfer may be made under this Section only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

**Section 9.02. Plan-to-Plan Transfers to the Plan.**

(a) The Administrator may permit a transfer of assets to the Plan as provided in this Section for an Employee who is a Participant in this Plan, and who is a participant or beneficiary in another plan under section 403(b) of the Code. Such a transfer is permitted only if the other plan provides for the direct transfer of the person's entire interest therein to the Plan. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with section 1.403(b)-10(b)(3) of the Income Tax Regulations and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.

(b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.

(c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that (1) the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan and (2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Article V.

**Section 9.03. Plan-to-Plan Transfers from the Plan.**

(a) The Administrator may permit a Participant or Beneficiary to elect to have all or any portion of his or her Account Balance transferred to another plan that satisfies section 403(b) of the Code in accordance with section 1.403(b)-10(b)(3) of the Income Tax Regulations. A transfer is permitted under this Section only if the Participant or Beneficiary: (i) is an employee or former employee of the employer under the receiving plan, and (ii) the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participant and Beneficiary, and (iii) each Participant and Beneficiary will have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred, less any applicable and reasonable fees charged under the receiving plan.

(b) The other plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the other plan shall impose restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan.

(c) Upon the transfer of assets under this Section, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to section 1.403(b)-10(b)(3) of the Income Tax Regulations.

## **ARTICLE X.**

### **INVESTMENT OF CONTRIBUTIONS**

**Section 10.01. Manner of Investment.** All Elective Deferrals, Rollover Contributions, or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights will be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account will provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

**Section 10.02. Investment of Contributions.** Each Participant or Beneficiary will direct the investment of his or her Account among the Investment Options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations in accordance with Section 10.03; provided, however, that transfers are not permitted between the Participant's Roth Accumulation Account, Pre-Tax Accumulation Account, and Rollover Account.

**Section 10.03. Investment Changes.** A Participant or Beneficiary is permitted to change the investment of his or her Account among the Investment Options available under the Plan, subject to the terms of the Individual Agreements. 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; provided, however, that a Participant who is an Employee is permitted to change the investment of his or her Account from an investment with a Former Vendor to an Investment Option with a current Vendor. A change of investment of a

Participant's Account among the Vendors under the Plan (or from a Former Vendor to a current Vendor) must satisfy the conditions of this Section:

(a) the Participant or Beneficiary has an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both Annuity Contracts or Custodial Accounts immediately before the exchange); and

(b) the Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

**Section 10.04. Current Vendors.** The Administrator will maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan and set forth in Appendix A. Each Vendor and the Administrator will exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

**Section 10.05. Former Vendors.** The University will make a good faith reasonable effort to enter into an information sharing agreement with each Former Vendor to the extent that any existing agreement with that Former Vendor does not already provide for such information sharing on a continuing basis. The agreement will provide for mutual sharing of the following information:

(a) Information necessary for the resulting Annuity Contract or Custodial Account, or any other Annuity Contract or Custodial Account to which contributions have been made by the University, to satisfy section 403(b) of the Code, including the following: (i) the University providing information as to whether the Participant's employment with the University is continuing, and notifying the Former Vendor when the Participant has had a severance from employment (for purposes of the Plan benefit distribution restrictions); (ii) the Former Vendor notifying the University of any hardship withdrawal if the withdrawal results in a six month suspension of the Participant's right to make Elective Deferrals under the Plan; and (iii) the Former Vendor providing information to the University or other Vendors or Former Vendors concerning the Participant's or Beneficiary's Annuity Contracts or Custodial Accounts (to enable a Vendor or Former Vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the Plan's hardship withdrawal rules); and

(b) Information necessary in order for the resulting Annuity Contract or Custodial Account and any other Annuity Contract or Custodial Account to which contributions have been made for the Participant by the University to satisfy other tax requirements, including the following: (i) the amount of any Plan loan that is outstanding to the Participant in order for a Vendor or Former Vendor to determine whether an additional Plan loan satisfies the applicable loan limitations, so that any such additional loan is not a deemed distribution under section 72(p)(1) of the Code; and (ii) information concerning the Participant's or Beneficiary's after-tax employee

contributions in order for a Vendor or Former Vendor to determine the extent to which a distribution is includible in gross income.

## **ARTICLE XI.**

### **PLAN ADMINISTRATION**

#### **Section 11.01. Administrator.**

(a) The Administrator will have the authority to control and manage the operation and administration of the Plan and will be the named fiduciary of the Plan. The Administrator is authorized to accept service of legal process.

(b) The Administrator will have such power and authority (including discretion with regard to the exercise of that power and authority) as may be necessary, advisable, desirable, or convenient to enable the Administrator to carry out its duties under the Plan. By way of illustration and not limitation, the Administrator is empowered and authorized:

(1) to make rules and regulations with respect to the Plan not inconsistent with the Plan or the Code, and to amend or rescind such rules and regulations;

(2) to determine, consistently therewith, all questions of law or fact that may arise as to the eligibility, benefits, status, and rights of any person claiming benefits or rights under the Plan, including without limitation, Participants, former Participants, surviving spouses of Participants, Beneficiaries, Employees, and former Employees;

(3) to direct the Vendors to make payments to Participants, their Beneficiaries, and other persons as the Administrator may determine pursuant to the terms of the Plan;

(4) subject to and consistent with the Code, to construe and interpret the Plan and to determine all questions of fact or law arising hereunder; and

(5) to correct any defects, supply any omissions, or reconcile any inconsistencies in the Plan to such extent as the Administrator deems expedient.

(c) Any action by the Administrator which is not found to be an abuse of discretion, will be final, conclusive, and binding on all individuals affected thereby. The Administrator may take any such action in such manner and to such extent as the Administrator, in its sole discretion, may deem expedient.

(d) Benefits are payable under the Plan only if the Administrator, in its sole discretion, determines the benefits are payable under the provisions of the Plan.

**Section 11.02. Delegation by Administrator.**

(a) The Administrator may from time to time delegate in writing to a committee or any duly authorized officer or a Third Party Administrator certain of its fiduciary duties or other responsibilities under the Plan. Any such committee or officer delegated fiduciary duties will 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 will have the same power and authority with respect to such delegated fiduciary or other responsibilities as the Administrator has under the Plan. The Administrator will not be liable for any act of omission of such fiduciary in carrying out such responsibilities.

(b) The Administrator has designated the Human Resources Department on the University's Macomb campus to oversee (i) initiating payroll reductions, (ii) sending Plan contributions for each Participant to the Third Party Administrator or the Vendor selected by the Participant, and (iii) for performing other administrative duties for the operation of the Plan.

(c) The Administrator has designated the Vendors to be responsible for (i) providing information to Participants regarding enrollment, investment options, and performance; (ii) processing contributions, withdrawal requests, transfers, and changes in investment options; (iii) providing record keeping services and (iv) such other services as provided for under agreements between the Vendors and the University.

(d) The University may designate a Third Party Administrator responsible for any or all of the following duties: common remittance of contributions across Vendors; monitoring contribution limits (basic and catch-ups, as applicable); directing the cessation and/or refund of excess contributions; authorizing hardship distributions across Vendors and Former Vendors, as specified by the Plan and the Code; authorizing loans across Vendors and Former Vendors, as specified by the Plan, the Code, and any applicable loan procedures; tracking loan repayment across Vendors and Former Vendors and notifying the Administrator, Participants, Vendors and Former Vendors of loan defaults; and approving distributions across Vendors and Former Vendors.

**Section 11.03. Employment of Consultants.** The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

**Section 11.04. Requests for Information Concerning Eligibility, Participation and Contributions.** Requests for information concerning eligibility, participation, contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the Administrator of the Plan. If a written request is denied, the Administrator shall, within a reasonable period of time, provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Administrator and may submit issues and comments in writing to the Administrator. The Administrator shall provide to the Participant a written decision upon such request for review of a denied claim.



**Section 11.05. Requests for Information Concerning Annuity Contracts and Custodial Accounts.** Requests for information concerning the Annuity Contracts and Custodial Accounts and their terms, conditions, and interpretations thereof, claims thereunder, any requests for review of such claims, and service of legal process, should be in writing and directed to the Vendor. If a written request is denied, the Vendor shall, within a reasonable period of time, provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Vendor and may submit issues and comments in writing to the Vendor. The Vendor shall provide to the Participant a written decision upon such request for review of a denied claim.

**Section 11.06. Plan Expenses.** All reasonable expenses of administering the individual Accounts in the Plan will be charged against and paid from the Participants' Accounts, subject to the terms of the Funding Vehicles, and unless paid by the University.

## **ARTICLE XII.**

### **AMENDMENT AND PLAN TERMINATION**

**Section 12.01. Termination of Contributions or Plan.** The University has adopted the Plan with the intention and expectation that contributions and this Plan will be continued indefinitely. However, the University has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time or completely terminate the Plan, without any liability hereunder for any such discontinuance or termination, by resolution of the Board.

**Section 12.02. Amendment.** The University reserves the authority to amend this Plan at any time. Amendments shall be recommended by the Committee and Benefits Manager and approved by the Vice President for Administrative Services.

**Section 12.03. Distribution upon Termination of the Plan.** The University may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the University and any Related Employer on the date of termination do not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Income Tax Regulations.

## **ARTICLE XIII.**

### **MISCELLANEOUS**

**Section 13.01. Non-Assignability.** Except as provided below for a domestic relation order or IRS levy, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary will have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

**Section 13.02. Domestic Relation Orders.** Notwithstanding Section 13.01, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance will be paid in the manner and to the person or persons so directed in the domestic relations order to the extent that it is a "qualified domestic relations order" ("QDRO") under section 414(p) of the Code. Such payment will be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan, but is subject to the terms of the Individual Agreements. A separate account or accounts shall be established for the Alternate Payee pursuant to the QDRO, until the account(s) is distributed. The Vendor(s) will establish reasonable procedures for determining the status of any such decree or order as a QDRO and for effectuating distribution pursuant to the QDRO. A participant may be charged a reasonable processing fee per domestic relations order.

**Section 13.03. IRS Levy.** Notwithstanding Section 13.01, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**Section 13.04. Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Employment Tax Regulations thereunder), except to the extent that it is a Qualified Distribution. A payee will provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

**Section 13.05. Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator or the Vendor, benefits will be paid to such person as the Administrator or Vendor may designate for the benefit of such Participant or Beneficiary. Such payments will be considered a payment to such Participant or Beneficiary and will, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**Section 13.06. Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) will be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the University.

**Section 13.07. Procedure When Distributee Cannot Be Located.** The Administrator will make all reasonable attempts to determine the identity and address of a Participant or a

Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the University's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within six months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Funding Vehicle will continue to hold the benefits due such person.

**Section 13.08. Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code.

**Section 13.09. Governing Law.** The Plan will be construed, administered and enforced according to the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Illinois without regard to conflict of law principles.

**Section 13.10. Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

**Section 13.11. Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

**Section 13.12. 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, except to the extent that the contribution is a Roth Elective Deferral. 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 13.13. Erroneous Payments.** If the Vendor makes any payment that, according to the terms of the Plan and the benefits provided thereunder, should not have been made, the Vendor may recover that incorrect payment by whatever means necessary, whether or not it was made due to the error of the Administrator or the 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 Vendor may deduct it when making any future payments directly to that Participant.

**Section 13.14. Limitation on Rights and Obligations.** Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor the purchase of any Annuity Contract or Custodial Account, nor any act or omission under the Plan or resulting from the operation of the Plan will be construed:

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

(b) as creating any responsibility or liability of the University for the validity or effect of the Plan;

(c) as a contract or agreement between the University and any Participant or other person;

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the University or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any Participant the right to be retained in the service of the University or to interfere with the right of the University to discharge any Participant or other person at any time; provided, however, that the foregoing will not be deemed to modify the provisions of any collective bargaining agreements which may have been entered into by the University with the bargaining representatives of any Participant.

**Section 13.15. Counterparts.** The Plan may be executed in any number of counterparts, each of which will be deemed to be an original. All counterparts will constitute but one and the same instrument and will be evidenced by any one counterpart.

IN WITNESS WHEREOF, the University has caused this Plan amendment and restatement to be executed by its duly authorized representative as of the date written below, but effective as of January 1, 2009.

**WESTERN ILLINOIS UNIVERSITY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

APPENDIX A  
PLAN VENDORS

The purpose of this Appendix A is to set forth the approved Vendors, as well as the Former Vendors, under the Plan. This Appendix A may be amended from time to time; provided, however, that any changes to approved Vendors under the Plan shall be effective on the date that the Board or person with authority to approve Vendors approves such changes, and not on the date of the amended Appendix A.

1.1 **Approved Vendors**

The University approves the following Vendors to provide Annuity Contracts and/or Custodial Accounts under the Plan:

American Funds Distributors, Inc.  
Fidelity Investment Tax Exempt Service  
IDS - Ameriprise Financial  
Putnam  
TIAA-CREF  
VALIC  
Vanguard

1.2 **Former Vendors**

Effective January 1, 2010, the Former Vendors under the Plan include the following:

American United Life/One America  
Equitable Life Assurance Society  
Lincoln National Life Insurance Co.  
John Hancock Life Insurance Co.  
Travelers

1.3 **Right to Add or Delete Vendors**

The current selection of Vendors is not intended to limit future additions or deletions of Vendors. The University reserves the right to add or delete Vendors at any time, in its sole discretion.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

# WESTERN ILLINOIS UNIVERSITY BOARD OF TRUSTEES

December 13, 2013

Resolution No. 13.12/2  
403(b) Vendors

**Resolution:**

**WHEREAS** the Western Illinois University Board of Trustees Regulations provide that the Board will adopt a supplemental retirement plan for the employees of the Board to be known as the Tax Deferred Supplemental Retirement Plan; and,

**WHEREAS** the Western Illinois University Board of Trustees Regulations provide for the Board to approve, suspend or remove vendors authorized to issue tax deferred supplemental retirement contracts under the Plan; and,

**WHEREAS** Western Illinois University does not contribute to or match contributions by participants to the Tax Deferred Supplemental Retirement Plan and neither Western Illinois University nor its participating employees bear any direct cost for administration of participant monies for the Tax Deferred Supplemental Retirement Plan; and,

**WHEREAS** Western Illinois University's Tax Deferred Supplemental Retirement Plan has two Plan vendors that have fallen below established limits by having less than ten participants for over two years:

**THEREFORE** be it resolved that the Western Illinois University Board of Trustees approves removal of Putnam and Ameriprise Financial/IDS from the list of approved Western Illinois University 403b Supplemental Retirement Plan Vendors for any new future business effective December 31, 2013.

Approved: December 13, 2013

Motion by: Trustee Carolyn Ehlert Fuller

Second by: Trustee Phil Hare

Vote: Yeas: 8 Nays: 0