

McGUIREWOODS

MEMORANDUM

TO: Charles Waldrup

FROM: Michael Hoes

CC: Jim Culbreth

DATE: October 15, 2008

RE: Significant 2008 Modifications to the Optional Retirement Program (the "ORP") of The University of North Carolina

This Memorandum accompanies a "redlined" version showing changes between the ORP as it was amended and restated effective January 1, 2007, (the "2007 ORP") and the draft proposed for amending and restating the ORP effective January 1, 2008 (the "2008 ORP").

The significant changes from the 2007 ORP to the 2008 ORP include the following new or substantially revised sections:

Section 1.02, Definition of Annual Additions – The definition of Annual Additions was revised to include language required by the final regulations for IRC Section 415.

Section 3.03, Timing of Participation Contributions – The ORP now includes a time limit on the crediting of employee contributions to their accounts. This is mandated by the final § 415 regulations, but is unlikely to have any operational effect if contributions are being timely credited.

Section 3.07, Maximum Additions – The annual contributions limit provisions now include required controlled group language, an express reference to adjustments for cost of living, an express reference to the IRC Section 401(a)(17) compensation limit, and a safe harbor definition of compensation for IRC Section 415 purposes. The revised Section 415 compensation definition includes provisions on the treatment of post-termination compensation, compensation from military service, foreign compensation, and back pay. It also clarifies items excluded from compensation.

Section 4.11, Rollover Distributions – The rollover provisions have been expanded as permitted by recent guidance to permit nonspousal rollovers to IRAs, as well as direct rollovers to Roth IRAs.

Section 6.02, Termination of the Plan – The ORP now includes a quantitative definition of a partial termination.

APPENDIX K

OPTIONAL RETIREMENT PROGRAM
OF
THE UNIVERSITY OF NORTH CAROLINA

As Amended and Restated
Generally Effective January 1, ~~2007~~2008

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INTRODUCTION

The University of North Carolina adopted an Optional Retirement Program (the "Plan") effective January 14, 1972. The Plan was implemented pursuant to Internal Revenue Code ("IRC") Section 403(b), requiring both employer and participant contributions.

Effective July 1, 1985, the Plan was amended to comply with IRC Sections 403(a) and 414(h), and was subsequently amended and restated effective July 1, 1989.

The Plan was amended further effective July 1, 1995. The Plan provisions in effect immediately prior to the July 1, 1995 amendments remain in effect for those Participants who were not actively employed by the participating Employing Institutions at any time after July 1, 1995, and the assets held under the Contracts continue to be held pursuant to the Plan.

Effective July 1, 1999, the Plan was amended and restated to include mutual funds as Plan investments, and said mutual funds are held in trust pursuant to IRC Section 401(a).

Effective January 1, 2007, the Plan was amended and restated.

It is intended that this amended and restated Plan, together with the Contracts and Investment Funds, meet all the requirements of the IRC, and the Plan shall be interpreted, wherever possible, to comply with the terms of the IRC and all formal regulations and rulings issued under the IRC and amendments thereto. The Plan is established under N.C.G.S. Section 135-5.1 et. seq.

Effective January 1, ~~2007~~**2008**, the Plan, as amended and restated, has the terms and provisions hereinafter set forth. **The amended and restated Plan is intended to comply with the final regulations of IRC 415.** The Plan provisions in effect immediately prior to the effective date of this amended and restated Plan remain in effect for those Participants who were not actively employed by the Employing Institutions at any time after the effective date of this amended and restated Plan.

ARTICLE I

DEFINITIONS

As used herein, unless otherwise required by the context, the following words and phrases shall have the meanings indicated:

1.01 "Adjustment" means the net increases and decreases in the market value of the Investment Fund during a Plan Year or other period exclusive of any Contribution during such year or other period. Such increases and decreases shall include such items as realized or unrealized investment gains and losses and investment income and may include expenses of administering the Investment Fund and the Plan.

1.02 "Annual Additions" means for any Participant in any Limitation Year, the sum of (a) Contributions made by the Employing Institution, (b) Contributions made by the Participant and (c) such other amounts as may be applicable pursuant to IRC Sections 415(c)(2) and 419(e). **Annual Additions includes any forfeitures allocated to a Participant's account, but does not include any direct transfer of a benefit from another qualified plan, a rollover contribution, or a restorative payment. Any includable amount is considered an Annual Addition for a Limitation Year if it is allocated to the Participant's account under the terms of the Plan as of any date within that Limitation Year.**

1.03 "Beneficiary" means any person designated by a Participant or otherwise entitled to receive benefits that may become payable hereunder after the death of such Participant.

1.04 "Board" means the Board of Governors of The University of North Carolina.

1.05 "Compensation" means, for any Employee, total earnings, prior to withholding, as reported on Form W-2, paid to him or her by the Employing Institution as well as (a) any portion of said Employee's pay which would be due and payable had he or she not signed a salary reduction agreement in order to participate in a tax sheltered annuity program pursuant to IRC Section 403(b) and/or IRC Section 457(b), (b) any portion of an Employee's pay which is contributed by The University pursuant to IRC Section 414(h) and (c) any other amounts which the Employee could have elected to receive as cash in the current year as taxable income prior to having such amount contributed to a plan which is maintained pursuant to IRC Section 401(k) and in lieu of a non-taxable benefit under a plan which is maintained pursuant to IRC Section 125. Compensation shall exclude extraordinary compensation, such as the imputed value of group life insurance and any University Contributions to this or any other employee benefit program.

Effective for Plan Years commencing on or after January 1, 2007, the limit referenced in this Section 1.05 shall be two hundred twenty-five thousand dollars (\$225,000) (or such other adjusted amount as may be determined by the Secretary of Treasury pursuant to IRC Section 401(a)(17)).

1.06 "Contracts" means any type of annuity contract(s) issued by any Insurance Company to effect the purposes of the Plan.

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1.07 “Contributions” means payments as provided herein by The University and/or the Participants to an Insurance Company or Trustee for the purpose of providing the benefits under this Plan.

1.08 “Core Retirement Plan” means a primary retirement plan which is sponsored by a Former Participant’s subsequent employer.

1.09 “Defined Contribution Plan” means a plan which is established and qualified under IRC Section 401(a) or 403(a), which provides for an individual account for each participant therein and for benefits based solely on the amounts contributed to each participant’s account and any income and expenses or gains or losses (both realized and unrealized) which may be allocated to such accounts.

1.10 “Effective Date” generally means January 1, ~~2007~~2008, for this Amended and Restated Plan or, if applicable, such later date as of which Employees of an Employing Institution shall be eligible to participate in the Plan. The original Effective Date was January 14, 1972.

1.11 “Eligible Service” means the completion of the number of months during a contract period of the Participant (which cannot exceed twelve (12) months) sufficient to satisfy the service requirement of such Participant’s employment contract for that contract period with an Employing Institution. A Participant who completes service during a contract period totaling less than the total months of such contract period shall be credited with Eligible Service as a fraction whose numerator is the number of months of completed service during the contract period and whose denominator is the number of months of that contract period. A Participant who fulfills at least a nine-month employment contract shall be credited with one (1) year of Eligible Service; therefore, Eligible Service shall not include employment at an Employing Institution as faculty during summer school, and in no event shall a participant be credited with more than one (1) year of Eligible Service for employment over a twelve (12) month period.

1.12 “Employee” means any of the administrators or faculty of The University, and, effective July 1, 2007, the North Carolina School of Science and Mathematics with the rank of instructor or above; field faculty of the Cooperative Agriculture Extension Service; the President and Senior Academic and Administrative Officers of The University who are appointed by the Board on the recommendation of the President of the University pursuant to N.C.G.S. 116-11(4), 116-11(5) and 116-14, or who are appointed by the Board of an Employing Institution upon the recommendation by the Chancellor of such institution pursuant to N.C.G.S. 116-40.22(b); and non-faculty instructional or research staff who are exempt from the State Personnel Act. For purposes of this Plan, Employee shall only include those employed in permanent job positions at least three-quarter (3/4) time for no less than nine (9) months per calendar year on a recurring basis.

1.13 “Employing Institution” means, collectively or individually, as the context may indicate, The University or any of the “Constituent Institutions” as that term is defined in N.C.G.S. Section 116-2.

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1.14 “Fiduciary” means The University, the Board, and any individual, corporation, firm, or other entity that has responsibility for the management of the Plan or the disposition of its assets.

1.15 “Forfeiture” means any amount held upon the termination of participation of a Participant which he or she is not entitled to receive as a distribution in accordance with the terms of Section 4.01.

1.16 “Former Participant” means a Participant whose participation in the Plan has terminated and who has not received payment from the Plan of his or her entire vested Individual Account.

1.17 “Individual Account” means the detailed record kept of the amounts credited or charged to each Participant in accordance with the terms hereof. Each Individual Account consists of a University Account and a Participant Account.

1.18 “Insurance Company” means any of the Teachers Insurance and Annuity Association-College Retirement Equities Fund, Lincoln National Life Insurance Company, Principal Life Insurance Company and AIG-VALIC, and such other entities as may be selected by the Board under Section 5.02.

1.19 “Investment Fund” means an Investment Fund described in Article V.

1.20 “IRC” means the Internal Revenue Code of 1986, as amended. Any reference to any section of the IRC shall be deemed to include any applicable regulations and rulings pertaining to such section and shall also be deemed a reference to comparable provisions of future laws.

1.21 “Like Retirement Plan” means a retirement plan of an institution or organization of higher education, including without limitation (i) teaching hospitals which train interns and residents and (ii) high schools which are part of the National Consortium for Specialized Secondary Schools of Mathematics, Science and Technology, in each case in which the Former Participant participates through one or more annuity contracts of Insurance Companies, or through the purchase of one or more Investment Funds from a Plan-approved Mutual Fund Company, with whom the Former Participant participated in the Plan, or in which he or she could have participated if the Former Participant had continued participation in the Plan.

1.22 “Limitation Year” means the twelve (12) month period beginning on January 1, and ending December 31.

1.23 “Mutual Fund Company” means, without limitation, Fidelity Investments and any other regulated investment company within the meaning of IRC Section 851(a) which issues only redeemable shares.

1.24 “N.C.G.S.” means the General Statutes of North Carolina, established by the North Carolina General Assembly and amended from time to time.

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1.25 “Participant” means any Employee who becomes a Participant as provided in Article II.

1.26 “Participant Account” means that portion of a person’s Individual Account attributable to (a) the Participant’s Contributions allocated to such Participant pursuant to Section 3.03 and (b) the Participant’s proportionate share of the Adjustments attributable to his or her Participant Account.

1.27 “Participant Contributions” means Contributions made by a Participant pursuant to Section 3.03.

1.28 “Plan” means the Optional Retirement Program of The University of North Carolina, as contained herein or as duly amended, including the Appendix (“The University of North Carolina Qualified Governmental Excess Benefit Arrangement”).

1.29 “Plan Administrator” means that person or persons who has been named by the President of The University to administer the Plan. If a Plan Administrator is not so appointed, the president of The University shall be deemed the Plan Administrator.

1.30 “Plan Year” means each twelve (12) month period beginning on January 1 and ending on December 31.

1.31 “Retires or Retired” means the status of a Former Participant who either:

(a) has announced in writing, in a form acceptable to the Employing Institution, that he or she has retired or has ceased indefinitely to be employed; or

(b) during the twelve (12) month period immediately following the end of participation in the Plan (1) has not actively become a common-law employee of a Subsequent Employer and (2) has not become enrolled in a timely manner in a Like Retirement Plan of a Subsequent Employer.

1.32 “Retirement System” means The Teachers’ and State Employees’ Retirement System of North Carolina.

1.33 “Subsequent Employer” means only the employer with whom the Participant commences employment service next following termination of his or her Eligible Service with an Employing Institution.

1.34 “Timely Enroll” or “Timely Enrollment” means formal enrollment in a Like Retirement Plan of a Subsequent Employer in the manner prescribed by the Subsequent Employer, provided that timely enrollment shall not include enrollment which has not been effected within twelve (12) months following termination of the Eligible Service in the Plan.

1.35 “Trust Agreement” means the agreement entered into between the Employing Institution and the Trustee. Trust Agreement shall include a custodial agreement entered into for the custody of Investment Funds.

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1.36 “Trustee” means the individual, individuals or financial institution, or a combination of them, designated in the Trust Agreement to hold in trust any assets of the Plan for the purpose of providing benefits under the Plan, and shall include any successor trustee to the trustee initially designated in the Trust Agreement. For purposes of this Plan, Trustee shall include any custodian who enters into a custody agreement to hold Investment Funds.

1.37 “University” and “The University” means The University of North Carolina.

1.38 “University Account” means that portion of a Participant’s Individual Account attributable to (a) the University Contributions allocated to such Participant pursuant to Section 3.02 and (b) the Participant’s proportionate share of the Adjustments attributable to his or her University Account.

1.39 “University Contributions” means Contributions made by the Employing Institution pursuant to Section 3.02.

1.40 “Valuation Date” means the last day of each Plan Year subsequent to the Effective Date, as of which date the Investment Fund shall be valued at fair market value. The Plan Administrator or its delegate may value the Investment Fund as of any other date as it deems desirable.

ARTICLE II

ELIGIBILITY AND PARTICIPATION

2.01 Eligibility.

(a) Eligible Employees shall within sixty (60) days of entering into eligible employment under Section 1.12 elect (i) to join the Retirement System in accordance with provisions of law applicable thereto or (ii) to participate in the Plan. This election shall be made in writing and shall be filed with the Retirement System and with the Employing Institution and shall be effective as of the date of entry into Eligible Service. An eligible Employee failing to elect to participate in the Plan at the time of entry into Eligible Service shall be enrolled automatically as a member of the Retirement System.

(b) Except as provided in Section 2.01(c), an election to participate in the Plan shall be irrevocable. The application of such irrevocable election under circumstances in which a Participant’s employment relationship with The University has been severed shall be made in accordance with N.C.G.S. Section 135-5.1(b)(3), pursuant to rules established by The University. Such rules shall be applied and administered for all Participants in a uniform and nondiscriminatory manner,. Except as provided in Section 2.01(c), a Participant’s election to participate in this Plan shall remain in effect for all of a Participant’s Eligible Service even if such Participant is re-employed by an Employing Institution after having ceased participation in the Plan following a termination of employment.

(c) The provisions of Section 2.01(b) notwithstanding, if a Participant (i) terminates employment with The University, (ii) receives a distribution of his or her

entire Individual Account under Section 4.05 and (iii) subsequently is rehired by the University in an eligible position, such Participant may elect upon rehire to again participate in this Plan by making a new election under Section 2.01(b).

(d) No election by an eligible Employee to participate in the Plan shall be effective unless it is accompanied by an appropriate application for the issuance of a Contract or Contracts, or by the selection of Investment Funds to be held in Trust, under the Plan, or both.

2.02 Participation. Each person who becomes a Participant shall remain a Participant as long as he or she is entitled to future benefits under the terms of the Plan as a Former Participant.

2.03 Special Rules.

(a) Transfers Within The University. A Participant whose position with an Employing Institution transfers from an eligible position to an ineligible position within the Plan and who does not receive a distribution of his or her entire Individual Account under Section 4.05 shall have his or her participation suspended, and vesting under Section 4.01 shall not resume until such Participant resumes employment with any Employing Institution in an eligible position.

(b) Determination of Status. The determination of whether a "lecturer" is eligible to participate in the Plan shall be made by the Employing Institution, based upon whether such Employing Institution considers the title "lecturer" equivalent to the rank of instructor or above.

(c) Re-employment by The University.

(i) A Participant who (A) becomes vested in his or her University Contributions under Section 4.01(b) or (d), (B) receives a distribution of his or her entire Individual Account, and (C) returns to employment with The University in a position that is eligible for participation in the Plan may elect, upon his or her rehire, to participate in the Plan as provided in section 2.01(c). If the rehired Participant so elects, such Participant shall immediately become eligible for University Contributions, and shall be fully-vested in any University Contributions that are made subsequent to his or her reemployment. A Participant with less than 5 years of Eligible Service who obtains employment with a Subsequent Employer and requests a rollover distribution of his or her entire Individual Account to the Like Retirement Plan as described in section 4.10 may return to employment with The University as a Participant but may not rollover such Participant's funds from the Like Retirement Plan to the Plan; however, such participant may re-enroll in this Plan as a new Participant as provided in Section 2.01(d).

(ii) A Participant who (A) becomes vested in his or her University Contributions under Section 4.01(b) or (d), (B) does not receive a distribution of his or her entire Individual Account, and (C) returns to employment with The

University in a position that is eligible for participation in the Plan, shall become enrolled in the Plan upon his or her reemployment. Such Participant shall immediately become eligible for University Contributions, and shall be fully-vested in any University Contributions that are made subsequent to his or her reemployment.

(iii) A Participant who (A) ceases employment with all Employing Institutions before he or she becomes fully vested in his or her University Contributions under Article IV, (B) receives a distribution of his or her entire Participant Account, and (C) subsequently becomes reemployed by an Employing Institution in an eligible position may elect, upon his or her reemployment, to participate in the Plan as provided in section 2.01(c). If the rehired Participant so elects, such Participant shall immediately become eligible for University Contributions, but such Participant's vesting in any University Contributions under Article IV shall only consider Eligible Service from the date of such Participant's reemployment by The University.

(iv) A Participant who (A) ceases employment with all Employing Institutions before he or she becomes fully vested in his or her University Contributions under Article IV, (B) does not receive a distribution of his or her entire Participant Account, and (C) subsequently becomes reemployed by an Employing Institution in an eligible position shall become enrolled in the Plan upon his or her reemployment. Such Participant shall immediately become eligible for University Contributions, but such Participant's vesting in any University Contributions under Article IV shall only consider Eligible Service from the date of such Participant's reemployment by The University.

2.04 Beneficiary Designation. Upon commencing participation, each Participant shall designate a Beneficiary on forms furnished by the Plan Administrator or its designee. Such forms shall be maintained in files held by the Plan Administrator or its delegate. From time to time, the Participant may change his or her Beneficiary by written notice to the Plan Administrator or the Plan Administrator's delegate. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under this Plan shall cease.

If no duly designated Beneficiary exists at the date of death of the Participant, or if the Beneficiary designated has died prior to the Participant, or if the Participant has revoked a prior designation in writing filed with the Plan Administrator or designee without having filed a new designation, then any death benefits which would have been payable to the Beneficiary shall be payable to the Participant's spouse, if living; if not living, equally to the Participant's children; or if none survive, then to the Participant's estate.

To the extent a Participant's interest in this Plan is invested in a Contract issued by an Insurance Company and such Contract has Beneficiary designation and/or payment procedures that are inconsistent with this Section 2.04, such Contract provisions shall apply so long as they do not affect the qualified status of the Plan.

2.05 Notification of Individual Account Balance. After the close of each Plan Year or more frequently as determined by the Plan Administrator or as required by law, the Plan Administrator or its delegate shall notify each Participant of the amount of his or her share in the Adjustments and Contributions for the Plan Year (or other period) just completed and of the new balance of his or her Individual Account.

ARTICLE III

CONTRIBUTIONS AND ALLOCATIONS

3.01 Individual Accounts.

(a) The Plan Administrator or its delegate shall establish and maintain an Individual Account comprised of a University Account and a Participant Account in the name of each Participant to which the Plan Administrator or its delegate shall credit all amounts allocated with respect to each such Participant pursuant to the following Sections of this Article III.

(b) To the extent authorized or required under the Plan, the Employing Institution and the Participant shall contribute toward the purchase of Contracts or deposit such contributions in the Trust (if applicable) on the Participant's behalf.

(c) Separate Accounts shall be maintained for all Participants who have an interest in the Plan. Such separate Accounts shall not require a segregation of the Investment Fund assets and no Participant shall acquire any right to or interest in any specific asset of the Investment Fund as a result of the allocations provided for in the Plan. All allocations shall be made as of the Valuation Date referred to in this Article III.

3.02 University Contributions. During each Plan Year, each Employing Institution shall contribute on behalf of each Participant in the Plan a percentage of the Participant's Compensation, which percentage shall be adjusted from time to time pursuant to N.C.G.S. Section 135-5.1(c). University Contributions shall be made to the Plan contemporaneously with Participant Contributions.

3.03 Participant Contributions. During each Plan Year, each Participant shall cause to be contributed on his or her behalf the amount which he or she would be required to contribute if a member of the Retirement System. Consistent with IRC Section 414(h), Contributions authorized or required by the provisions of this Section on behalf of each Participant shall be made by salary reduction according to rules and regulations established by the Plan Administrator. **Participant Contributions shall be credited to a Participant's Individual Account no later than 30 days after the close of the Limitation Year for which the Contributions were made.**

3.04 Voluntary Before-Tax Contributions to Other Plans. Although not part of this Plan, additional personal contributions may also be made by a Participant by payroll deduction or salary reduction to an annuity or retirement income plan established by related North Carolina General Statutes and the applicable policies of the Employing Institution. Such contributions shall be made as permitted under IRC Sections 401(k), 403(b) or 457(b), and shall not be part of

this Plan. Payment of voluntary before-tax contributions shall be made by the Employing Institution of The University to the designated company or companies underwriting the annuities or providing investment alternatives for the benefit of each Participant.

3.05 Adjustment; Contract Gains and Losses.

(a) The Trustee shall determine the investment gains and losses under the Trust for the period elapsed since the last preceding Valuation Date. The allocation shall be made separately within the Investment Funds on the basis of the ratio between each Participant's or Former Participant's Individual Account invested in the Investment Funds and the total of all Participants' Individual Accounts invested in the Investment Funds at the Valuation Date. The Plan Administrator shall have the right to oversee the accounting to ensure that each Participant's or Former Participant's allocation is properly credited or debited, as the case may be, to his or her University Account and his or her Participant Account.

(b) Gains and losses in any Contract will be allocated to the Participant or Former Participant for whom the Contract is purchased.

(c) To the extent a Participant's or Former Participant's interest in this Plan is invested in a Contract issued by an Insurance Company, and such Contract or Trust shall have an allocation procedure which shall be inconsistent with this Section 3.05, such Contract or Trust provision shall apply so long as it will not affect the qualified status of the Plan.

3.06 Equitable Allocations. Should the Plan Administrator determine that the strict application of the accounting procedures utilized in the administration of the Plan will not result in an equitable and non-discriminatory allocation among the accounts of Participants, it may modify the procedures for the purpose of achieving an equitable and non-discriminatory allocation in accordance with the general concepts of the Plan and the provisions of this Article.

3.07 Maximum Additions. Anything herein to the contrary notwithstanding, the total Annual Additions made to the Individual Account of a Participant for any Limitation Year, when combined with any similar Annual Additions credited the Participant for the same period from another qualified Defined Contribution Plan maintained by the Employing Institution (or any other employer within the Employing Institution's controlled group within the meaning of IRC Section 414(b), or any employer within the group of employers that includes the Employer and who must be aggregated and treated as one employer pursuant to IRC 414(c), 414(m), or 414(o)), shall not exceed the lesser of Section 3.07(a) or Section 3.07(b) following:

(a) Forty-five thousand dollars (\$45,000~~46,000~~) (in 2007~~2008~~) or such other amount as may be allowed under IRC Section 415 (adjusted for cost of living pursuant to IRC Section 415(d)) and the regulations thereunder; and

(b) One hundred percent (100%) of the Participant's total non-deferred compensation received from the Employing Institution for such Plan Year, not to exceed the compensation limit of IRC 401(a)(17). For purposes of this paragraph,

“compensation” shall mean a Participant’s earned income, wages, salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with an Employer maintaining the plan. “Compensation” shall include any elective deferrals as defined in IRC Section 402(g)(3) and any amounts which are contributed or deferred by the Employer at the election of the Employee and which are not includible in the gross income of the Employee by reason of IRC Sections 125, 457(b), or 132(f). ~~125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).~~

“Compensation” shall include the following:

(i) Payments to an individual who does not currently perform services for any Employing Institution by reason of qualified military service (as that term is used in IRC Section 414(u)).

(ii) Any regular pay for services during the Participant’s regular working hours, compensation for services outside the Participant’s regular work hours (such as, overtime or shift differential), commissions, bonuses or other similar payments that would have been paid to the Participant had he not severed from service, but only if the payments are made within the later of 2 ½ months after severance of service or the end of the Plan Year that includes the date of severance. Compensation does not include any payments not described above such as, parachute payments and post-severance payments under a nonqualified deferred compensation plan.

(iii) Amounts earned for services rendered outside of the United States even if those amounts are not includible in gross income due to the location of the services and the amounts would be excluded from gross income under Sections 872, 893, 894, 911 and 933 of the IRC. However, any foreign compensation earned by a non-resident alien who is not a participant in the Plan is not treated as Compensation.

(iv) Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate an employee for lost wages are compensation within the meaning of the Section 415(c)(3) of the IRC for the Plan Year to which the back-pay relates, but only to the extent that such payments represent wages and compensation that would otherwise be included in compensation.

“Compensation” shall exclude the following:

(v) (i)-Employer contributions to a plan of deferred compensation to the extent such contributions are not included in gross income of the Employee to a Simplified Employee Pension plan and to the extent such contributions are deductible from a plan of deferred compensation whether or not includable in the gross income of the Employee when distributed;

(vi) (ii)-Amounts realized from the exercise of a non-qualified stock option, or realized when restricted stock (or property) held by an Employee

becomes freely transferable or is no longer subject to a substantial risk of forfeiture; and

(vii) ~~(iii)~~ Amounts realized from the sale, exchange, or other disposition of stock acquired under a qualified stock option.

(viii) Other amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in IRC Section 125).

(ix) Other items of remuneration that are similar to any of the items listed in paragraphs (b)(i) through (b)(iv) of this section.

Compensation for any Limitation Year is the compensation actually paid, made available, or includible in gross income during such year.

In the event a Participant is covered by one or more other Defined Contribution Plans maintained by the Employing Institution, the maximum Annual Additions under this Plan shall be decreased to the extent determined necessary by the Employing Institution, prior to the reduction of such other Defined Contribution Plan, to ensure that all such plans will remain qualified under the IRC.

In the event that as of any Valuation Date corrective adjustments in the Annual Addition to any Individual Account are required pursuant to this Section 3.07, the Participant Account shall be first reduced by the amount required to ensure compliance with this Section 3.07, and then the University Account. Any amounts consequently withheld or taken from a Participant's Individual Account shall be returned to the Participant within seventy-five days of the end of the Plan Year in which they were contributed to the Plan. Any amounts consequently withheld or taken from a Participant's University Account shall be segregated in a separate account and applied toward the Contribution of the University for the next Limitation Year. Upon termination of the Plan, amounts in the 415 suspense account may revert to the University, which shall then pay these amounts to the Teachers' and State Employees' Retirement System of North Carolina pursuant to N.C.G.S. Section 135-5.1(b)(5).

3.08 Contributions Required By The Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"). A Participant shall be allowed to make Participant Contributions for each year of Qualified Military Service in an amount no less than the amount as would have been required had the Participant not been in Qualified Military Service (as defined below), based on the Participant's Compensation as herein defined, provided the Participant entered such Qualified Military Service directly from the employ of the University and was timely reemployed by the University (as required by USERRA). The Participant requesting to make such Participant Contributions under this Section 3.08 shall be required to contribute such make-up Participant Contributions during the period which begins with the Participant's compliant reemployment with the University and extends for the lesser of (i) the product of three (3) times the period of Qualified Military Service and (ii) five (5) years.

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A University Contribution shall be made on behalf of any eligible Employee who makes a Participant Contribution under this Section 3.08 for each year of Qualified Military Service in an amount equal to the amount with which the Participant would have been credited (without regard to any adjustments) if he or she had not been in Qualified Military Service, based on his or her Compensation as herein defined.

An Employee who is in Qualified Military Service shall be treated as receiving Compensation during such period of Qualified Military Service equal to:

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

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

Any University Contributions made pursuant to this Section shall not be subject to any otherwise applicable limitations contained in IRC Sections 404(a), 402(g) or 415 with respect to the year in which the University Contributions are made; however, such University Contributions shall be subject to such limitations with respect to the year to which the University Contributions relate.

Qualified Military Service means any service in the uniformed services (as defined in Chapter 43, Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such services.

3.09 Rollovers and Transfers into the Plan. The Plan will not accept rollovers or other transfers of funds from any plan or arrangement qualified under IRC Section 401(a), 403, 408 or 457(b), except for transfers as permitted by the N.C.G.S. from the Retirement System.

ARTICLE IV

DISTRIBUTIONS

4.01 Vesting.

(a) A Participant shall always be one hundred percent (100%) vested in his or her Individual Account.

(b) A Participant shall become one hundred percent (100%) vested in his or her Individual Account balances attributable to University Contributions upon the completion of (5) full years of Eligible Service.

(c) A Participant shall become one hundred percent (100%) vested in his or her Account upon such Participant's death.

(d) A Participant who (i) ceases employment with all Employing Institutions before he or she completes five (5) full years of Eligible Service and (ii) becomes employed within twelve (12) months with a Subsequent Employer, (iii) Timely Enrolls in a Like Retirement Plan as the Participant's Core Retirement Plan and (iv) begins either to make contributions under annuity contracts of underwriting insurance companies previously subscribed or available under the Plan or to purchase Investment Funds previously available under the Plan, shall become fully vested in his or her Individual Account balances attributable to University Contributions on enrollment in such Like Retirement Plan.

4.02 Normal Retirement.

(a) The normal retirement date of a Participant shall be the first day of the month coinciding with or next following the first to occur of (a) the date on which a Participant attains the age of sixty-five (65) and the completion of five (5) Years of Eligible Service (b) the attainment of age sixty (60) and the completion of twenty-five (25) Years of Eligible Service, or (c) the completion of thirty (30) Years of Eligible Service.

(b) Upon the retirement of a Participant in accordance with the provisions of this Section 4.02, the balance of his or her Individual Account shall become payable, and the Plan Administrator shall, upon the instruction of the Participant, thereupon direct the Trustee or Insurance Company to distribute to such Participant such amount in accordance with Section 4.06.

(c) To the extent a Participant's interest in this Plan shall be invested in a Contract issued by an Insurance Company or an Investment Fund under the Trust Agreement, the Participant shall have the right to commence a benefit at such time as elected by such Participant, provided the election is in accordance with Section 4.08.

4.03 Delayed Retirement.

(a) In the event a Participant remains in the employ of the Employing Institution beyond his or her normal retirement date, he or she shall thereafter retire on his or her delayed retirement date. The delayed retirement date of a Participant shall be the first day of the month coinciding with or next following the actual date the Participant Retires.

(b) Upon the retirement of a Participant in accordance with the provisions of this Section 4.03, the balance of his or her Individual Account shall become payable upon request and the Plan Administrator shall thereupon direct the Trustee or Insurance Company to distribute to such Participant such amount in accordance with Section 4.07.

(c) To the extent a Participant's interest in this Plan shall be invested in a Contract issued by an Insurance Company, the Participant shall have the right to

commence a benefit at such time as elected by such Participant, provided the election is in accordance with Section 4.08.

4.04 Distributions upon Death.

(a) Death Before Retirement or Termination of Employment. Upon the death of a Participant before retirement or termination of employment, the value of such Participant's Individual Account as of the date of death of the Participant shall become payable and the Plan Administrator shall direct the Insurance Company(ies) or Trustee to distribute to such Participant's Beneficiary amounts in accordance with Section 4.06(b), with the Beneficiary being substituted for the Participant in such Section.

(b) Death After Retirement or Termination of Employment. Upon the death of a Former Participant who has elected to receive benefit payments in accordance with Section 4.06(b) or (c), to the extent there is a remainder to be paid to a Beneficiary based on the annuity option elected, such remainder shall be paid in accordance with the Contract, provided such remaining payment will not affect the qualified status of the Plan.

4.05 Distributions Upon Termination of Employment with The University.

(a) Distributions After Full Vesting. A Participant who Retires after becoming fully vested under Section 4.01 shall be entitled to receive his or her Individual Account, as adjusted in Section 3.05, in any manner permitted by the Contract or Investment Fund in which such Participant has invested his or her Individual Account.

(b) Distributions Before Full Vesting.

(i) A Participant who terminates employment with the University without being fully vested in his or her University Account, but who qualifies for continued vesting under Section 4.01(d), may receive a distribution of his or her entire Individual Account as soon as administratively possible following completion of any procedures required by the respective Insurer or Trustee.

(ii) A Participant who terminates employment with the University without becoming fully vested under Section 4.01 shall be entitled to receive a distribution of his or her Participant Account, upon request to the Plan Administrator. Distribution shall be made in any form permitted under the Plan.

4.06 Method of Payment.

(a) Application for Benefits. To receive a benefit under the Plan, the Participant, Former Participant, his or her Beneficiary, or next of kin (under the applicable state law) must make written application therefore on a form or forms provided by the Plan Administrator or its delegate. The Plan Administrator may require that there be furnished to it in connection with such application all information pertinent to any question of eligibility and the amount of any benefit.

(b) Normal Form for Contracts. The normal form of payment of benefits to a Participant who has selected one or more Insurance Contracts for the investment of his or her Individual Account under Section 5.02 shall be a life-only annuity unless the Participant elects payment in accordance with Section 4.06(c).

(c) Normal Form for Investment Funds Optional Form for Contracts; Investment Fund Distributions. A Participant, Former Participant, or Beneficiary may elect in writing to receive his or her distribution in a lump sum or an optional form of payment permitted by the Mutual Funds Companies and Investment Funds.

(d) Optional Form for Contracts. In lieu of receiving payment in accordance with Section 4.06(b), a Participant, Former Participant, or Beneficiary may elect in writing to receive his or her distribution in a lump sum or an optional form of payment provided by the Contract(s).

(e) Eligibility for Health Insurance – To the extent a Participant is otherwise eligible under N.C.G.S. Section 135-40 *et seq.* to purchase health insurance from the State of North Carolina upon being in pay status of a retirement benefit hereunder, the term “pay status” shall mean having Retired and receiving monthly retirement benefits of all or a portion of a Participant’s Individual Account.

4.07 Benefits to Minors and Incompetents.

(a) If a person entitled to receive payment under the Plan is a minor, the Plan Administrator, in its discretion and not inconsistent with any underlying Contract, may distribute such amount in any one or more of the following ways:

(i) by application thereof for the benefit of such minor;

(ii) by payment thereof to either a parent of such minor or to any adult person with whom such minor is at the time living or to any person who is legally qualified and is acting as guardian of the person or of the property of such minor; provided only that the parent or adult person to whom any amount is paid must advise the Plan Administrator in writing that he will hold or use such amount for the benefit of such minor.

(b) If it is found that a person who is entitled to receive payment under the Plan is physically or mentally incapable of personally receiving and giving a valid receipt for any payment due (unless prior claim therefore shall have been made by a duly qualified legal representative), such payment may be made to the spouse, son, daughter, parent, brother, sister, or other person deemed by the Plan Administrator to have incurred expense for such person otherwise entitled to payment.

4.08 Payment of Benefits. If a portion of a Participant’s Individual Account shall become due and payable pursuant to Article IV, and the Participant, in accordance with the provisions of the Plan, has not elected otherwise, any payment of benefits or commencement thereof to the Participant shall begin not later than sixty (60) days after the close of the Plan Year in which occurs the latest of:

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- (a) the Participant's having attained his or her normal retirement age as defined in Section 4.02;
- (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; and
- (c) the termination of service of the Participant.

4.09 Required Minimum Distributions. The following provisions of this Section 4.08 will take precedence over any inconsistent provisions of the Plan. All distributions required under the following provisions of this Section 4.08 will be determined and made in accordance with the IRC regulations under IRC Section 401(a)(9).

- (i) (A) The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "required beginning date."

(B) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

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

(4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subparagraph (B), other than clause (1), will apply as if the surviving spouse were the Participant.

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For purposes of this subparagraph (B) and paragraph (iii), distributions are considered to begin on the Participant's "required beginning date" (or, if clause (4) applies, the date distributions are required to begin to the surviving spouse under clause (1)). If distributions under an annuity purchased from any insurance company irrevocably commence to the Participant before the Participant's "required beginning date" (or to the surviving spouse before the date distributions are required to begin to the surviving spouse under clause (1)), the date distributions are considered to begin is the date distributions actually commence.

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

(ii) (A) During the Participant's lifetime, the minimum amount that will be distributed for each "distribution calendar year" is the lesser of:

(1) the quotient obtained by dividing the "Participant's account balance" by the distribution period in the Uniform Lifetime Table in section 1.401(a)(9)-9 of the IRC regulations, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(2) if the Participant's sole designated Beneficiary for the "distribution calendar year" is the Participant's spouse, the quotient obtained by dividing the "Participant's account balance" by the number in the Joint and Last Survivor Table in section 1.401(a)(9)-9 of the IRC regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the "distribution calendar year."

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

(iii) (A) (1) If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining life

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expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

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

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

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

(2) If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) (1) If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in subparagraph (A).

(2) If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

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(3) If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under paragraph (i)(B)(1), this subparagraph (B) will apply as if the surviving spouse were the Participant.

(iv) For purposes of this Section 4.08, the following words and phrases shall have the meanings indicated:

(A) Distribution calendar year – A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year that contains the Participant's "required beginning date." For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (i)(B). The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date." The required minimum distribution for other "distribution calendar years," including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year."

(B) Life expectancy – Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the IRC regulations.

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

(D) Required beginning date – The April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant Retires.

4.10 Re-Employment by The University as a Former Participant.

(a) If a Former Participant returns to Eligible Service at the University and has not received a distribution of his or her entire Individual Account under Section 4.05,

such Former Participant shall be reenrolled in this Plan upon re-employment by the University so long as such Former Participant is considered an "Employee" as described in Section 1.12 of the Plan. If such Former Participant returns to a position that is ineligible to participate in this Plan, such Former Participant shall not be eligible to enroll in this Plan upon re-employment.

(b) A Former Participant who terminated employment with less than 5 years of Eligible Service and returns to employment with The University after receiving a distribution under Section 4.05 shall not be permitted to transfer to this Plan any funds distributed under Section 4.05, but may elect to enroll in the Plan upon re-employment as provided in Section 2.01(c).

4.11 Rollover Distributions.

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section 4.11, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator or its designee and after becoming entitled to a distribution from the Plan, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. Such distribution may commence less than thirty (30) days after the notice required under Section 1.411(a)-11(c) of the IRC regulations is given, provided that (i) the Plan Administrator clearly informs the Participant that the Distributee has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (ii) the Distributee, after receiving the notice, affirmatively elects a distribution. Any distribution election must remain revocable until the later of the annuity starting date or the expiration of the seven (7) day period that begins the day after the explanation specified herein is provided.

(b) For purposes of this Section 4.11, the following definitions shall apply:

(i) Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: 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 specified period of ten (10) years or more; any distribution to the extent such distribution is required under IRC Section 401(a)(9); ~~and any distribution which is made upon hardship of the Employee.~~ **and any Participant Contribution returned to comply with IRC Section 415.** For purposes of the preceding sentence, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in IRC Section 408(a) or (b), or to a Defined Contribution Plan that agrees to separately account for amounts so transferred, including separately

accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(ii) Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in IRC Section 408(a), an individual retirement annuity described in IRC Section 408(b), **a Roth IRA described in IRC Section 408A**, an annuity plan described in IRC Section 403(a), a qualified retirement plan described in IRC Section 401(a), an eligible deferred compensation plan described in IRC Section 457(b) which is maintained by an eligible employer described in IRC Section 457(e)(1)(A) and which agrees to separately account for amounts transferred into such a plan from this Plan, or an annuity contract described in IRC Section 403(b), that accepts the Distributee's Eligible Rollover Distribution. The preceding definition of Eligible Retirement Plan also shall apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC Section 414(p). **In the case of a nonspouse beneficiary, an Eligible Retirement Plan is an individual retirement account described in IRC Section 408(a) or an individual retirement annuity described in IRC Section 408(b).**

(iii) Distributee: A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC Section 414(p), are Distributees with regard to the interest of the spouse or former spouse. **A nonspouse beneficiary is a Distributee for purposes of a Direct Rollover to an individual retirement account described in IRC Section 408(a) or an individual retirement annuity described in IRC Section 408(b).**

(iv) Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(c) The Individual Account of a Participant, who has been provided the notice specified in IRC Section 402(f) but who makes no election with regard to an Eligible Rollover Distribution within thirty (30) days of receiving such notice, shall be distributed directly to the Participant as soon thereafter as is practicable following such thirty (30) day period.

4.12 Claims for Benefits. All claims for benefits under the Plan shall be submitted in writing to the Plan Administrator. Within a reasonable period of time the Plan Administrator shall decide the claim by majority vote in the exercise of its sole and absolute discretion. Written notice of the decision on each such claim shall be furnished within 90 days after receipt of the claim; provided that, if special circumstances require an extension of time for processing the claim, an additional 90 days from the end of the initial period shall be allowed for processing the claim, in which event the claimant shall be furnished with a written notice of the extension prior to the termination of the initial 90-day period indicating the special circumstance requiring an extension. If the claim is wholly or partially denied, such written notice shall set forth an

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explanation of the specific findings and conclusions on which such denial is based. A claimant may review all pertinent documents and may request a review by the Plan Administrator of such a decision denying the claim. Such a request shall be made in writing and filed with the Plan Administrator within 60 days after delivery to said claimant of written notice of said decision. Such written request for review shall contain all additional information which the claimant wishes the Plan Administrator to consider. The Plan Administrator may hold any hearing or conduct any independent investigation which it deems necessary to render its decision, and the decision on review shall be made as soon as possible after the Plan Administrator's receipt of the request for review. Written notice of the decision on review shall be furnished to the claimant within 60 days after receipt by the Plan Administrator of a request for review, unless special circumstances require an extension of time for processing, in which event an additional 60 days shall be allowed for review and the claimant shall be so notified in writing. Written notice of the decision on review shall include specific reasons for such decision. For all purposes under the Plan, such decisions on claims (where no review is requested) and decisions on review (where review is requested) shall be final, binding and conclusive on all interested parties as to participation and benefit eligibility, the Participant's amount of Compensation and as to any other matter of fact or interpretation relating to the Plan.

4.13 Missing Payee. If the Plan Administrator cannot ascertain the whereabouts of any person to whom a payment is due under the Plan, and if, after 5 years from the date such payment is due, a notice of such payment due is mailed to the last known address of such person, as shown on the records of the Plan Administrator or The University, and within 3 months after such mailing such person has not made written claim therefore, the Plan Administrator, if it so elects, after receiving advice from counsel to the Plan, may direct that such payment and all remaining payments otherwise due to such person be delivered to the U.S. Department of Labor under the program established to locate missing participants, as such program is in effect at such time. Upon such delivery, the Plan shall have no further liability therefore

ARTICLE V

FUNDING

5.01 Contributions. Contributions by the Employing Institution and by the Participants as provided for in Article III shall be remitted to the Insurance Company and/or Trustees. All Contributions by the Employing Institution shall be irrevocable, except as herein provided, and may be used only for the exclusive benefit of the Participants, Former Participants, and their Beneficiaries.

5.02 Investment Funds. The Board or its designee shall designate the Insurance Companies from which Contracts are to be purchased and the Mutual Fund Companies and Investment Funds that the Trustees shall make available for Participants to choose for the investment of their Individual Accounts. The Board or its designee also shall select a default investment in which shall be invested the Individual Account of any Participant who fails to properly select among the available Investment Funds. In making these decisions, the Board or its designee shall give due consideration to the following:

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- (a) the nature and extent of the rights and benefits to be provided by these Contracts or Trust Agreement, for Participants and their Beneficiaries;
- (b) the relation of these rights and benefits to the amount of contributions to be made;
- (c) the suitability of these rights and benefits to the needs of the Participants and the interest of the institutions of The University in recruiting and retaining faculty in a national market;
- (d) the ability of the designated Insurance Company or Companies underwriting the annuity contracts and the Trustees to provide these suitable rights and benefits under such contracts or trust agreement for these purposes; and
- (e) the Plan's "investment policy statement", as in effect after adoption by the Board from time to time.

Notwithstanding the provisions of this Section, no contractual relationship established under the Plan pursuant to the authority granted by Chapter 338, North Carolina Session Laws of 1971, is deemed terminated by the provisions.

5.03 Investment Direction. A Participant may elect, in such manner and form as the Contracts or Investment Funds prescribe, to direct the investment of the amounts credited to his or her Participant Account in accordance with the rules established by the Plan or, if applicable by the Contracts or the Investment Funds. The Plan Administrator may change the rules for investment direction from time-to-time in its sole discretion.

5.04 Possession of the Contracts. Consistent with policies and procedures established by the Plan Administrator, a Participant investing in a Contract issued by an Insurance Company shall be assigned possession of such Contract by the Plan Administrator, and such Contract shall be delivered to such Participant. Such policies and procedures shall be communicated to Participants and to the Insurance Companies.

ARTICLE VI

AMENDMENT AND TERMINATION OF THE PLAN

6.01 Amendment of the Plan. The Board or its designee shall have the right at any time by action of the Board or its designee to modify, alter, or amend the Plan in whole or in part; provided, however, that the duties, powers, and liability of the Insurance Company(ies) or Trustees hereunder shall not be increased without their written consent; and provided, further, that the amount of benefits which at the time of any such modification, alteration, or amendment shall have accrued for any Participant, Former Participant or Beneficiary hereunder shall not be adversely affected thereby; and provided, further, that no such modification, alteration, or amendment shall have the effect of reverting in The University any part of the principal or income of any Participant's Individual Account.

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6.02 Termination of the Plan. The University expects to continue the Plan indefinitely, but continuance is not assumed as a contractual obligation, and The University reserves the right at any time by action of the Board of Governors to terminate the Plan. If The University terminates or partially terminates the Plan or discontinues authorization of Contributions at any time, each Participant affected thereby shall be then vested in the amount credited in his or her Individual Account. **If the turnover rate is at least 20 percent, a partial termination is presumed to have taken place unless such turnover is routine or other mitigating circumstances apply. The turnover rate is determined by dividing: (1) the number of Participants who had an employer-initiated severance from employment during the applicable period by (2) the sum of (a) the number of Participants at the start of the applicable period plus (b) the number of Employees who became Participants during the applicable period.**

In the event of the termination of the Plan by The University, the Plan Administrator or its delegate shall value the Investment Fund as of the date of termination. That portion of the Investment Fund applicable to any Employing Institution of The University for which the Plan has not been terminated shall be unaffected. The Individual Accounts of the Participants, Former Participants, and Beneficiaries affected by the termination, as determined by the Plan Administrator or its delegate, shall continue to be administered as part of the Investment Fund or distributed to such Participants, Former Participants, or Beneficiaries or otherwise applied to their benefits pursuant to Section 4.06.

ARTICLE VII

MISCELLANEOUS

7.01 Governing Law. The Plan shall be construed, regulated, and administered according to the laws of the State of North Carolina except in those areas preempted by the laws of the United States of America.

7.02 Construction. The headings and subheadings in the Plan have been inserted for convenience of reference only and shall not affect the construction of the provisions hereof. In any necessary construction the masculine shall include the feminine and the singular, the plural and vice versa.

The University has established and maintains the Plan for the exclusive benefit of participating Employees and of necessity retains control of the operation and administration of the Plan. Pursuant to Section 1.29 and this Section 7.02, the Plan Administrator shall have the duty and discretionary authority to construe the Plan and to determine all questions that may arise thereunder relating to (a) the eligibility of individuals to participate in the Plan, (b) the amount of benefits to which any Participant or Beneficiary may become entitled hereunder, and (c) any situation not specifically covered by the provisions of the Plan. The Plan Administrator shall have no power in any way to modify, alter, add to, or subtract from any provisions of the Plan.

APPENDIX K

When the Plan Administrator is required in the performance of its duties hereunder to administer or construe, or to reach a determination under, any of the provisions of the Plan, it shall do so in a uniform, equitable, and nondiscriminatory basis.

7.03 Administrative Expenses. The Board or its designee may provide for the administration of the Plan and may perform or authorize the performance of all functions necessary for its administration. The expenses of administering the contracts, Investment Funds and the Plan may be paid either by The University or from the respective contracts or Investment Fund.

7.04 Participation in Other Plans. Any eligible Employee electing to participate in the Plan is ineligible for active membership in the Retirement System so long as he or she remains employed in any eligible position within The University; and, while in an eligible position, he shall continue to participate in the Plan.

7.05 Other Benefits. No retirement benefit, death benefit, or other benefit under the Plan shall be paid by the State of North Carolina, or The University, or the Board of Trustees of the Retirement System with respect to any Employee selecting and participating in the Plan. Benefits shall be payable to Participants or their Beneficiaries only in accordance with the terms of the Contracts or Trust Agreement.

7.06 Participant's Rights; Acquittance. No Participant in the Plan shall acquire any right to be retained in the employ of an Employing Institution of The University by virtue of the Plan; nor, upon his or her dismissal, or upon his or her voluntary termination of employment, shall the Participants have any right or interest in and to the Investment Fund other than as specifically provided herein. The Employing Institution shall not be liable for the payment of any benefit provided for herein; all benefits hereunder shall be payable only from the Investment Fund.

7.07 Spendthrift Clause. Except as may be required by IRC Section 401(a)(13)(B) or this Section 7.07 or 7.09 of the Plan (relating to Qualified Domestic Relations Orders), and except for the applications of the provisions of N.C.G.S. Section 110-136 (garnishment to enforce child support) and in connection with a court-ordered equitable distribution under N.C.G.S. Section 50-20, none of the benefits, payments, proceeds, or distributions under this Plan shall be subject to the claims of any creditor of a Participant or Former Participant or to the claim of any creditor of any Beneficiary hereunder or to any legal process by any creditor of such Participant or Former Participant or of any such Beneficiary; and no such Participant, Former Participant, nor any such Beneficiary shall have any right to alienate, commute, anticipate, or assign any of the benefits, payments, proceeds, or distributions under this Plan.

7.08 Mistake of Fact. Notwithstanding anything herein to the contrary, there shall be returned to the Employing Institution any Contributions which are made as follows:

- (a) By a mistake of fact, as determined by the Internal Revenue Service or in such other manner as the Internal Revenue Service may permit; or
- (b) Prior to the receipt of initial qualification if the Plan receives an adverse determination with respect to its initial qualification and the application for determination

is made by the time prescribed by law for filing the Employing Institution's tax return for the taxable year in which the Plan is adopted, or such later date as the Secretary of Treasury may prescribe.

The return of any Contribution to the Employing Institution by the Trustee or Insurance Company shall be made within one (1) year after the payment of the Contribution or the denial of the qualification, whichever is applicable, unless a longer notice period is provided in a Contract or the Trust. The portion of any Contribution returned under this Section 7.08 to the Employing Institution shall be reduced by its proportionate share of losses and expenses of the Contract or Trust, if any, but shall not be increased by any income or gains of the Contract or Trust, if any.

7.09 Domestic Relations Orders. If it is determined by the Plan Administrator that a "domestic relations order" received by the Plan fulfills the requirements of a "Qualified Domestic Relations Order" pursuant to the appropriate procedures adopted by the Plan Administrator, any amounts that are to be paid to an alternate payee may, if required pursuant to the terms of such order, be either segregated within the relevant Contract or Trust, or distributed in the form selected under the Plan as soon as practicable following the determination such order is a Qualified Domestic Relations Order, or at such other time as such order shall provide. However, the Plan shall not provide a lump sum distribution unless permitted under the Insurance Contract or Investment Fund, or required by the IRS. To the extent permitted by federal and state law, and unless specified otherwise in the Qualified Domestic Relations Order, all costs associated with qualifying and processing a Qualified Domestic Relations Order shall be divided equally between and paid by the Participant's Individual Account and the account established for the alternate payee under the Qualified Domestic Relations Order. A "Qualified Domestic Relations Order means any judgment, decree or order (including approval of a property settlement agreement) which has been determined by the Plan Administrator or its designee in accordance with nondiscriminatory rules and procedures established under the Plan to constitute a qualified domestic relations order within the meaning of IRC Section 414(p)(1).

7.10 Counterparts. The Plan, the Contract(s) and the Trust Agreement (if applicable) may be executed in any number of counterparts, each of which shall constitute one and the same instrument and may be sufficiently evidenced by any one counterpart.

ARTICLE VIII

ADOPTION OF THE PLAN

Anything herein to the contrary notwithstanding, this Plan is created under the condition that it shall be approved and qualified by the Internal Revenue Service under IRC Section 401(a) and/or IRC Section 403(a) and that the Trust (if applicable) is exempt under IRC Section 501(a), or under any comparable Sections of any future legislation which amend, supplement, or supersede such Sections. Should the Internal Revenue Service find that the Plan, as herein created, is not qualified, The University may modify the Plan to meet Internal Revenue Service requirements.

APPENDIX K

As evidence of its adoption of the Plan, the Board of Governors of The University of North Carolina has caused this instrument to be signed by its Chair therefore duly authorized and its corporate seal to be affixed hereto this ____ day of _____, ~~2007~~2008.

THE BOARD OF GOVERNORS OF
THE UNIVERSITY OF NORTH CAROLINA

CHAIR

ATTEST:

By: _____
Secretary
The University of North Carolina

SEAL