



**RESOLUTION ON THE OPTIONAL RETIREMENT PROGRAM OF  
THE UNIVERSITY OF NORTH CAROLINA**

**Optional Retirement Program  
Amendment and Restatement**

WHEREAS, The University of North Carolina (hereinafter referred to as the “University”) established the Optional Retirement Program of The University of North Carolina (hereinafter referred to as the “Plan”), as amended and restated effective January 1, 2023;

WHEREAS, the Board of Governors of the University (the “Board”) or its delegate reserved the right in Article VI of the Plan to amend the Plan, subject to specified limitations in Article VI of the Plan;

WHEREAS, the Board is now desirous of amending and restating the Plan in order to make certain changes, as outlined on Exhibit A; and

WHEREAS, the Board is now desirous of delegating to the President of the University (the “President”) or his or her delegate the authority to approve and adopt any amendments to the Plan.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves and adopts the Plan, as amended and restated effective January 1, 2025 substantially in the form attached hereto as Exhibit B; and

RESOLVED, that effective as of May 15, 2025, the Board hereby delegates the authority to approve and adopt any amendments to the Plan to the President or his or her delegate, subject to the limitations set forth in the Plan and under North Carolina General Statute Chapter 135 (as applicable).

**Optional Retirement Program Excess Benefit Arrangement  
Amendment and Restatement**

WHEREAS, the University established The University of North Carolina Qualified Governmental Excess Benefit Arrangement (hereinafter referred to as the “Arrangement”), as amended and restated effective June 8, 2007, to provide participants in the Plan that portion of a participant’s benefit that would otherwise be payable under the terms of the Plan except for the limitations on benefits imposed by Section 415 of the Internal Revenue Code;

WHEREAS, the Board or its delegate reserved the right in Article VIII of the Arrangement to amend the Arrangement, subject to specified limitations in Article VIII of the Arrangement;

WHEREAS, the Board is now desirous of amending and restating the Arrangement in order to make certain changes; and

WHEREAS, the Board is now desirous of delegating to the President or his or her delegate the authority to approve and adopt any amendments to the Arrangement.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves and adopts the Arrangement, as amended and restated effective January 1, 2025 substantially in the form attached hereto as Exhibit C. ; and

RESOLVED, that effective as of May 15, 2025, the Board hereby delegates the authority to approve and adopt any amendments to the Arrangement to the President or his or her delegate subject to the limitations set forth in the Plan and under North Carolina General Statute Chapter 135 (as applicable).

### **Optional Retirement Program Investment Designation**

WHEREAS, pursuant to Section 5.02 of the Plan, the Board or its delegate shall (i) designate companies to provide insurance contracts and (ii) approve the form and contents of annuity contracts and trust agreements;

WHEREAS, pursuant to North Carolina General Statute Section 135-5.1(d), the Board shall designate the company or companies from which contracts are to be purchased or the trustee responsible for the investment of contributions under the Plan, and shall approve the form and contents of such contracts or trust agreement in accordance with North Carolina General Statute Section 135-5.1(d).

NOW THEREFORE, BE IT RESOLVED, that effective as of May 15, 2025, the Board hereby approves and adopts the Collective Investment Trusts to be offered in the ORP, effective on or after May 15, 2025, as outlined on Exhibit D.

### **General Resolutions**

IN WITNESS WHEREOF, the Board has caused this Resolution to be executed by its Chair and its seal to be affixed by the Secretary, both duly authorized, effective as indicated herein, but executed this 15<sup>th</sup> day of May, 2025.

[signature on following page]

Attest: (SEAL)

THE BOARD OF GOVERNORS OF  
THE UNIVERSITY OF NORTH CAROLINA

\_\_\_\_\_  
Secretary

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

## EXHIBIT A

### Overview of 2025 Amendments to the Optional Retirement Program (the “Plan”)

Amendment	Summary
<b>General Cleanup</b>	<ul style="list-style-type: none"><li>Revised various defined terms and references throughout the Plan to ensure consistency both within the Plan and across the other University Benefit Plans<ul style="list-style-type: none"><li>E.g., retained the definition of “Spouse” from other University Benefit Plans and revised references according</li><li>E.g., increased various IRS limitations</li></ul></li></ul>
<b>Primary &amp; Secondary Institution Clarifications</b>	<ul style="list-style-type: none"><li>Included new definitions of both “Primary Institution” and “Secondary Institution” to address certain dually-employed individuals</li><li>Clarified the impact of such dual employment on certain Plan provisions (e.g., compensation, termination of employment, transfer of employment)</li></ul>
<b>HealthCare Institution Eligibility Changes</b>	<ul style="list-style-type: none"><li>Effective January 1, 2024, updated the eligibility rules to comply with (i) N.C.G.S. Sections 135-5.6 and 135-5.7 with respect to UNC Health Care System, Medical Faculty Practice Plan and ECU Dental School Clinical Operations and (ii) the eligibility provisions under the UNC Health System ORP<ul style="list-style-type: none"><li>Specifically, clarified that for individuals hired by UNC Health Care System on or after July 1, 2024, that such individuals are generally ineligible to participate in TSERs or the Plan (unless such individuals are already in TSERs or the Plan)</li></ul></li></ul>
<b>Beneficiary Designations</b>	<ul style="list-style-type: none"><li>Included language to confirm that upon a divorce, a participant’s beneficiary designation does not automatically change</li></ul>
<b>Forfeitures</b>	<ul style="list-style-type: none"><li>Included language to confirm that the Plan Administrator may use forfeitures under the Plan to (1) pay Plan expenses and (2) reduce University contributions to the Plan</li></ul>

## **EXHIBIT B**

### **Optional Retirement Program Amendment and Restatement**

## **EXHIBIT C**

### **Optional Retirement Program Excess Benefit Arrangement Amendment and Restatement**

EXHIBIT B

**OPTIONAL RETIREMENT PROGRAM  
OF  
THE UNIVERSITY OF NORTH CAROLINA**

~~As Amended and Restated~~  
AMENDED AND RESTATED  
~~Generally Effective January~~ JANUARY 1, 2023 ~~2025~~

## ~~TABLE OF CONTENTS~~ TABLE OF CONTENTS

	Page
<b>ARTICLE I DEFINITIONS</b>	<b><u>21</u></b>
1.01 “Adjustment <del>“</del> ”	<u>21</u>
1.02 “Annual Additions”	<u>21</u>
1.03 “Beneficiary”	2
1.04 “Board”	2
1.05 “Code”	2
1.06 “Compensation”	2
1.07 “Constituent Institutions”	<u>32</u>
1.08 “Contracts”	<u>32</u>
1.09 “Contributions”	<u>32</u>
1.10 “Core Retirement Plan”	<u>32</u>
1.11 “Defined Contribution Plan”	<u>32</u>
1.12 “ECU Dental School Clinic Operations”	3
1.13 “Effective Date”	3
1.14 “Eligible Service”	3
1.15 “Employee”	<u>43</u>
1.16 “Employing Institution”	<u>43</u>
<del>1.17</del> <b>“Fiduciary”</b>	<u>4</u>
<del>1.18</del> <u>1.17</u> “Forfeiture” or “Forfeit”	<u>43</u>
<del>1.19</del> <u>1.18</u> “HealthCare Institutions”	<u>43</u>
<del>1.20</del> <u>1.19</u> “Individual Account”	<u>43</u>
<del>1.21</del> <u>1.20</u> “Insurance Company”	4
<del>1.22</del> <u>1.21</u> “Investment Fund(s)”	<u>54</u>
<del>1.23</del> <u>1.22</u> “Like Retirement Plan”	<u>54</u>
<del>1.24</del> <u>1.23</u> “Limitation Year”	<u>54</u>
<del>1.25</del> <u>1.24</u> “Medical Faculty Practice Plan”	<u>54</u>
<del>1.26</del> <u>1.25</u> “Mutual Fund Company”	<u>54</u>
<del>1.27</del> <u>1.26</u> “N.C.G.S.”	<u>54</u>
<del>1.28</del> <u>1.27</u> “Normal Retirement Age”	<u>54</u>
<del>1.29</del> <u>1.28</u> “Participant”	<u>54</u>
<del>1.30</del> <u>1.29</u> “Participant Account”	<u>54</u>
<del>1.31</del> <u>1.30</u> “Participant Contributions”	<u>54</u>
<del>1.32</del> <u>1.31</u> “Plan”	<u>54</u>
<del>1.33</del> <u>1.32</u> “Plan Administrator”	<u>54</u>
<del>1.34</del> <u>1.33</u> “Plan Year”	<u>64</u>
<u>1.34</u> <b>“Primary Institution”</b>	<u>5</u>
1.35 “Qualified Military Service”	<u>65</u>
1.36 “Retire” or “Retired”	<u>65</u>
1.37 “Retirement System”	<u>65</u>
<u>1.38</u> <b>“Secondary Institution”</b>	<u>5</u>
<del>1.38</del> <u>1.39</u> “SECURE Act”	<u>65</u>
<u>1.40</u> <b>“Spouse”</b>	<u>5</u>
<del>1.39</del> <u>1.41</u> “Subsequent Employer”	<u>65</u>

*[Different first page link-to-previous setting changed from on in original to off in modified.]*

<del>1.40</del> <u>1.42</u>	“Supplemental Account”	<del>65</del>
<del>1.41</del> <u>1.43</u>	“Supplemental Contributions”	<del>65</del>
<del>1.42</del> <u>1.44</u>	“Termination of Employment”	<del>65</del>
<del>1.43</del> <u>1.45</u>	“Timely Enroll”	<del>65</del>
<del>1.44</del> <u>1.46</u>	“Trust”	6
<del>1.45</del> <u>1.47</u>	“Trust Agreement”	6
<del>1.46</del> <u>1.48</u>	“Trustee”	<del>76</del>
<del>1.47</del> <u>1.49</u>	“University”	<del>76</del>
<del>1.48</del> <u>1.50</u>	“University Account”	<del>76</del>
<del>1.49</del> <u>1.51</u>	“University Contributions”	<del>76</del>
<del>1.50</del> <u>1.52</u>	“University of North Carolina Health Care System”	<del>76</del>
<del>1.51</del> <u>1.53</u>	“USERRA”	<del>76</del>
<del>1.52</del> <u>1.54</u>	“Valuation Date”	<del>76</del>

## ARTICLE II ELIGIBILITY AND PARTICIPATION ~~76~~

2.01	Eligibility	<del>76</del>
2.02	Participation	<del>98</del>
2.03	Special Rules	<del>98</del>
2.04	Beneficiary Designation	<del>119</del>

## ARTICLE III CONTRIBUTIONS AND ALLOCATIONS ~~1110~~

3.01	Individual Accounts	<del>1110</del>
3.02	University Contributions	<del>1210</del>
3.03	Supplemental Contributions	<del>1210</del>
3.04	Participant Contributions	<del>1211</del>
3.05	Voluntary Before-Tax Contributions to Other Plans	<del>1211</del>
3.06	Adjustment; Contract Gains and Losses	<del>1311</del>
3.07	Equitable Allocations	<del>1311</del>
3.08	Maximum Additions	<del>1311</del>
3.09	Contributions Required USERRA	<del>1513</del>
3.10	Rollovers and Transfers into the Plan	<del>1614</del>

## ARTICLE IV DISTRIBUTIONS ~~1614~~

4.01	Vesting	<del>1614</del>
4.02	Distributions upon Death	<del>1815</del>
4.03	Distributions Upon Retirement or Termination of Employment with <del>The</del> <u>the</u> University	<del>1815</del>
4.04	In-Service Distributions Upon Participation in the Phased Retirement Program	<del>1816</del>
4.05	Method of Payment	<del>1816</del>
4.06	Benefits to Minors and Incompetents	<del>1916</del>
4.07	Payment of Benefits	<del>2017</del>
4.08	Required Minimum Distributions	<del>2017</del>
4.09	Re-Employment by <del>The</del> <u>the</u> University	<del>2421</del>
4.10	Rollover Distributions	<del>2522</del>
4.11	Claims for Benefits	<del>2623</del>
4.12	Missing Payee	<del>2723</del>

*[Link-to-previous setting changed from on in original to off in modified.]*



4.13	<a href="#">Forfeitures</a>	24
<b>ARTICLE V FUNDING</b>		<b><del>27</del>24</b>
5.01	Contributions	<del>27</del> 24
5.02	Investment Funds	<del>27</del> 24
5.03	Investment Direction	<del>28</del> 24
5.04	Possession of the Contracts	<del>28</del> 25
<b>ARTICLE VI AMENDMENT AND TERMINATION OF THE PLAN</b>		<b><del>28</del>25</b>
6.01	Amendment of the Plan	<del>28</del> 25
6.02	Termination of the Plan	<del>29</del> 25
<b>ARTICLE VII MISCELLANEOUS</b>		<b><del>29</del>25</b>
7.01	Governing Law	<del>29</del> 25
7.02	Construction	<del>29</del> 26
7.03	Administrative Expenses	<del>30</del> 26
7.04	Participation in Other Plans	<del>30</del> 26
7.05	Other Benefits	<del>30</del> 26
7.06	Participant's Rights; Acquittance	<del>30</del> 26
7.07	Spendthrift Clause	<del>30</del> 26
7.08	Mistake of Fact	<del>30</del> 26
7.09	Domestic Relations Orders	<del>31</del> 27
7.10	Counterparts	<del>31</del> 27
<b><del>ARTICLE VIII ADOPTION OF THE PLAN</del></b>		<b><del>31</del></b>
7.11	<a href="#">Adoption of the Plan</a>	27

*[Link-to-previous setting changed from on in original to off in modified.]*

## INTRODUCTION

The University of North Carolina adopted an Optional Retirement Program (the “**Plan**”) effective January 14, 1972. The Plan was implemented pursuant to Section 403(b) of the Code (as defined herein), requiring both employer and participant contributions.

Effective July 1, 1985, the Plan was amended to comply with Sections 403(a) and 414(h) of the Code, 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 Section 401(a) of the Code. The Plan was further amended and restated, effective January 1, 2007.

Effective January 1, 2008, and again, effective January 1, 2012, 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 Code, and the Plan shall be interpreted, wherever possible, to comply with the terms of the Code and all formal regulations and rulings issued under the Code and amendments thereto. The Plan is established under N.C.G.S. Section 135-5.1 et. seq.

Generally effective January 1, ~~2023~~2025, 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 Section 415 of the Code. 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 set forth below:

**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) University Contributions, (b) Supplemental Contributions, (c) Participant Contributions and (d) such other amounts as may be applicable pursuant to Sections 415(c)(2) and 419(e) of the Code. Annual Additions includes any forfeitures allocated to a Participant’s Individual 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 Individual 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 “Code”** means the Internal Revenue Code of 1986, as amended. Any reference to any section of the Code 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.

**1.06 “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 (which, for avoidance of doubt, shall include any amounts received based on services performed for a Secondary 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 Sections 403(b) and/or 457(b) of the Code, (b) any portion of an Employee’s pay which is contributed by ~~The~~the University pursuant to Section 414(h) of the Code, 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 Section 401(k) of the Code and in lieu of a non-taxable benefit under a plan which is maintained pursuant to Sections 125 or 132(f)(4) of the Code. Compensation shall exclude extraordinary compensation, such as the imputed value of group life insurance and any University Contributions to the Plan or any other employee benefit program.

Notwithstanding any other provision of the Plan to the contrary, ~~and~~a Participant’s annual Compensation taken into account in determining Contributions for any Plan Year shall not exceed the limitation amount under Section 401(a)(17) of the Code (as adjusted for cost-of living increases in accordance with Section 401(a)(17)(B) of the Code). Effective for Plan Years commencing on or after January 1, ~~2023~~2025, the

limit referenced in this Section ~~1.05~~1.06 shall be three hundred ~~thirty~~fifty thousand dollars (\$~~330,000~~350,000).

Notwithstanding the limitation in the previous paragraph, in the case of an Eligible Participant (as defined below), the dollar limitation herein provided in such paragraph shall not apply to the extent the amount of Compensation which is allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under subsection 1.05(a) as in effect on July 1, 1993. For purposes of this Section ~~1.05~~1.06, “**Eligible Participant**” shall mean an individual who first became a Participant on or before December 31, 1995.

**1.07 “Constituent Institutions”** means the institutions that are part of ~~The~~the University ~~of North Carolina~~, as defined by ~~North Carolina law~~N.C.G.S. Section 116-2(4), as amended.

**1.08 “Contracts”** means any type of annuity contract(s) issued by any Insurance Company to effect the purposes of the Plan.

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

**1.10 “Core Retirement Plan”** means a primary retirement plan which is sponsored by a Participant’s Subsequent Employer.

**1.11 “Defined Contribution Plan”** means a plan which is established and qualified under Section 401(a) or 403(a) of the Code, 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.

**1.12 “ECU Dental School Clinic Operations”** means the division of the School of Medicine of East Carolina University established and constituted in accordance with N.C.G.S. Section 116.360.5.

**1.13 “Effective Date”** generally means January 1, ~~2023~~2025, 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.

**1.14 “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, which for avoidance of doubt shall exclude any Secondary Institution that is not 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 (9) 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.

**1.15 “Employee”** means any of the administrators or faculty of ~~The~~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~~the University who are appointed by the Board on the recommendation of the President of the University pursuant to N.C.G.S. Sections 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. Section 116-40.22(b); non-faculty instructional or research staff who are exempt from the State Personnel Act; employees of the University of North Carolina Health Care System, effective April 1, 2012, for individuals in Group A and October 1, 2012, for individuals in Group B; and effective January 1, 2013, employees hired by an Employing Institution on or after January 1, 2013. “Group A” means individuals whose titles indicate that they are Senior Executives (i.e., Chief Operating Officer, Chief Financial Officer, Senior Vice President, or Vice President) or Advanced Practice Practitioners (i.e., Physician Assistant, Nurse Practitioner, or Clinical Nurse Anesthetist), and who are benefits eligible and scheduled to work thirty (30) or more hours per week. “Group B” means all other categories of benefits eligible employees scheduled to work thirty (30) or more hours per week and that are not listed in Group A. For purposes of ~~this~~the 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.

**1.16 “Employing Institution”** means, collectively or individually, as the context may indicate, ~~The~~the University ~~or~~, any of the Constituent Institutions, or other entities designated by the Plan Administration (including UNC Press), and effective April 1, 2012, the University of North Carolina Health Care System.

~~1.17 “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.~~

**1.17** ~~1.18~~ **“Forfeiture” or “Forfeit”** 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.

**1.18** ~~1.19~~ **“HealthCare Institutions”** means the University of North Carolina Health Care System, Medical Faculty Practice Plan and ECU Dental School Clinic Operations.

**1.19** ~~1.20~~ **“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, a Supplemental Account, and a Participant Account.<sup>+</sup>

**1.20** ~~1.21~~ **“Insurance Company”** means any of the Teachers Insurance and Annuity Association-College Retirement Equities Fund and Principal Life Insurance Company, and such other entities as may be selected by the Board under Section 5.02.

**1.21** ~~1.22~~ **“Investment Fund(s)”** means an Investment Fund described in Article V.

**1.22** ~~1.23~~ **“Like Retirement Plan”** means a retirement plan of an institution, organization or system of higher education or health care, or any supporting organizations, associated entities or foundations thereof, including without limitation high schools that are part of the National Consortium for

<sup>+</sup> ~~Amendment No. 1, effective January 1, 2016~~

Specialized Secondary Schools of Mathematics, Science and Technology, in each case in which the 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 Participant participated in the Plan, or in which he or she could have participated if the Participant had continued participation in the Plan.<sup>2</sup>

1.23 ~~1.24~~ “**Limitation Year**” means the twelve (12) month period beginning on January 1, and ending December 31.

1.24 ~~1.25~~ “**Medical Faculty Practice Plan**” means a division of the School of Dental Medicine at East Carolina University established and constituted in accordance with N.C.G.S. Section 116.360.

1.25 ~~1.26~~ “**Mutual Fund Company**” means, without limitation, Fidelity Investments and any other regulated investment company within the meaning of Section 851(a) of the Code which issues only redeemable shares.

1.26 ~~1.27~~ “**N.C.G.S.**” means the North Carolina General Statutes, established by the North Carolina General Assembly and amended from time to time.

1.27 ~~1.28~~ “**Normal Retirement Age**” means age 59 ½.

1.28 ~~1.29~~ “**Participant**” means any Employee who becomes a Participant as provided in Article II.

1.29 ~~1.30~~ “**Participant Account**” means that portion of a Participant’s Individual Account attributable to (a) Participant Contributions, and (b) the Participant’s proportionate share of the Adjustments attributable to his or her Participant Account pursuant to Section 3.06.

1.30 ~~1.31~~ “**Participant Contributions**” means Contributions made by a Participant pursuant to Section 3.04.

1.31 ~~1.32~~ “**Plan**” means the Optional Retirement Program of The University of North Carolina, as contained herein or as duly amended, including The University of North Carolina Qualified Governmental Excess Benefit Arrangement attached hereto as Appendix A.

1.32 ~~1.33~~ “**Plan Administrator**” means that person or persons who has been named by the President of ~~The~~the University to administer the Plan. If a Plan Administrator is not so appointed, the President of ~~The~~the University shall be deemed the Plan Administrator.

1.33 ~~1.34~~ “**Plan Year**” means each twelve (12) month period beginning on January 1 and ending on December 31.

1.34 “**Primary Institution**” means the Employing Institution which, pursuant to a separate written agreement with a Secondary Institution, permits such Secondary Institution to engage an Employee for purposes of performing temporary or intermittent services to such Secondary Institution.

<sup>2</sup> ~~Amendment No. 2, effective October 1, 2019~~

**1.35 “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.

**1.36 “Retire” or “Retired”** means the status of a Participant who has announced in writing, in a form acceptable to the Employing Institution, that he or she has retired and has ceased to be employed by any of the Employing Institutions in the University.

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

**1.38 “Secondary Institution”** means any entity which employs individuals that are eligible for participation in the Retirement System and which engages, pursuant to a separate written agreement with a Primary Institution, an Employee from such Primary Institution for purposes of performing temporary or intermittent services to such Secondary Institution. For avoidance of doubt, a Secondary Institution may include an Employing Institution.

**1.39 ~~1.38~~ “SECURE Act”** means the Setting Every Community Up for Retirement Enhancement Act of 2020.

**1.40 “Spouse”** means an individual who is lawfully married to an Employee under the law of any U.S. or foreign jurisdiction having the legal authority to sanction marriages, including the common law spouse of an Employee in a legally recognized common law marriage. The term Spouse does not include an individual who has entered into a registered domestic partnership, civil union or other similar formal relationship with an Employee recognized under the law of any U.S. or foreign jurisdiction that is not denominated as a marriage under the laws of that U.S. or foreign jurisdiction. Notwithstanding any provision of this Plan to the contrary, this provision shall be construed in accordance with federal law.

**1.41 ~~1.39~~ “Subsequent Employer”** means only the employer with whom the Participant first commences permanent, non-seasonal employment service following termination of his or her Eligible Service with an Employing Institution.

**1.42 ~~1.40~~ “Supplemental Account”** means the portion of a Participant’s Individual Account attributable to (a) the Supplemental 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 Supplemental Account pursuant to Section 3.06.<sup>3</sup>

**1.43 ~~1.41~~ “Supplemental Contributions”** means Contributions made by the Employing Institution pursuant to Section 3.03.<sup>4</sup>

**1.44 ~~1.42~~ “Termination of Employment”** means the date the Participant ceases to be an Employee of any of the Employing Institutions. For avoidance of doubt, a Termination of Employment does not occur when the Participant ceases to be an Employee of a Secondary Institution that is not an Employing Institution.

**1.45 ~~1.43~~ “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, which takes place within twelve (12) months following the expiration of the enrollment waiting period in the

<sup>3</sup> ~~Amendment No. 1, effective January 1, 2016~~

<sup>4</sup> ~~Amendment No. 1, effective January 1, 2016~~



Like Retirement Plan, if any, and not later than thirty-six (36) months following termination of Eligible Service.

1.46 ~~1.44~~ “**Trust**” means the trust established to hold assets of the Plan pursuant to the Trust Agreement.

1.47 ~~1.45~~ “**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.

1.48 ~~1.46~~ “**Trustee**” means the individual, individuals or financial institution, or a combination thereof, designated in the Trust Agreement to hold in ~~rust~~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~~the Plan, Trustee shall include any custodian who enters into a custody agreement to hold Investment Funds.

1.49 ~~1.47~~ “**University**” means The University of North Carolina, the Constituent Institutions and, effective April 1, 2012, the University of North Carolina Health Care System.

1.50 ~~1.48~~ “**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~~ 3.03 (as applicable)~~),~~ and (b) the Participant’s proportionate share of the Adjustments attributable to his or her University Account pursuant to Section 3.06.

1.51 ~~1.49~~ “**University Contributions**” means Contributions made by the Employing Institution pursuant to Section 3.02.

1.52 ~~1.50~~ “**University of North Carolina Health Care System**” means the affiliated enterprise of ~~The~~the University ~~of North Carolina~~ established and constituted in accordance with N.C.G.S. Section 116-37, as may be amended.

1.53 ~~1.51~~ “**USERRA**” means the Uniformed Services Employment and Reemployment Rights Act of 1994.

1.54 ~~1.52~~ “**Valuation Date**” means each business day. The Plan Administrator or its delegate may value the Investment Fund as of any other schedule of dates as it deems desirable.

## ARTICLE II

### ELIGIBILITY AND PARTICIPATION

#### 2.01 Eligibility.

(a) Unless otherwise excluded within this Section 2.01(a), eligible Employees shall within sixty (60) days of entering into eligible employment under Section ~~4.13~~1.15 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. For purposes of this Section 2.01(a), the individual election forms may be filed with the Retirement System using electronic transmission. 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. Effective September 1, 2023, eligible Employees shall within thirty (30) days of entering into eligible employment under Section ~~1.13~~ 1.15 shall make the election described within this Section 2.01(a).

(b) **HealthCare Institution Employees.**

~~(i) New Hires. Effective January 1, 2024, any (A) newly hired Employee of a HealthCare Institution or (B) an Employee of a HealthCare Institution (1) who is hired prior to January 1, 2024 and (2) who becomes eligible for the Plan on or after January 1, 2024, shall be ineligible to participate in the Retirement System and shall automatically be enrolled in the Plan. Notwithstanding the foregoing, in the event that the applicable HealthCare Institution sponsors a retirement plan pursuant to N.C.G.S. Section 116-350.30 or 116-360.15 (as applicable) and participation in such retirement plan is mandatory for Employees of such HealthCare Institution, then such Employees are not eligible for participation in this Plan and shall participate in the applicable HealthCare Institution retirement plan; provided that, if a HealthCare Institution Employee described in this sentence is a Participant in this Plan at the time such HealthCare Institution adopts its mandatory retirement plan, then such Participant shall remain a Participant in this Plan, except to the extent that such HealthCare Institution retirement plan constitutes a “similar benefit plan” (as defined below), then such Employee shall participate in the HealthCare Institution’s mandatory retirement plan. Alternatively, in the event that the applicable HealthCare Institution sponsors a “similar benefit plan” pursuant to N.C.G.S. Section 116-350.30 or 116-360.15 (as applicable) and participation in such similar benefit plan is optional for Employees of such HealthCare Institution, then such Employees may elect to participate in (X) the Plan or (Y) the “similar benefit plan” sponsored by the applicable HealthCare Institution. In the event that the HealthCare Institution sponsors a retirement plan that is not a “similar benefit plan,” then an Employee described in the first sentence of this Section 2.01(b)(i) shall participate in the HealthCare Institution retirement plan and shall not be eligible for participation in this Plan.~~

~~For purposes of this Plan, a “similar benefit plan” shall mean a retirement plan that provides for a one-time election to make elective contributions in an amount equal to those contemplated by Section 3.05 of this Plan and in a manner that (A) complies with the requirements of Code Section 414(h) and (B) does not create a “cash or deferred arrangement” when such arrangement is considered with potential participation in this Plan.~~

~~(ii) One-Time Election. In the event a HealthCare Institution sponsors a “similar benefit plan,” as defined above and pursuant to N.C.G.S. Section 116-350.30 or 116-360.15 (as applicable), Employees of a HealthCare Institution who are (i) employed by a HealthCare Institution before January 1, 2024 and (ii) are Participants in the Plan shall be permitted to make a one-time, irrevocable election to cease participation in the Plan in favor of such similar benefit plan.~~

~~pursuant to N.C.G.S. Section 116-350.30 or 116-360.15 (as applicable) and in accordance with N.C.G.S. Sections 135-5.6 and 135-5.7 (as applicable).~~

(i) **Medical Faculty Practice Plan or ECU Dental School Clinic Operation Employees.** Effective January 1, 2024, any newly hired Employee of the Medical Faculty Practice Plan or ECU Dental School Clinic Operation hired on or after January 1, 2024 who becomes eligible for this Plan on or after January 1, 2024, shall be ineligible to participate in the Retirement System and shall automatically be enrolled in this Plan; provided, however, that such Employee is not currently a participant in the Retirement System. In the event an Employee (as described in this Section 2.01(b)(i)) is a participant in the Retirement System, such Employee shall be provided a one-time irrevocable election to either: (a) remain a participant in the Retirement System or (b) participate in this Plan.

(ii) **University of North Carolina Health Care System Employees.**

(A) **Employees Hired On or Prior to June 30, 2024.** Effective January 1, 2024, any newly hired Employee of the University of North Carolina Health Care System hired on or prior to June 30, 2024 who becomes eligible for this Plan on or after January 1, 2024, shall be ineligible to participate in the Retirement System and shall automatically be enrolled in this Plan; provided, however, that such Employee is not currently a participant in the Retirement System. In the event an Employee (as described in this Section 2.01(b)(ii)(A)) is (i) a participant in the Retirement System and (ii) has not previously received a one-time irrevocable election described in this Section 2.01(b)(ii)(A), such Employee shall be provided a one-time irrevocable election to either: (a) remain a participant in the Retirement System or (b) participate in this Plan.

(B) **Employees Hired On or After July 1, 2024.** Effective January 1, 2024, any newly hired Employee of the University of North Carolina Health Care System hired on or after July 1, 2024 shall be ineligible to participate in both the Retirement System and this Plan and shall automatically be enrolled in the University of North Carolina Health Care System's similar retirement plan (as described in N.C.G.S. Section 116-350.30); provided, however, that such Employee is not currently a participant in the Retirement System or this Plan. In the event an Employee (as described in this Section 2.01(b)(ii)(B)) is (i) a participant in the Retirement System and (ii) has not previously received a one-time irrevocable election described in this Section 2.01(b)(ii)(B), such Employee shall be provided a one-time irrevocable election to either: (a) remain a participant in the Retirement System or (b) participate in this Plan. In the event an Employee (as described in this Section 2.01(b)(ii)(B)) is a participant in this Plan, such Participant must remain in this Plan and shall be ineligible for participation in the University of North Carolina Health Care System's similar retirement plan described in this Section 2.01(b)(ii).

(iii) **Re-Employment by a HealthCare Institution.** For purposes of this Section 2.01(b), if an Employee of a HealthCare Institution terminates employment with the HealthCare Institution on or after January 1, 2024 and such individual returns to employment with the HealthCare Institution, the Employee shall be treated as a newly hired Employee under the applicable provision under Section 2.01(b)(~~i~~) of the Plan;

provided that, the Employee's right to participate in this Plan upon the Participant's reemployment shall be subject to Section 2.03 of the Plan.

(c) Except as provided in Section 2.01(~~ed~~), 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(~~ed~~), a Participant's election to participate in ~~this~~the 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.

(d) The provisions of Section 2.01(~~bc~~) notwithstanding, if a Participant (i) has a Termination of Employment, (ii) receives a distribution of his or her entire Individual Account under Article IV, and (iii) subsequently is rehired by the University in an eligible position, such Participant may elect upon rehire to again participate in ~~this~~the Plan by making a new election under Section 2.01(a) or (b) (unless employed by a HealthCare Institution on or after January 1, 2024, in which case such employee shall only be eligible to make the elections under 2.01(a) applicable to such HealthCare Institution employees).

(e) 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 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 Article IV 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. For avoidance of doubt, an Employee performing services to a Secondary Institution that is not an Employing Institution under the arrangement described in Section 1.39 shall not be deemed to have transferred from an eligible position to an ineligible position so long as such Employee remains employed in a permanent job position described in Section 1.15.

(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) (i) receives a distribution of his or her entire Individual Account or (ii) requests a rollover distribution of his or her entire Individual Account to a Like Retirement Plan, 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~~Section 2.01(~~ed~~). 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.<sup>5</sup>

(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 entire Supplemental 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~~Section 2.01(~~ed~~). 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.<sup>6</sup>

(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 entire Supplemental Account, (C) within twelve (12) months following the termination of employment with all Employing Institutions, subsequently becomes reemployed by an Employing Institution in an eligible position, and (D) does not become fully vested in his or her Individual Account balances attributable to University Contributions pursuant to Section 4.01(d), shall become enrolled in the Plan upon his or her reemployment. Such Participant shall immediately become eligible for University Contributions and the Participant's vesting in any University Contributions under Article IV shall consider Eligible Service for periods (1) prior to his or her termination of employment with all Employing Institutions and (2) subsequent to his or her reemployment by an Employing Institution.<sup>78</sup>

(v) 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 entire Supplemental Account, (C) subsequently becomes reemployed by a Subsequent Employer in an eligible position, and (D) becomes fully vested in his or her Individual Account balances attributable to University Contributions pursuant to Section 4.01(d) shall become enrolled in the Plan upon such Participant's reemployment. Such Participant shall immediately become eligible for University Contributions, and shall be

<sup>5</sup> ~~Amendment No. 3, effective January 1, 2023~~

<sup>6</sup> ~~Amendment No. 1, effective January 1, 2016~~

<sup>7</sup> ~~Amendment No. 1, effective January 1, 2016~~

<sup>8</sup> ~~Amendment No. 3, effective January 1, 2023~~

fully-vested in any University Contributions that are made subsequent to his or her reemployment.<sup>9</sup>

**2.04 Beneficiary Designation.** Upon commencing participation, each Participant shall designate a Beneficiary on forms furnished by the Plan Administrator or its delegate. 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 its delegate. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under ~~this~~the Plan shall cease. The designation of a Spouse as Beneficiary is not automatically revoked, invalidated or changed upon the divorce of such person from a Participant, unless, the Participant (or the Participant's authorized representative, as applicable) changes such designation.

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 its delegate 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~~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~~the 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.

## 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, a Supplemental 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.<sup>10</sup>

(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 Individual Accounts shall be maintained for all Participants who have an interest in the Plan. Such separate Individual 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

<sup>9</sup> ~~Amendment No. 3, effective January 1, 2023~~

<sup>10</sup> ~~Amendment No. 1, effective January 1, 2016~~

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 Supplemental Contributions.** During each Plan Year, the Plan Administrator may in its sole discretion contribute an additional amount on behalf of each Participant as a Supplemental Contribution (generally attributable to revenue sharing amounts generated from Investment Funds). If the Plan Administrator shall determine that any such Supplemental Contributions for a Plan Year shall be made, the Plan Administrator shall designate the amount of the discretionary Supplemental Contribution to be made for such Plan Year and deposit such amount into the Plan as of a date not later than the fifteenth (15<sup>th</sup>) day of the tenth (10<sup>th</sup>) calendar month following the end of the University's fiscal year within which the particular Limitation Year for such Supplemental Contribution ends. The Participants entitled to share in any discretionary Supplemental Contribution for a Plan Year are those Participants in the Plan who are employed by an Employing Institution on the last day of such Plan Year.<sup>+1</sup>

**3.04 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 the Participant were a member of the Retirement System. Consistent with Section 414(h) of the Code, Participant Contributions authorized or required by the provisions of this Section ~~3.05~~ 3.04 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 each Participant's Individual Account no later than thirty (30) days after the close of the Limitation Year for which the Participant Contributions were made.

**3.05 Voluntary Before-Tax Contributions to Other Plans.** Although not part of ~~this~~ the 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 N.C.G.S. ~~and the applicable policies of the Employing Institution.~~ Such contributions shall be made as permitted under Sections 401(k), 403(b) or 457(b) of the Code, and shall not be part of ~~this~~ the Plan. Payment of voluntary before-tax contributions shall be made by the Employing Institution to the designated company or companies underwriting the annuities or providing investment alternatives for the benefit of each Participant.

### **3.06 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 Individual Account investment 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 allocation is properly credited or debited, as the case may be, to his or her University Account, his or her Supplemental Account, and his or her Participant Account<sup>+2</sup>.

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

(c) To the extent a Participant's interest in ~~this~~ the Plan is invested in a Contract issued by an Insurance Company, and such Contract or Trust Agreement shall have an allocation

<sup>+1</sup> ~~Amendment No. 1, effective January 1, 2016~~

<sup>+2</sup> ~~Amendment No. 1, effective January 1, 2016~~



procedure which shall be inconsistent with this Section 3.06, such Contract or Trust Agreement provision shall apply so long as it will not affect the qualified status of the Plan.

**3.07 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 Individual Accounts of the 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 III.

**3.08 Maximum Additions.** Anything herein to the contrary notwithstanding, the total Annual Additions made to the Participant's Individual Account for any Limitation Year, when combined with any similar Annual Additions credited to 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 Section 414(b) of the Code, or any employer within the group of employers that includes the Employing Institution and who must be aggregated and treated as one employer pursuant to 414(c), 414(m), or 414(o) of the Code, but excluding any arrangement that may be excluded pursuant to Section 1.415(f)-1(f) of the Code regulations), shall not exceed the lesser of Section 3.09(a) or Section 3.09(b) following:

(a) ~~Sixty-six~~Seventy thousand dollars (~~\$66,000~~70,000) (in ~~2023~~2025) or such other amount as may be allowed under Section 415 of the Code (adjusted for cost of living pursuant to Section 415(d) of the Code) 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 401(a)(17) of the Code. 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 Employing Institution. "Compensation" shall include any elective deferrals as defined in Section 402(g)(3) of the Code and any amounts which are contributed or deferred by the Employing Institution at the election of the Participant and which are not includible in the gross income of the Participant by reason of Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code.

"Compensation" shall include the following:

(i) Payments (including differential wage 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 Section 414(u) of the Code).

(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 or she not severed from service, but only if the payments are made within the later of two and one half (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 Code. 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 Employing Institution to compensate a Participant for lost wages are compensation within the meaning of the Section 415(c)(3) of the Code 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) Employer contributions to a deferred compensation plan to the extent such contributions are not included in gross income of the Participant or to a Simplified Employee Pension plan, and to the extent such contributions are deductible from a nonqualified deferred compensation plan whether or not includable in the gross income of the Participant when distributed;

(vi) Amounts realized from the exercise of a nonqualified stock option, or realized when restricted stock (or property) held by a Participant becomes freely transferable or is no longer subject to a substantial risk of forfeiture.

(vii) 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 Participant and are not salary reduction amounts that are described in Section 125 of the Code).

(ix) Other items of remuneration that are similar to any of the items listed in paragraphs (b)(v) through (b)(ix) of this Section ~~3.09~~3.08.

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~~the 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 Code.

Effective January 1, 2008, if Annual Additions are made to the Individual Account of any Participant in violation of the terms of this Section ~~3.09~~3.08, such a failure may be corrected using any method permitted by the Employee Plans Compliance Resolution System or any similar correction program approved by the Internal Revenue Service.

**3.09 Contributions Required 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, 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 ~~3.10~~3.09 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.

A University Contribution shall be made on behalf of any eligible Employee who makes a Participant Contribution under this Section ~~3.10~~3.09 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 determined herein.

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 ~~3.10~~3.09 shall not be subject to any otherwise applicable limitations contained in Sections 404(a), 402(g) or 415 of the Code with respect to the Plan 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.

A Participant who dies or becomes disabled on or after January 1, 2007 while performing Qualified Military Service will be treated as if the individual had resumed employment in accordance with USERRA on the day preceding the death or disability and terminated employment on the actual date of death or disability

**3.10 Rollovers and Transfers into the Plan.** Effective January 1, 2012, the Plan will accept rollovers or other transfers of funds from any plan or arrangement qualified under Section 401(a), 403, 408, or 457(b) of the Code, including transfers from the Retirement System as permitted by the N.C.G.S. The Plan does not accept direct rollovers of after-tax contributions.

## ARTICLE IV

### DISTRIBUTIONS

#### 4.01 Vesting.

(a) A Participant shall always be one hundred percent (100%) vested in his or her Individual Account balances attributable to Supplemental Account.<sup>13</sup>

<sup>13</sup> ~~Amendment No. 1, effective January 1, 2016~~

(b) Effective July 1, 2011, 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 any combination of (i) Eligible Service under the Plan; and (ii) total membership service, as defined in the N.C.G.S., in the Retirement System, the Local Government Employees' Retirement System, or the Consolidated Judicial Retirement System.

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

(d) Effective July 1, 2011, a Participant who (i) ceases employment with all Employing Institutions before he or she completes five (5) full years of any combination of Eligible Service under the Plan and total membership service in the Retirement System, the Local Government Employees' Retirement System, or the Consolidated Judicial Retirement System;<sup>14</sup> (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,<sup>3</sup> 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.

(e) Effective January 1, 2013, a Participant who ceases employment with all Employing Institutions before he or she completes five (5) full years of any combination of Eligible Service under the Plan and total membership service in the Retirement System, the Local Government Employees' Retirement System, or the Consolidated Judicial Retirement System and to whom Section 4.01(d) of the Plan does not apply, shall Forfeit his or her Individual Account balances attributable to University Contributions. Consistent with Section 401(a) of the Code, no part of the corpus or income of the Plan may be used for purposes other than for the exclusive benefit of participants and their beneficiaries, except that University Contributions made under a good faith mistake of fact may be returned, consistent with the rules adopted by the University.

(f) Any Participant who is convicted of an offense (as defined below) shall forfeit, in accordance with N.C.G.S. Section 135-5.1(h), the Participant's interest in the Plan attributable to the University's Contributions if (i) the offense is committed while the Participant is employed by the Constituent Institutions;<sup>3</sup> and (ii) the conduct resulting in the Participant's conviction is directly related to the Participant's office or employment. For avoidance of doubt, any Participant that is not one hundred percent (100%) vested in the Participant's Individual Account on December 1, 2012 and is convicted of an offense committed after December 1, 2012, shall forfeit any interest in the Plan attributable to the University's Contributions, except for a return of the Participant's interest in the Plan. Alternatively, any Participant that is one hundred percent (100%) vested in the Participant's Individual Account on December 1, 2012 and is convicted of an offense committed after December 1, 2012 shall forfeit any interest in the Plan attributable to the University's Contributions accrued after December 1, 2012. Any funds forfeited under this paragraph (f) shall be deposited in the trust fund(s).

For purposes of this paragraph (f), "offense" includes any offense listed under N.C.G.S. Section 135-18.10A, including any felony under federal law or the laws of North Carolina.<sup>14</sup>

#### **4.02 Distributions upon Death.**

<sup>14</sup> ~~Amendment No. 3, effective January 1, 2023~~

(a) **Death Before Retirement or Termination of Employment.** Upon the death of a Participant before the Participant Retires or the Participant's 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~~4.05(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 Participant who has elected to receive benefit payments in accordance with Section ~~4.04~~4.05(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.

#### **4.03 Distributions Upon Retirement or Termination of Employment with ~~The~~the University.**

(a) **Distributions After Full Vesting.** A Participant who Retires or has a Termination of Employment after becoming fully vested under Section 4.01 shall be entitled to receive his or her Individual Account, as adjusted in Section 3.06, 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 Retires or has a Termination of Employment without being fully vested in his or her University Account, but who becomes vested 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 Insurance Company or Trustee.

(ii) A Participant who Retires or has a Termination of 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.

**4.04 In-Service Distributions Upon Participation in the Phased Retirement Program.** A Participant who has (a) attained Normal Retirement Age and (b) has entered The University of North Carolina Phased Retirement Program following the completion of five (5) full years of Eligible Service, shall be entitled to receive his or her Individual Account, as adjusted in Section 3.06, in any manner permitted by the Contract or Investment Fund in which such Participant has invested his or her Individual Account.

#### **4.05 Method of Payment.**

(a) **Application for Benefits.** To receive a benefit under the Plan, the Participant, the Participant's 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 4.05(c).

(c) **Investment Fund Distributions.** A 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 4.05(b), a 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 135-45.2 *et seq.* to receive or 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.

#### **4.06 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.

**4.07 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 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:

(a) the Participant’s having attained his or her Normal Retirement Age;

(b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or

- (c) the Termination of Employment of the Participant.

**4.08 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 Section 401(a)(9) of the Code and the regulations thereunder.

(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:

(i) If the Participant's surviving ~~spouse~~Spouse is the Participant's sole designated Beneficiary, then distributions to the surviving ~~spouse~~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.

(ii) If the Participant's surviving ~~spouse~~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.

(iii) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death.

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

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~~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~~Spouse before the date distributions are required to begin to the surviving ~~spouse~~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 Section 401(a)(9) of the Code and the regulations thereunder.

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

(i) 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 Code regulations, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(ii) 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 Code regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the "distribution calendar year."

(e) 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.

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

(i) 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.

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

(iii) If the Participant's surviving ~~spouse~~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.

(g) 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.



(h) 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).

(i) 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 (5<sup>th</sup>) anniversary of the Participant’s death.

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

(k) **SECURE Act Requirements.** The provisions of this subsection are intended to reflect only changes made to the Code by the SECURE Act, and shall be administered in accordance with such changes and any guidance issued thereunder notwithstanding anything contained in the Plan, including any Article, or Appendix, to the contrary.

(i) **Delay of the Mandatory Commencement Date.** The Participant’s entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant’s Mandatory Commencement Date. For Plan purposes, the “Mandatory Commencement Date” is April 1 immediately following the later of (i) the calendar year in which the Participant attains age 72 or (ii) if so elected by the Participant under subsection (c), the calendar year in which the Participant Retires.

(A) Exception for five percent (5%) Owners. For purposes of determining a Participant’s Mandatory Commencement Date, an affected Participant will be treated as more than a five percent (5%) owner if he or she was a five percent (5%) owner (as defined in Section 416(i)(1)(B) of the Code) as to the Plan Year ending in the calendar year the Participant attains age 72.

(ii) **Mandatory Spousal Distributions.** If the Participant dies before the Participant’s Mandatory Commencement Date and the Participant’s surviving ~~spouse~~Spouse is the Participant’s sole designated Beneficiary, then distributions to the surviving ~~spouse~~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 72, if later.

(iii) **Required Minimum Distributions to Beneficiaries.** With respect to Participants who die on or after January 1, 2020:

(A) **10-Year Rule.** If the distributee of a deceased Participant’s account balance is a designated Beneficiary who is not an Eligible Designated Beneficiary (as defined below), then the Plan will distribute the account balance in full no later than December 31 of the tenth (10<sup>th</sup>) year following the year of the Participant’s death.

(B) **Beneficiary Death.** If an Eligible Designated Beneficiary dies before receiving distribution of the Beneficiary's entire interest in the Participant's account, the Plan will distribute that interest in full no later than December 31 of the tenth (10<sup>th</sup>) year following the year of the Eligible Designated Beneficiary's death. Similarly, if a Participant died before January 1, 2020, the limitations of this subparagraph (C)(2) shall apply to distributions to the beneficiary of the Participant's designated Beneficiary if the designated Beneficiary died after January 1, 2020.

(C) **Eligible Designated Beneficiaries.** An individual is an "Eligible Designated Beneficiary" of a Participant if the individual qualifies as a designated Beneficiary and is:

- (1) the Participant's ~~spouse~~Spouse,
- (2) the Participant's child who has not reached the age of majority (as defined for purposes of Section 401(a)(9)(F) of the Code),
- (3) an individual not more than ten (10) years younger than the Participant,
- (4) a disabled individual (as defined in Section 72(m)(7) of the Code), or
- (5) an individual who has been certified to be chronically ill (as defined in Section 7702B(c)(2) of the Code) for a reasonably lengthy period, or indefinitely.
- (6) Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to Section 401(a)(9)(H)(iv) and (v) of the Code. When a child of the Participant reaches the age of majority, the Plan will distribute the child's account in full no later than ten (10) years after that date.

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

(i) **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."



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

(iii) **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.

(iv) **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.

#### **4.09 Re-Employment by ~~The~~the University.**

(a) If a Participant returns to Eligible Service at the University and has not received a distribution of his or her entire Individual Account, such Participant shall be reenrolled in ~~this~~the Plan upon re-employment by the University so long as such Participant is considered an “Employee” as described in Section ~~4.12~~1.15 of the Plan. If such Participant returns to a position that is ineligible to participate in ~~this~~the Plan, such Participant shall not be eligible to enroll in ~~this~~the Plan upon re-employment.

(b) A Participant who terminated employment with less than five (5) years of Eligible Service and returns to employment with the University after receiving a distribution under Section 4.03 shall not be permitted to transfer to ~~this~~the Plan any funds distributed under Section 4.03 (except as authorized by Section 3.10), but may elect to enroll in the Plan upon re-employment as provided in Section 2.01(c).

#### **4.10 Rollover Distributions.**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's (as defined below) election under this Section 4.10, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator or its delegate and after becoming entitled to a distribution from the Plan, to have any portion of an Eligible Rollover Distribution (as defined below) paid directly to an Eligible Retirement Plan (as defined below) specified by the Distributee in a Direct Rollover (as defined below). Such distribution may commence less than thirty (30) days after the notice required under Section 1.411(a)-11(c) of the Code 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 4.10, 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 Section 401(a)(9) of the Code; any distribution which is made upon hardship of the Employee, and any Participant Contribution returned to comply with Section 415 of the Code. 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 Section 408(a) or (b) of the Code, 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 Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a Roth IRA described in Section 408A of the Code, an annuity plan described in Section 403(a) of the Code, a qualified retirement plan described in Section 401(a) of the Code, an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such a plan from ~~this~~the Plan, or an annuity contract described in Section 403(b) of the Code, 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~~Spouse, or to a ~~spouse~~Spouse or former ~~spouse~~Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code. In the case of a ~~nonspouse~~-beneficiary that is not a Spouse, an Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code.

(iii) **Distributee:** A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving ~~spouse~~Spouse and the Employee's or former Employee's ~~spouse~~Spouse or former ~~spouse~~Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the ~~spouse~~Spouse or former ~~spouse~~Spouse. A ~~nonspouse~~-beneficiary that is not a Spouse is a Distributee for purposes of a Direct Rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code.

(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 Section 402(f) of the Code 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.

**4.11 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 ninety (90) days after receipt of the claim; provided that, if special circumstances require an extension of time for processing the claim, an additional ninety (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 ninety (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 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 sixty (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 sixty (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 sixty (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.

**4.12 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 five (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 ~~threesix~~ (36) months after such mailing such person has not made written claim therefore, the Plan Administrator, may (i) establish an individual retirement account on behalf of the participant or beneficiary to whom payment is due, and deliver the payment to that account as a distribution, or, in the discretion of the Plan Administrator, deposit the payment in the North Carolina escheat fund. ~~Upon, which upon~~ such delivery, the Plan shall have no further liability, or (ii) forfeit such benefits to pay Plan expenses. In the event the person (or the person's representative) is located after the person's benefits have been forfeited, and files a written claim for payment of benefits and executes such other instruments as the Plan Administrator may require, such benefits shall be restored (without adjustment for gains or losses) retroactive to the date they become payable.

**4.13 Forfeitures.** Any Forfeitures occurring during the Plan Year shall be used first, to pay Plan expenses; second, to reduce any University Contributions to the Plan.

## 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 delegate 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 delegate 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 delegate shall give due consideration to the following:

- (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 5.02, 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, University Account and Supplemental 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.<sup>15</sup>

**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.

<sup>15</sup> ~~Amendment No. 1, effective January 1, 2016~~

## ARTICLE VI

### AMENDMENT AND TERMINATION OF THE PLAN

**6.01 Amendment of the Plan.** The Board or its delegate shall have the right at any time by action of the Board or its delegate 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 or Beneficiary hereunder shall not be adversely affected thereby; and provided, further, that no such modification, alteration, or amendment shall have the effect of revesting in the University any part of the principal or income of any Participant's Individual Account.

**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 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~~twenty percent (20%), 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 for which the Plan has not been terminated shall be unaffected. The Individual Accounts of the 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 or Beneficiaries or otherwise applied to their benefits pursuant to Section 4.05.

## 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 Participants and of necessity retains control of the operation and administration of the Plan. Pursuant to Section ~~1.30~~1.33 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.

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 delegate may provide for the administration of the Plan and may perform or authorize the performance of all functions necessary for its administration. The reasonable and necessary 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 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 Section 401(a)(13)(B) of the Code 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~~the Plan shall be subject to the claims of any creditor of a Participant or to the claim of any creditor of any Beneficiary hereunder or to any legal process by any creditor of such Participant or of any such Beneficiary; and no such 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~~the 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~~[Internal Revenue Service](#). 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) by a court with jurisdiction over the Plan which has been determined by the Plan Administrator or its delegate in accordance with nondiscriminatory rules and procedures established under the Plan to constitute a domestic relations order assigning Plan benefits. A Qualified Domestic Relations Order must (a) relate to the payment of a marital property award to a ~~spouse~~[Spouse](#) or former ~~spouse~~[Spouse](#) of a Participant (an “Alternate Payee”), (b) must create or recognize an Alternate Payee as an owner or a co-owner of an interest of a Participant under the Plan, and (c) must specifically identify each interest that is subject to such order and must specifically order the direct transfer of each such interest to such Alternate Payee. No Qualified Domestic Relations Order shall require the Plan to provide any type or form of benefit not otherwise provided by the Plan; nor to provide any increased benefits; nor to pay benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another previously applicable Qualified Domestic Relations Order.

**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~~

**7.11 Adoption of the Plan.** Anything herein to the contrary notwithstanding, ~~this~~[the](#) Plan is created under the condition that it shall be approved and qualified by the Internal Revenue Service under Section 401(a) and/or Section 403(a) of the Code and that the Trust (if applicable) is exempt under Section 501(a) of the Code, 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.

As evidence of its adoption of the Plan, the Board has caused this instrument to be signed by its ~~Chairman~~Chair therefore duly authorized and its corporate seal to be affixed hereto this ~~—~~15<sup>th</sup> day of ~~—~~May, ~~2023~~2025.

THE BOARD OF GOVERNORS OF  
THE UNIVERSITY OF NORTH CAROLINA

\_\_\_\_\_  
CHAIR

ATTEST:

By: \_\_\_\_\_  
Secretary  
The University of North Carolina

SEAL



<b>Summary report:</b> <b>Litera Compare for Word 11.11.0.158 Document comparison done on</b> <b>4/28/2025 4:25:11 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://dmsus.mwllp.dom/active/196349194/1 - UNC - Optional Retirement Plan - A&R 2024.docx	
<b>Modified DMS:</b> iw://dmsus.mwllp.dom/active/196349194/8 - UNC - Optional Retirement Plan (ORP) - Amendment and Restatement (2025) - Working Draft.docx	
<b>Changes:</b>	
<u>Add</u>	361
<del>Delete</del>	348
<del>Move From</del>	8
<u>Move To</u>	8
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>725</b>

**OPTIONAL RETIREMENT PROGRAM**  
**OF**  
**THE UNIVERSITY OF NORTH CAROLINA**

**AMENDED AND RESTATED**  
**JANUARY 1, 2025**

## TABLE OF CONTENTS

	Page
<b>ARTICLE I DEFINITIONS .....</b>	<b>1</b>
1.01 “Adjustment” .....	1
1.02 “Annual Additions” .....	1
1.03 “Beneficiary” .....	2
1.04 “Board” .....	2
1.05 “Code” .....	2
1.06 “Compensation” .....	2
1.07 “Constituent Institutions” .....	2
1.08 “Contracts” .....	2
1.09 “Contributions” .....	2
1.10 “Core Retirement Plan” .....	2
1.11 “Defined Contribution Plan” .....	2
1.12 “ECU Dental School Clinic Operations” .....	3
1.13 “Effective Date” .....	3
1.14 “Eligible Service” .....	3
1.15 “Employee” .....	3
1.16 “Employing Institution” .....	3
1.17 “Forfeiture” or “Forfeit” .....	3
1.18 “HealthCare Institutions” .....	3
1.19 “Individual Account” .....	3
1.20 “Insurance Company” .....	4
1.21 “Investment Fund(s)” .....	4
1.22 “Like Retirement Plan” .....	4
1.23 “Limitation Year” .....	4
1.24 “Medical Faculty Practice Plan” .....	4
1.25 “Mutual Fund Company” .....	4
1.26 “N.C.G.S.” .....	4
1.27 “Normal Retirement Age” .....	4
1.28 “Participant” .....	4
1.29 “Participant Account” .....	4
1.30 “Participant Contributions” .....	4
1.31 “Plan” .....	4
1.32 “Plan Administrator” .....	4
1.33 “Plan Year” .....	4
1.34 “Primary Institution” .....	5
1.35 “Qualified Military Service” .....	5
1.36 “Retire” or “Retired” .....	5
1.37 “Retirement System” .....	5
1.38 “Secondary Institution” .....	5
1.39 “SECURE Act” .....	5
1.40 “Spouse” .....	5
1.41 “Subsequent Employer” .....	5
1.42 “Supplemental Account” .....	5
1.43 “Supplemental Contributions” .....	5
1.44 “Termination of Employment” .....	5
1.45 “Timely Enroll” .....	5
1.46 “Trust” .....	6

1.47	“Trust Agreement” .....	6
1.48	“Trustee” .....	6
1.49	“University” .....	6
1.50	“University Account” .....	6
1.51	“University Contributions” .....	6
1.52	“University of North Carolina Health Care System” .....	6
1.53	“USERRA” .....	6
1.54	“Valuation Date” .....	6
<b>ARTICLE II ELIGIBILITY AND PARTICIPATION .....</b>		<b>6</b>
2.01	Eligibility .....	6
2.02	Participation .....	8
2.03	Special Rules .....	8
2.04	Beneficiary Designation .....	9
<b>ARTICLE III CONTRIBUTIONS AND ALLOCATIONS .....</b>		<b>10</b>
3.01	Individual Accounts .....	10
3.02	University Contributions .....	10
3.03	Supplemental Contributions .....	10
3.04	Participant Contributions .....	11
3.05	Voluntary Before-Tax Contributions to Other Plans .....	11
3.06	Adjustment; Contract Gains and Losses .....	11
3.07	Equitable Allocations .....	11
3.08	Maximum Additions .....	11
3.09	Contributions Required USERRA .....	13
3.10	Rollovers and Transfers into the Plan .....	14
<b>ARTICLE IV DISTRIBUTIONS .....</b>		<b>14</b>
4.01	Vesting .....	14
4.02	Distributions upon Death .....	15
4.03	Distributions Upon Retirement or Termination of Employment with the University .....	15
4.04	In-Service Distributions Upon Participation in the Phased Retirement Program .....	16
4.05	Method of Payment .....	16
4.06	Benefits to Minors and Incompetents .....	16
4.07	Payment of Benefits .....	17
4.08	Required Minimum Distributions .....	17
4.09	Re-Employment by the University .....	21
4.10	Rollover Distributions .....	22
4.11	Claims for Benefits .....	23
4.12	Missing Payee .....	23
4.13	Forfeitures .....	24
<b>ARTICLE V FUNDING .....</b>		<b>24</b>
5.01	Contributions .....	24
5.02	Investment Funds .....	24
5.03	Investment Direction .....	24
5.04	Possession of the Contracts .....	25
<b>ARTICLE VI AMENDMENT AND TERMINATION OF THE PLAN .....</b>		<b>25</b>
6.01	Amendment of the Plan .....	25

6.02	Termination of the Plan .....	25
<b>ARTICLE VII MISCELLANEOUS .....</b>		<b>25</b>
7.01	Governing Law .....	25
7.02	Construction.....	26
7.03	Administrative Expenses .....	26
7.04	Participation in Other Plans .....	26
7.05	Other Benefits .....	26
7.06	Participant’s Rights; Acquittance .....	26
7.07	Spendthrift Clause.....	26
7.08	Mistake of Fact .....	26
7.09	Domestic Relations Orders .....	27
7.10	Counterparts.....	27
7.11	Adoption of the Plan .....	27

## INTRODUCTION

The University of North Carolina adopted an Optional Retirement Program (the “**Plan**”) effective January 14, 1972. The Plan was implemented pursuant to Section 403(b) of the Code (as defined herein), requiring both employer and participant contributions.

Effective July 1, 1985, the Plan was amended to comply with Sections 403(a) and 414(h) of the Code, 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 Section 401(a) of the Code. The Plan was further amended and restated, effective January 1, 2007.

Effective January 1, 2008, and again, effective January 1, 2012, 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 Code, and the Plan shall be interpreted, wherever possible, to comply with the terms of the Code and all formal regulations and rulings issued under the Code and amendments thereto. The Plan is established under N.C.G.S. Section 135-5.1 et. seq.

Generally effective January 1, 2025, 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 Section 415 of the Code. 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 set forth below.

**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) University Contributions, (b) Supplemental Contributions, (c) Participant Contributions and (d) such other amounts as may be applicable pursuant to Sections 415(c)(2) and 419(e) of the Code. Annual Additions includes any forfeitures allocated to a Participant’s Individual 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 Individual 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 “Code”** means the Internal Revenue Code of 1986, as amended. Any reference to any section of the Code 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.

**1.06 “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 (which, for avoidance of doubt, shall include any amounts received based on services performed for a Secondary 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 Sections 403(b) and/or 457(b) of the Code, (b) any portion of an Employee’s pay which is contributed by the University pursuant to Section 414(h) of the Code, 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 Section 401(k) of the Code and in lieu of a non-taxable benefit under a plan which is maintained pursuant to Sections 125 or 132(f)(4) of the Code. Compensation shall exclude extraordinary compensation, such as the imputed value of group life insurance and any University Contributions to the Plan or any other employee benefit program.

Notwithstanding any other provision of the Plan to the contrary, a Participant’s annual Compensation taken into account in determining Contributions for any Plan Year shall not exceed the limitation amount under Section 401(a)(17) of the Code (as adjusted for cost-of living increases in accordance with Section 401(a)(17)(B) of the Code). Effective for Plan Years commencing on or after January 1, 2025, the limit referenced in this Section 1.06 shall be three hundred fifty thousand dollars (\$350,000).

Notwithstanding the limitation in the previous paragraph, in the case of an Eligible Participant (as defined below), the dollar limitation herein provided in such paragraph shall not apply to the extent the amount of Compensation which is allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under subsection 1.05(a) as in effect on July 1, 1993. For purposes of this Section 1.06, **“Eligible Participant”** shall mean an individual who first became a Participant on or before December 31, 1995.

**1.07 “Constituent Institutions”** means the institutions that are part of the University, as defined by N.C.G.S. Section 116-2(4), as amended.

**1.08 “Contracts”** means any type of annuity contract(s) issued by any Insurance Company to effect the purposes of the Plan.

**1.09 “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 the Plan.

**1.10 “Core Retirement Plan”** means a primary retirement plan which is sponsored by a Participant’s Subsequent Employer.

**1.11 “Defined Contribution Plan”** means a plan which is established and qualified under Section 401(a) or 403(a) of the Code, 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.

**1.12 “ECU Dental School Clinic Operations”** means the division of the School of Medicine of East Carolina University established and constituted in accordance with N.C.G.S. Section 116.360.5.

**1.13 “Effective Date”** generally means January 1, 2025, 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.

**1.14 “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, which for avoidance of doubt shall exclude any Secondary Institution that is not 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 (9) 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.

**1.15 “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. Sections 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. Section 116-40.22(b); non-faculty instructional or research staff who are exempt from the State Personnel Act; employees of the University of North Carolina Health Care System, effective April 1, 2012, for individuals in Group A and October 1, 2012, for individuals in Group B; and effective January 1, 2013, employees hired by an Employing Institution on or after January 1, 2013. “Group A” means individuals whose titles indicate that they are Senior Executives (i.e., Chief Operating Officer, Chief Financial Officer, Senior Vice President, or Vice President) or Advanced Practice Practitioners (i.e., Physician Assistant, Nurse Practitioner, or Clinical Nurse Anesthetist), and who are benefits eligible and scheduled to work thirty (30) or more hours per week. “Group B” means all other categories of benefits eligible employees scheduled to work thirty (30) or more hours per week and that are not listed in Group A. For purposes of the 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.

**1.16 “Employing Institution”** means, collectively or individually, as the context may indicate, the University, any of the Constituent Institutions, or other entities designated by the Plan Administration (including UNC Press), and effective April 1, 2012, the University of North Carolina Health Care System.

**1.17 “Forfeiture” or “Forfeit”** 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.

**1.18 “HealthCare Institutions”** means the University of North Carolina Health Care System, Medical Faculty Practice Plan and ECU Dental School Clinic Operations.

**1.19 “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, a Supplemental Account, and a Participant Account.



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

**1.21 “Investment Fund(s)”** means an Investment Fund described in Article V.

**1.22 “Like Retirement Plan”** means a retirement plan of an institution, organization or system of higher education or health care, or any supporting organizations, associated entities or foundations thereof, including without limitation high schools that are part of the National Consortium for Specialized Secondary Schools of Mathematics, Science and Technology, in each case in which the 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 Participant participated in the Plan, or in which he or she could have participated if the Participant had continued participation in the Plan.

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

**1.24 “Medical Faculty Practice Plan”** means a division of the School of Dental Medicine at East Carolina University established and constituted in accordance with N.C.G.S. Section 116.360.

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

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

**1.27 “Normal Retirement Age”** means age 59 ½.

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

**1.29 “Participant Account”** means that portion of a Participant’s Individual Account attributable to (a) Participant Contributions, and (b) the Participant’s proportionate share of the Adjustments attributable to his or her Participant Account pursuant to Section 3.06.

**1.30 “Participant Contributions”** means Contributions made by a Participant pursuant to Section 3.04.

**1.31 “Plan”** means the Optional Retirement Program of The University of North Carolina, as contained herein or as duly amended, including The University of North Carolina Qualified Governmental Excess Benefit Arrangement attached hereto as Appendix A.

**1.32 “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.

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

**1.34 “Primary Institution”** means the Employing Institution which, pursuant to a separate written agreement with a Secondary Institution, permits such Secondary Institution to engage an Employee for purposes of performing temporary or intermittent services to such Secondary Institution.

**1.35 “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.

**1.36 “Retire” or “Retired”** means the status of a Participant who has announced in writing, in a form acceptable to the Employing Institution, that he or she has retired and has ceased to be employed by any of the Employing Institutions in the University.

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

**1.38 “Secondary Institution”** means any entity which employs individuals that are eligible for participation in the Retirement System and which engages, pursuant to a separate written agreement with a Primary Institution, an Employee from such Primary Institution for purposes of performing temporary or intermittent services to such Secondary Institution. For avoidance of doubt, a Secondary Institution may include an Employing Institution.

**1.39 “SECURE Act”** means the Setting Every Community Up for Retirement Enhancement Act of 2020.

**1.40 “Spouse”** means an individual who is lawfully married to an Employee under the law of any U.S. or foreign jurisdiction having the legal authority to sanction marriages, including the common law spouse of an Employee in a legally recognized common law marriage. The term Spouse does not include an individual who has entered into a registered domestic partnership, civil union or other similar formal relationship with an Employee recognized under the law of any U.S. or foreign jurisdiction that is not denominated as a marriage under the laws of that U.S. or foreign jurisdiction. Notwithstanding any provision of this Plan to the contrary, this provision shall be construed in accordance with federal law.

**1.41 “Subsequent Employer”** means only the employer with whom the Participant first commences permanent, non-seasonal employment service following termination of his or her Eligible Service with an Employing Institution.

**1.42 “Supplemental Account”** means the portion of a Participant’s Individual Account attributable to (a) the Supplemental 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 Supplemental Account pursuant to Section 3.06.

**1.43 “Supplemental Contributions”** means Contributions made by the Employing Institution pursuant to Section 3.03.

**1.44 “Termination of Employment”** means the date the Participant ceases to be an Employee of any of the Employing Institutions. For avoidance of doubt, a Termination of Employment does not occur when the Participant ceases to be an Employee of a Secondary Institution that is not an Employing Institution.

**1.45 “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, which takes place

within twelve (12) months following the expiration of the enrollment waiting period in the Like Retirement Plan, if any, and not later than thirty-six (36) months following termination of Eligible Service.

**1.46 “Trust”** means the trust established to hold assets of the Plan pursuant to the Trust Agreement.

**1.47 “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.

**1.48 “Trustee”** means the individual, individuals or financial institution, or a combination thereof, 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 the Plan, Trustee shall include any custodian who enters into a custody agreement to hold Investment Funds.

**1.49 “University”** means The University of North Carolina, the Constituent Institutions and, effective April 1, 2012, the University of North Carolina Health Care System.

**1.50 “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 3.03 (as applicable), and (b) the Participant’s proportionate share of the Adjustments attributable to his or her University Account pursuant to Section 3.06.

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

**1.52 “University of North Carolina Health Care System”** means the affiliated enterprise of the University established and constituted in accordance with N.C.G.S. Section 116-37, as may be amended.

**1.53 “USERRA”** means the Uniformed Services Employment and Reemployment Rights Act of 1994.

**1.54 “Valuation Date”** means each business day. The Plan Administrator or its delegate may value the Investment Fund as of any other schedule of dates as it deems desirable.

## **ARTICLE II**

### **ELIGIBILITY AND PARTICIPATION**

#### **2.01 Eligibility.**

(a) Unless otherwise excluded within this Section 2.01(a), eligible Employees shall within sixty (60) days of entering into eligible employment under Section 1.15 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. For purposes of this Section 2.01(a), the individual election forms may be filed with the Retirement System using electronic transmission. 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. Effective September 1, 2023, eligible Employees shall within thirty (30) days

of entering into eligible employment under Section 1.15 shall make the election described within this Section 2.01(a).

**(b) HealthCare Institution Employees.**

**(i) Medical Faculty Practice Plan or ECU Dental School Clinic Operation Employees.** Effective January 1, 2024, any newly hired Employee of the Medical Faculty Practice Plan or ECU Dental School Clinic Operation hired on or after January 1, 2024 who becomes eligible for this Plan on or after January 1, 2024, shall be ineligible to participate in the Retirement System and shall automatically be enrolled in this Plan; provided, however, that such Employee is not currently a participant in the Retirement System. In the event an Employee (as described in this Section 2.01(b)(i)) is a participant in the Retirement System, such Employee shall be provided a one-time irrevocable election to either: (a) remain a participant in the Retirement System or (b) participate in this Plan.

**(ii) University of North Carolina Health Care System Employees.**

**(A) Employees Hired On or Prior to June 30, 2024.** Effective January 1, 2024, any newly hired Employee of the University of North Carolina Health Care System hired on or prior to June 30, 2024 who becomes eligible for this Plan on or after January 1, 2024, shall be ineligible to participate in the Retirement System and shall automatically be enrolled in this Plan; provided, however, that such Employee is not currently a participant in the Retirement System. In the event an Employee (as described in this Section 2.01(b)(ii)(A)) is (i) a participant in the Retirement System and (ii) has not previously received a one-time irrevocable election described in this Section 2.01(b)(ii)(A), such Employee shall be provided a one-time irrevocable election to either: (a) remain a participant in the Retirement System or (b) participate in this Plan.

**(B) Employees Hired On or After July 1, 2024.** Effective January 1, 2024, any newly hired Employee of the University of North Carolina Health Care System hired on or after July 1, 2024 shall be ineligible to participate in both the Retirement System and this Plan and shall automatically be enrolled in the University of North Carolina Health Care System's similar retirement plan (as described in N.C.G.S. Section 116-350.30); provided, however, that such Employee is not currently a participant in the Retirement System or this Plan. In the event an Employee (as described in this Section 2.01(b)(ii)(B)) is (i) a participant in the Retirement System and (ii) has not previously received a one-time irrevocable election described in this Section 2.01(b)(ii)(B), such Employee shall be provided a one-time irrevocable election to either: (a) remain a participant in the Retirement System or (b) participate in this Plan. In the event an Employee (as described in this Section 2.01(b)(ii)(B)) is a participant in this Plan, such Participant must remain in this Plan and shall be ineligible for participation in the University of North Carolina Health Care System's similar retirement plan described in this Section 2.01(b)(ii).

**(iii) Re-Employment by a HealthCare Institution.** For purposes of this Section 2.01(b), if an Employee of a HealthCare Institution terminates employment with the HealthCare Institution on or after January 1, 2024 and such individual returns to employment with the HealthCare Institution, the Employee shall be treated as a newly hired

Employee under the applicable provision under Section 2.01(b) of the Plan; provided that, the Employee's right to participate in this Plan upon the Participant's reemployment shall be subject to Section 2.03 of the Plan.

(c) Except as provided in Section 2.01(d), 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(d), a Participant's election to participate in the 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.

(d) The provisions of Section 2.01(c) notwithstanding, if a Participant (i) has a Termination of Employment, (ii) receives a distribution of his or her entire Individual Account under Article IV, and (iii) subsequently is rehired by the University in an eligible position, such Participant may elect upon rehire to again participate in the Plan by making a new election under Section 2.01(a) or (b) (unless employed by a HealthCare Institution on or after January 1, 2024, in which case such employee shall only be eligible to make the elections under 2.01(a) applicable to such HealthCare Institution employees).

(e) 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 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 Article IV 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. For avoidance of doubt, an Employee performing services to a Secondary Institution that is not an Employing Institution under the arrangement described in Section 1.39 shall not be deemed to have transferred from an eligible position to an ineligible position so long as such Employee remains employed in a permanent job position described in Section 1.15.

(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) (i) receives a distribution of his or her entire Individual Account or (ii) requests a rollover distribution of his or her entire Individual Account to a Like Retirement Plan, 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(d). 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.

(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 entire Supplemental 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(d). 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 entire Supplemental Account, (C) within twelve (12) months following the termination of employment with all Employing Institutions, subsequently becomes reemployed by an Employing Institution in an eligible position, and (D) does not become fully vested in his or her Individual Account balances attributable to University Contributions pursuant to Section 4.01(d), shall become enrolled in the Plan upon his or her reemployment. Such Participant shall immediately become eligible for University Contributions and the Participant's vesting in any University Contributions under Article IV shall consider Eligible Service for periods (1) prior to his or her termination of employment with all Employing Institutions and (2) subsequent to his or her reemployment by an Employing Institution.

(v) 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 entire Supplemental Account, (C) subsequently becomes reemployed by a Subsequent Employer in an eligible position, and (D) becomes fully vested in his or her Individual Account balances attributable to University Contributions pursuant to Section 4.01(d) shall become enrolled in the Plan upon such Participant's 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.

**2.04 Beneficiary Designation.** Upon commencing participation, each Participant shall designate a Beneficiary on forms furnished by the Plan Administrator or its delegate. 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 its delegate. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under the Plan shall cease. The designation of a Spouse as Beneficiary is not automatically revoked, invalidated or changed upon the divorce of such person from a Participant, unless, the Participant (or the Participant's authorized representative, as applicable) changes such designation.

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 its delegate 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 the 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.

### **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, a Supplemental 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 Individual Accounts shall be maintained for all Participants who have an interest in the Plan. Such separate Individual 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 Supplemental Contributions.** During each Plan Year, the Plan Administrator may in its sole discretion contribute an additional amount on behalf of each Participant as a Supplemental Contribution (generally attributable to revenue sharing amounts generated from Investment Funds). If the Plan Administrator shall determine that any such Supplemental Contributions for a Plan Year shall be made, the Plan Administrator shall designate the amount of the discretionary Supplemental Contribution to be made for such Plan Year and deposit such amount into the Plan as of a date not later than the fifteenth (15<sup>th</sup>) day of the tenth (10<sup>th</sup>) calendar month following the end of the University's fiscal year within which the

particular Limitation Year for such Supplemental Contribution ends. The Participants entitled to share in any discretionary Supplemental Contribution for a Plan Year are those Participants in the Plan who are employed by an Employing Institution on the last day of such Plan Year.

**3.04 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 the Participant were a member of the Retirement System. Consistent with Section 414(h) of the Code, Participant Contributions authorized or required by the provisions of this Section 3.04 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 each Participant's Individual Account no later than thirty (30) days after the close of the Limitation Year for which the Participant Contributions were made.

**3.05 Voluntary Before-Tax Contributions to Other Plans.** Although not part of the 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 N.C.G.S. Such contributions shall be made as permitted under Sections 401(k), 403(b) or 457(b) of the Code, and shall not be part of the Plan. Payment of voluntary before-tax contributions shall be made by the Employing Institution to the designated company or companies underwriting the annuities or providing investment alternatives for the benefit of each Participant.

**3.06 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 Individual Account investment 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 allocation is properly credited or debited, as the case may be, to his or her University Account, his or her Supplemental Account, and his or her Participant Account.

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

(c) To the extent a Participant's interest in the Plan is invested in a Contract issued by an Insurance Company, and such Contract or Trust Agreement shall have an allocation procedure which shall be inconsistent with this Section 3.06, such Contract or Trust Agreement provision shall apply so long as it will not affect the qualified status of the Plan.

**3.07 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 Individual Accounts of the 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 III.

**3.08 Maximum Additions.** Anything herein to the contrary notwithstanding, the total Annual Additions made to the Participant's Individual Account for any Limitation Year, when combined with any similar Annual Additions credited to 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 Section 414(b) of the Code, or any employer within the group of employers that includes the Employing Institution and who must be aggregated and treated as



one employer pursuant to 414(c), 414(m), or 414(o) of the Code, but excluding any arrangement that may be excluded pursuant to Section 1.415(f)-1(f) of the Code regulations), shall not exceed the lesser of Section 3.09(a) or Section 3.09(b) following:

(a) Seventy thousand dollars (\$70,000) (in 2025) or such other amount as may be allowed under Section 415 of the Code (adjusted for cost of living pursuant to Section 415(d) of the Code) 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 401(a)(17) of the Code. 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 Employing Institution. "Compensation" shall include any elective deferrals as defined in Section 402(g)(3) of the Code and any amounts which are contributed or deferred by the Employing Institution at the election of the Participant and which are not includible in the gross income of the Participant by reason of Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code.

"Compensation" shall include the following:

(i) Payments (including differential wage 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 Section 414(u) of the Code).

(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 or she not severed from service, but only if the payments are made within the later of two and one half (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 Code. 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 Employing Institution to compensate a Participant for lost wages are compensation within the meaning of the Section 415(c)(3) of the Code 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) Employer contributions to a deferred compensation plan to the extent such contributions are not included in gross income of the Participant or to a Simplified Employee Pension plan, and to the extent such contributions are deductible from a

nonqualified deferred compensation plan whether or not includable in the gross income of the Participant when distributed;

(vi) Amounts realized from the exercise of a nonqualified stock option, or realized when restricted stock (or property) held by a Participant becomes freely transferable or is no longer subject to a substantial risk of forfeiture.

(vii) 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 Participant and are not salary reduction amounts that are described in Section 125 of the Code).

(ix) Other items of remuneration that are similar to any of the items listed in paragraphs (b)(v) through (b)(ix) of this Section 3.08.

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 the 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 Code.

Effective January 1, 2008, if Annual Additions are made to the Individual Account of any Participant in violation of the terms of this Section 3.08, such a failure may be corrected using any method permitted by the Employee Plans Compliance Resolution System or any similar correction program approved by the Internal Revenue Service.

**3.09 Contributions Required 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, 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 3.09 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.

A University Contribution shall be made on behalf of any eligible Employee who makes a Participant Contribution under this Section 3.09 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 determined herein.

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 3.09 shall not be subject to any otherwise applicable limitations contained in Sections 404(a), 402(g) or 415 of the Code with respect to the Plan 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.

A Participant who dies or becomes disabled on or after January 1, 2007 while performing Qualified Military Service will be treated as if the individual had resumed employment in accordance with USERRA on the day preceding the death or disability and terminated employment on the actual date of death or disability

**3.10 Rollovers and Transfers into the Plan.** Effective January 1, 2012, the Plan will accept rollovers or other transfers of funds from any plan or arrangement qualified under Section 401(a), 403, 408, or 457(b) of the Code, including transfers from the Retirement System as permitted by the N.C.G.S. The Plan does not accept direct rollovers of after-tax contributions.

## **ARTICLE IV**

### **DISTRIBUTIONS**

#### **4.01 Vesting.**

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

(b) Effective July 1, 2011, 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 any combination of (i) Eligible Service under the Plan; and (ii) total membership service, as defined in the N.C.G.S., in the Retirement System, the Local Government Employees' Retirement System, or the Consolidated Judicial Retirement System.

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

(d) Effective July 1, 2011, a Participant who (i) ceases employment with all Employing Institutions before he or she completes five (5) full years of any combination of Eligible Service under the Plan and total membership service in the Retirement System, the Local Government Employees' Retirement System, or the Consolidated Judicial Retirement System, (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.

(e) Effective January 1, 2013, a Participant who ceases employment with all Employing Institutions before he or she completes five (5) full years of any combination of Eligible Service under the Plan and total membership service in the Retirement System, the Local Government Employees' Retirement System, or the Consolidated Judicial Retirement System and to whom Section 4.01(d) of the Plan does not apply, shall Forfeit his or her Individual Account balances attributable to University Contributions. Consistent with Section 401(a) of the Code, no part of the corpus or income of the Plan may be used for purposes other than for the exclusive benefit of participants and their beneficiaries, except that University Contributions made under a good faith mistake of fact may be returned, consistent with the rules adopted by the University.

(f) Any Participant who is convicted of an offense (as defined below) shall forfeit, in accordance with N.C.G.S. Section 135-5.1(h), the Participant's interest in the Plan attributable to the University's Contributions if (i) the offense is committed while the Participant is employed by the Constituent Institutions, and (ii) the conduct resulting in the Participant's conviction is directly related to the Participant's office or employment. For avoidance of doubt, any Participant that is not one hundred percent (100%) vested in the Participant's Individual Account on December 1, 2012 and is convicted of an offense committed after December 1, 2012, shall forfeit any interest in the Plan attributable to the University's Contributions, except for a return of the Participant's interest in the Plan. Alternatively, any Participant that is one hundred percent (100%) vested in the Participant's Individual Account on December 1, 2012 and is convicted of an offense committed after December 1, 2012 shall forfeit any interest in the Plan attributable to the University's Contributions accrued after December 1, 2012. Any funds forfeited under this paragraph (f) shall be deposited in the trust fund(s).

For purposes of this paragraph (f), "offense" includes any offense listed under N.C.G.S. Section 135-18.10A, including any felony under federal law or the laws of North Carolina.

#### **4.02 Distributions upon Death.**

(a) **Death Before Retirement or Termination of Employment.** Upon the death of a Participant before the Participant Retires or the Participant's 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 4.05(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 Participant who has elected to receive benefit payments in accordance with Section 4.05(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.

#### **4.03 Distributions Upon Retirement or Termination of Employment with the University.**

(a) **Distributions After Full Vesting.** A Participant who Retires or has a Termination of Employment after becoming fully vested under Section 4.01 shall be entitled to receive his or her Individual Account, as adjusted in Section 3.06, 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 Retires or has a Termination of Employment without being fully vested in his or her University Account, but who becomes vested 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 Insurance Company or Trustee.

(ii) A Participant who Retires or has a Termination of 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.

**4.04 In-Service Distributions Upon Participation in the Phased Retirement Program.** A Participant who has (a) attained Normal Retirement Age and (b) has entered The University of North Carolina Phased Retirement Program following the completion of five (5) full years of Eligible Service, shall be entitled to receive his or her Individual Account, as adjusted in Section 3.06, in any manner permitted by the Contract or Investment Fund in which such Participant has invested his or her Individual Account.

**4.05 Method of Payment.**

(a) **Application for Benefits.** To receive a benefit under the Plan, the Participant, the Participant's 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 4.05(c).

(c) **Investment Fund Distributions.** A 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 4.05(b), a 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 135-45.2 *et seq.* to receive or 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.

**4.06 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.

**4.07 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 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:

(a) the Participant's having attained his or her Normal Retirement Age;

(b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or

(c) the Termination of Employment of the Participant.

**4.08 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 Section 401(a)(9) of the Code and the regulations thereunder.

(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:

(i) 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.

(ii) 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.

(iii) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death.

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

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 Section 401(a)(9) of the Code and the regulations thereunder.

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

(i) 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 Code regulations, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

(ii) 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 Code regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the "distribution calendar year."

(e) 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.

(f) 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 expectancy of the Participant or the remaining life expectancy of the Participant’s designated Beneficiary, determined as follows:

(i) 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.

(ii) 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.

(iii) 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.

(g) 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.

(h) 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).

(i) 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 (5<sup>th</sup>) anniversary of the Participant’s death.

(j) 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.

(k) **SECURE Act Requirements.** The provisions of this subsection are intended to reflect only changes made to the Code by the SECURE Act, and shall be administered in accordance with such changes and any guidance issued thereunder notwithstanding anything contained in the Plan, including any Article, or Appendix, to the contrary.

(i) **Delay of the Mandatory Commencement Date.** The Participant’s entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant’s Mandatory Commencement Date. For Plan purposes, the “Mandatory



Commencement Date” is April 1 immediately following the later of (i) the calendar year in which the Participant attains age 72 or (ii) if so elected by the Participant under subsection (c), the calendar year in which the Participant Retires.

(A) **Exception for five percent (5%) Owners.** For purposes of determining a Participant’s Mandatory Commencement Date, an affected Participant will be treated as more than a five percent (5%) owner if he or she was a five percent (5%) owner (as defined in Section 416(i)(1)(B) of the Code) as to the Plan Year ending in the calendar year the Participant attains age 72.

(ii) **Mandatory Spousal Distributions.** If the Participant dies before the Participant’s Mandatory Commencement Date and 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 72, if later.

(iii) **Required Minimum Distributions to Beneficiaries.** With respect to Participants who die on or after January 1, 2020:

(A) **10-Year Rule.** If the distributee of a deceased Participant’s account balance is a designated Beneficiary who is not an Eligible Designated Beneficiary (as defined below), then the Plan will distribute the account balance in full no later than December 31 of the tenth (10<sup>th</sup>) year following the year of the Participant’s death.

(B) **Beneficiary Death.** If an Eligible Designated Beneficiary dies before receiving distribution of the Beneficiary’s entire interest in the Participant’s account, the Plan will distribute that interest in full no later than December 31 of the tenth (10<sup>th</sup>) year following the year of the Eligible Designated Beneficiary’s death. Similarly, if a Participant died before January 1, 2020, the limitations of this subparagraph (C)(2) shall apply to distributions to the beneficiary of the Participant’s designated Beneficiary if the designated Beneficiary died after January 1, 2020.

(C) **Eligible Designated Beneficiaries.** An individual is an “Eligible Designated Beneficiary” of a Participant if the individual qualifies as a designated Beneficiary and is:

- (1) the Participant’s Spouse,
- (2) the Participant’s child who has not reached the age of majority (as defined for purposes of Section 401(a)(9)(F) of the Code),
- (3) an individual not more than ten (10) years younger than the Participant,
- (4) a disabled individual (as defined in Section 72(m)(7) of the Code), or

(5) an individual who has been certified to be chronically ill (as defined in Section 7702B(c)(2) of the Code) for a reasonably lengthy period, or indefinitely.

(6) Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to Section 401(a)(9)(H)(iv) and (v) of the Code. When a child of the Participant reaches the age of majority, the Plan will distribute the child's account in full no later than ten (10) years after that date.

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

(i) **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."

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

(iii) **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.

(iv) **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.

#### **4.09 Re-Employment by the University.**

(a) If a Participant returns to Eligible Service at the University and has not received a distribution of his or her entire Individual Account, such Participant shall be reenrolled in the Plan upon re-employment by the University so long as such Participant is considered an "Employee" as described in Section 1.15 of the Plan. If such Participant returns to a position that is ineligible to participate in the Plan, such Participant shall not be eligible to enroll in the Plan upon re-employment.

(b) A Participant who terminated employment with less than five (5) years of Eligible Service and returns to employment with the University after receiving a distribution under Section 4.03 shall not be permitted to transfer to the Plan any funds distributed under Section 4.03 (except as authorized by Section 3.10), but may elect to enroll in the Plan upon re-employment as provided in Section 2.01(c).

#### **4.10 Rollover Distributions.**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's (as defined below) election under this Section 4.10, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator or its delegate and after becoming entitled to a distribution from the Plan, to have any portion of an Eligible Rollover Distribution (as defined below) paid directly to an Eligible Retirement Plan (as defined below) specified by the Distributee in a Direct Rollover (as defined below). Such distribution may commence less than thirty (30) days after the notice required under Section 1.411(a)-11(c) of the Code 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 4.10, 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 Section 401(a)(9) of the Code; any distribution which is made upon hardship of the Employee, and any Participant Contribution returned to comply with Section 415 of the Code. 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 Section 408(a) or (b) of the Code, 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 Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a Roth IRA described in Section 408A of the Code, an annuity plan described in Section 403(a) of the Code, a qualified retirement plan described in Section 401(a) of the Code, an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible employer described in Section 457(e)(1)(A) of the Code and which agrees to separately account for amounts transferred into such a plan from the Plan, or an annuity contract described in Section 403(b) of the Code, 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 Section 414(p) of the Code. In the case of a beneficiary that is not a Spouse, an Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code.

(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 Section 414(p) of the Code, are Distributees with regard to the interest of the Spouse or former Spouse. A beneficiary that is not a Spouse is a Distributee for purposes of a Direct Rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code.

(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 Section 402(f) of the Code 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.

**4.11 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 ninety (90) days after receipt of the claim; provided that, if special circumstances require an extension of time for processing the claim, an additional ninety (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 ninety (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 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 sixty (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 sixty (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 sixty (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.

**4.12 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 five (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 six (6) months after such mailing such person has not made written claim therefore, the Plan Administrator, may (i) establish an individual retirement account on behalf of the participant or beneficiary to whom payment is due, and deliver the payment to that account as a distribution, or, in the discretion of the Plan Administrator, deposit the payment in the North Carolina escheat fund, which upon such delivery, the Plan shall have no further liability, or (ii) forfeit such benefits to pay Plan expenses. In the event the person (or the person's representative) is located after the person's benefits have been forfeited, and files a written claim for payment of benefits and executes such other instruments as the Plan Administrator may require, such benefits shall be restored (without adjustment for gains or losses) retroactive to the date they become payable.

**4.13 Forfeitures.** Any Forfeitures occurring during the Plan Year shall be used first, to pay Plan expenses; second, to reduce any University Contributions to the Plan.

## **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 delegate 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 delegate 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 delegate shall give due consideration to the following:

- (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 5.02, 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, University Account and Supplemental 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 delegate shall have the right at any time by action of the Board or its delegate 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 or Beneficiary hereunder shall not be adversely affected thereby; and provided, further, that no such modification, alteration, or amendment shall have the effect of revesting in the University any part of the principal or income of any Participant's Individual Account.

**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 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 twenty percent (20%), 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 for which the Plan has not been terminated shall be unaffected. The Individual Accounts of the 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 or Beneficiaries or otherwise applied to their benefits pursuant to Section 4.05.

## **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 Participants and of necessity retains control of the operation and administration of the Plan. Pursuant to Section 1.33 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.

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 delegate may provide for the administration of the Plan and may perform or authorize the performance of all functions necessary for its administration. The reasonable and necessary 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 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 Section 401(a)(13)(B) of the Code 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 the Plan shall be subject to the claims of any creditor of a Participant or to the claim of any creditor of any Beneficiary hereunder or to any legal process by any creditor of such Participant or of any such Beneficiary; and no such Participant nor any such Beneficiary shall have any right to alienate, commute, anticipate, or assign any of the benefits, payments, proceeds, or distributions under the 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 Internal Revenue Service. 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) by a court with jurisdiction over the Plan which has been determined by the Plan Administrator or its delegate in accordance with nondiscriminatory rules and procedures established under the Plan to constitute a domestic relations order assigning Plan benefits. A Qualified Domestic Relations Order must (a) relate to the payment of a marital property award to a Spouse or former Spouse of a Participant (an "Alternate Payee"), (b) must create or recognize an Alternate Payee as an owner or a co-owner of an interest of a Participant under the Plan, and (c) must specifically identify each interest that is subject to such order and must specifically order the direct transfer of each such interest to such Alternate Payee. No Qualified Domestic Relations Order shall require the Plan to provide any type or form of benefit not otherwise provided by the Plan; nor to provide any increased benefits; nor to pay benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another previously applicable Qualified Domestic Relations Order.

**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.

**7.11 Adoption of the Plan.** Anything herein to the contrary notwithstanding, the Plan is created under the condition that it shall be approved and qualified by the Internal Revenue Service under Section 401(a) and/or Section 403(a) of the Code and that the Trust (if applicable) is exempt under Section 501(a) of the Code, 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.



As evidence of its adoption of the Plan, the Board has caused this instrument to be signed by its Chair therefore duly authorized and its corporate seal to be affixed hereto this 15<sup>th</sup> day of May, 2025.

THE BOARD OF GOVERNORS OF  
THE UNIVERSITY OF NORTH CAROLINA

---

CHAIR

ATTEST:

By: \_\_\_\_\_  
Secretary  
The University of North Carolina

SEAL

EXHIBIT C

**THE UNIVERSITY OF NORTH CAROLINA OPTIONAL RETIREMENT PROGRAM**

**APPENDIX:**

**THE UNIVERSITY OF NORTH CAROLINA QUALIFIED GOVERNMENTAL EXCESS  
BENEFIT ARRANGEMENT**

**AMENDED AND RESTATED**  
**JANUARY 1, 2025**

~~As Amended and Restated June 8, 2007~~

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	<u>1</u>
<del>GENERAL PROVISIONS</del> <u>ARTICLE I DEFINITIONS</u> .....	<u>1</u>
<u>ARTICLE II PARTICIPATION</u> .....	<u>1</u>
<u>2.01 Eligible Class</u> .....	<u>1</u>
<u>ARTICLE III ARRANGEMENT CONTRIBUTIONS</u> .....	<u>2</u>
<u>3.01 Arrangement Contributions Under this Arrangement</u> .....	<u>2</u>
<u>3.02 Amount of</u> .....	<u>2</u>
<u>3.03 Timing of</u> .....	<u>2</u>
<u>3.04 Cessation of Arrangement Contributions</u> .....	<u>2</u>
<u>ARTICLE IV INVESTMENTS</u> .....	<u>2</u>
<u>ARTICLE V PAYMENT OF BENEFITS</u> .....	<u>3</u>
<u>5.01 Benefit Amounts</u> .....	<u>3</u>
<u>5.02 Commencement of Benefits</u> .....	<u>3</u>
<u>5.03 Form of Benefit Payment</u> .....	<u>3</u>
<u>5.04 Beneficiary Designation</u> .....	<u>3</u>
<u>5.05 Vesting Provisions</u> .....	<u>3</u>
<u>5.06 Forfeiture Provisions.</u> .....	<u>3</u>
<u>5.07 Non-Alienation Provisions</u> .....	<u>3</u>
<u>ARTICLE VI UNFUNDED STATUS</u> .....	<u>4</u>
<u>ARTICLE VII PLAN ADMINISTRATION</u> .....	<u>4</u>
<u>7.01 Powers and Duties</u> .....	<u>4</u>
<u>7.02 Consultants</u> .....	<u>4</u>
<u>ARTICLE VIII AMENDMENT AND TERMINATION</u> .....	<u>4</u>
<u>8.01 Amendment</u> .....	<u>4</u>
<u>8.02 Termination</u> .....	<u>4</u>
<u>ARTICLE IX GENERAL PROVISIONS</u> .....	<u>5</u>
<u>9.01 Governing Law</u> .....	<u>5</u>
<u>9.02 Captions</u> .....	<u>5</u>
<u>9.03 Facility of Payment</u> .....	<u>5</u>
<u>9.04 Withholding</u> .....	<u>5</u>
<u>9.05 Administrative Expenses</u> .....	<u>5</u>
<u>9.06 Severability</u> .....	<u>5</u>
<u>9.07 Liability</u> .....	<u>5</u>
<u>9.08 Binding Effect</u> .....	<u>5</u>
<u>9.09 Construction</u> .....	<u>5</u>
<b>ARTICLE I</b> <b>DEFINITIONS</b> .....	<b>1</b>
<b>1.1</b> <b>ARRANGEMENT</b> .....	<b>2</b>

1.2	BENEFICIARY	2
1.3	BENEFIT COMMENCEMENT DATE	2
1.4	CODE	2
1.5	COMPENSATION	2
1.6	ELIGIBLE EMPLOYER	2
1.7	PARTICIPANT	2
1.8	PLAN ADMINISTRATOR	3
ARTICLE II	PARTICIPATION	3
2.1	ELIGIBLE CLASS	3
ARTICLE III	CONTRIBUTIONS	3
3.1	COMMENCEMENT OF CONTRIBUTIONS	3
3.2	EMPLOYEE CONTRIBUTIONS	3
3.3	EMPLOYER CONTRIBUTIONS	4
3.4	CESSATION OF CONTRIBUTIONS	4
ARTICLE IV	INVESTMENTS	4
ARTICLE V	PAYMENT OF BENEFITS	5
5.1	BENEFIT AMOUNTS	5
5.2	COMMENCEMENT OF BENEFITS	5
5.3	FORM OF BENEFIT PAYMENT	5
5.4	ELECTION OF BENEFIT PAYMENT FORM	5
5.5	BENEFICIARY DESIGNATION	6
5.6	VESTING PROVISIONS	6
5.7	NON-ALIENATION PROVISIONS	6
ARTICLE VI	UNFUNDED STATUS	6
ARTICLE VII	PLAN ADMINISTRATION	6
7.1	POWERS AND DUTIES	6
7.2	CONSULTANTS	7
ARTICLE VIII	AMENDMENT AND TERMINATION	7
8.1	AMENDMENT	7
8.2	TERMINATION	7

ARTICLE IX	GENERAL PROVISIONS	7
9.1	GOVERNING LAW	7
9.2	CAPTIONS	7
9.3	FACILITY OF PAYMENT	8
9.4	WITHHOLDING	8
9.5	ADMINISTRATIVE EXPENSES	8
9.6	SEVERABILITY	8
9.7	LIABILITY	8
9.8	BINDING EFFECT	8
9.9	CONSTRUCTION	8
ARTICLE X	ADOPTION OF THE ARRANGEMENT	9

**The University of North Carolina Optional Retirement Program Appendix**  
**The University of North Carolina**  
**Qualified Governmental Excess Benefit Arrangement**

**INTRODUCTION**

WHEREAS, The University of North Carolina (~~"UNC"~~the "University") is a public institution of higher education of the State of North Carolina and is a "body politic and corporate" of said State; ~~and~~

WHEREAS, ~~LTNC~~the University has established an Optional Retirement Program, which is a governmental retirement plan intended to qualify, and which has been found by the Internal Revenue Service to qualify, as a qualified plan under Sections ~~401~~401(a) and 403(a) of the Internal Revenue Code; ~~and of 1986, as amended, ("Code");~~

WHEREAS, Section 415(m) of the ~~Internal Revenue~~ Code ~~of 1986, as amended, ("IRC")~~ authorizes a governmental organization to establish a qualified excess benefit plan as a portion of a governmental plan, as provided by ~~IRC~~ Section 415(m) of the Code;

WHEREAS, the purpose of The University of North Carolina Qualified Governmental Excess Benefit Arrangement (the "Arrangement") is to provide participants in the Optional Retirement Program of The University of North Carolina (the ~~"ORP"~~"Plan") that portion of a ~~participant's~~participant's benefits that would otherwise be payable under the terms of the ~~ORP~~Plan except for the limitations on benefits imposed by ~~IRC~~ Section 415 of the Code; and

WHEREAS, this Arrangement is intended to comply with ~~IRC~~ Section 415(m) of the Code and is intended to be an appendix to the ~~Optional Retirement Program Plan~~;

NOW, THEREFORE, ~~LTNC~~the University hereby establishes this Arrangement as ~~set forth in this document~~amended and restated, effective January 1, ~~1995~~2025.

**GENERAL PROVISIONS**

Except as noted herein, this Arrangement shall operate in accordance with the ~~Optional Retirement Program Plan~~ and the policies and procedures adopted hereunder.

**ARTICLE I** ~~ARTICLE I~~

**DEFINITIONS**

~~Where the following words and phrases appear in the Arrangement, they shall have the meanings specified below unless a different meaning is clearly required by the context. Capitalized terms used but not defined in this Arrangement shall have the meanings given to them in the ORP.~~

~~**1.1 Arrangement.** The term "Arrangement" refers to The University of North Carolina Qualified Governmental Excess Benefit Arrangement, whether or not referred to herein as "the" or "this" Arrangement.~~

~~**1.2 Beneficiary.** The term "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.~~

~~**1.3 Benefit Commencement Date.** For a Participant who has attained Normal Retirement Age, as defined in Section 4.02 of the ORP, the term "Benefit Commencement Date" shall mean the first day of the month following the Participant's termination of employment or death. For all other Participants, the term "Benefit Commencement Date" shall mean the first day of the month following attainment of Delayed Retirement as that term is defined in Section 4.03 of the ORP or death. If a terminated or retired Participant returns to employment with UNC prior to the original Benefit Commencement Date, the Benefit Commencement Date for benefits accrued during the former period of service shall be redetermined according to the first two sentences of this Section 1.3 based on the date of cessation of the second (or subsequent) period of employment.~~

~~**1.4 Code.** The terms "Internal Revenue Code" and "IRC" shall mean the Internal Revenue Code of 1986, as amended from time to time subsequent to the date that this Arrangement is executed.~~

~~**1.5 Compensation.** The term "Compensation" shall mean an individual's compensation as defined in Section 1.05, Article I of the ORP, subject to the limitations of IRC Section 401(a)(1-7) and the transition rules under Treasury Regulations Section 1.401(a)(1-7)(d)(4)(ii).~~

~~**1.6 Eligible Employer.** The term "Eligible Employer" shall mean The University of North Carolina.~~

~~**1.7 Participant.** Any employee within the Eligible Class under Section 2.1, Article II of this Arrangement.~~

~~1.8 Plan Administrator.~~ The term Plan Administrator shall mean The University of North Carolina. The Plan Administrator hereby delegates its responsibilities as follows:

~~(a) Any action (including, but not limited to decisions, determinations and interpretations that may be taken by the Plan Administrator under the Arrangement) may be taken by its delegate.~~

~~(b) The President of The University of North Carolina shall have the authority to appoint, in writing, a person or committee to serve as a temporary substitute or permanent replacement for the President to serve as the delegate of the Plan Administrator, provided such person is (or all committee members are) either an employee of The University of North Carolina or a member of the Board of Governors of The University of North Carolina.~~

~~(c) No person serving as a delegate of the Plan Administrator shall be authorized to take action with respect to matters exclusively affecting his or her own benefit under the Arrangement.~~

Capitalized terms used but not defined in this Arrangement shall have the meanings given to them in the Plan.

## ARTICLE II~~ARTICLE II~~

### PARTICIPATION

2.01 ~~2.1~~ **Eligible Class.** All employees of the Eligible Employer shall participate in the Arrangement if they are ~~participants~~ Participants in the ~~ORP~~ Plan and the net amount determined in Sections 3.1, 3.2, and 3.3 of the Arrangement exceeds zero for any month.

## ARTICLE III~~ARTICLE III~~

### ARRANGEMENT CONTRIBUTIONS

3.01 ~~3.1~~ **Commencement of Arrangement Contributions Under this Arrangement.** Notwithstanding anything herein to ~~t\_h~~ the contrary, contributions made to this Arrangement ~~shall only commence when the contributions under Sections 3.2 and 3.3 hereunder, in the aggregate, exceed the contribution limits described in IRC Section 415(e).~~ (“Arrangement Contributions”) shall only be made when the contemplated Contributions to the Plan for any Plan Year (as described in Sections 3.02, 3.03, and 3.04 of the Plan) exceeds the maximum Annual Addition amount (as described in Section 3.08 of the Plan).

3.02 **Amount of Arrangement Contributions.** The amount of the Arrangement Contribution made on behalf of a Participant to this Arrangement for any Plan Year in which the circumstance described in Section 3.1 applies shall equal:



(a) The amount of the Contributions for such Plan Year, determined pursuant to Sections 3.02, 3.03, and 3.04 of the Plan, without regard for the application of the maximum Annual Addition limitation described in Section 3.08 of the Plan, minus

~~3.2 Employee Contributions. Employee contributions to the Arrangement shall be determined by applying the following steps:~~

~~(a) First, for each month, beginning with the month coincident with the effective date, the employee contribution rate specified under the ORP shall be multiplied by Compensation as defined hereunder earned during such month, disregarding any limitations on employee contributions that would be applicable under the ORP as necessary to limit annual additions within the ORP to the amount defined in IRC Section 415(c).~~

(b) ~~Contributions to the Arrangement of the amount~~ The actual amount of the Contributions for such Plan Year, determined pursuant to Section 3.2(a) hereof shall then commence when the Employee and Employer Contributions under the ORP exceed the limits in IRC Section 415(c). Sections 3.02, 3.03, and 3.04 of the Plan after applying the maximum Annual Addition limitation described in Section 3.08 of the Plan.

~~3.3 Employer Contributions. Employer contributions to the Arrangement shall be determined by applying the following steps:~~

Notwithstanding the foregoing, no Arrangement Contribution for any Plan Year may be based on an amount of a Participant's Compensation in excess of the limit on maximum allowable compensation set forth under Code Section 401(a)(17) as of the first day of such Plan Year.

~~(a) First, for each month, beginning with the month coincident with the effective date, the employer contribution rate specified under the ORP shall be multiplied by Compensation as defined hereunder earned during such month, disregarding any limitations on employer contributions that would be applicable under the ORP as necessary to limit annual additions to the amount defined in IRC Section 415(c).~~

**3.03 Timing of Arrangement Contributions.** Any Arrangement Contributions made on behalf of a Participant to this Arrangement shall be made at the same time as the corresponding Contributions are made to the Plan. In the event that no Contributions may be made on behalf of a Participant to the Plan for a particular Plan Year due to the application of the maximum Annual Addition limitations described in Section 3.08 of the Plan (thereby entitling such Participant to a Arrangement Contributions to this Arrangement equal to the amount of the contemplated Contribution to the Plan), such Arrangement Contribution shall be made within two and one-half months following the end of the Plan Year to which such Arrangement Contribution relates.

~~(b) Contribution to the Arrangement of the amount determined pursuant to Section 3.3(a) hereof shall then commence when the Employee and Employer Contributions under the ORP exceed the limits in IRC Section 415(c).~~

~~3.4 Cessation of Contributions. No contributions to this~~

**3.04 Cessation of Arrangement Contributions.** No Arrangement Contributions made pursuant to this Arrangement shall be made by or for on behalf of a Participant after the payment of benefits to that Participant has commenced under this Arrangement.

## ARTICLE IV ~~ARTICLE IV~~

### INVESTMENTS

Arrangement Contributions under this Arrangement shall be deemed to be invested in the same form and manner as ~~contributions~~ amounts held in the Participant's Individual Account under the ~~ORP. All~~

~~product and~~ Plan, as if all investment elections under the ~~ORP~~ Plan equally ~~apply~~ applied to amounts credited to a Participant's "**Arrangement Account**" under this Arrangement. The Participant's Arrangement Account shall be the bookkeeping account maintained by the University to track the value of the Participant's benefit under this Arrangement.

~~ARTICLE V~~  
ARTICLE V

PAYMENT OF BENEFITS

**5.01** ~~5.1~~ **Benefit Amounts.** The benefits payable to or on behalf of a Participant under this Arrangement shall be equal to the ~~Participant's account~~ Participant's Arrangement Account balance ~~(under this Arrangement,~~ which shall be the sum of all ~~employee and employer contributions~~ Arrangement Contributions made under this Arrangement ~~by or for the Participant,~~ reduced by ~~plan~~ Plan or Arrangement expenses properly chargeable to the Participant), and increased or decreased (as appropriate) by the ~~Participant's~~ Participant's "investment factor," as described below.

A ~~Participant's~~ Participant's "investment factor" shall be equal to the return ~~that would have been on investment~~ realized on the ~~Participant's account~~ Participant's Arrangement Account balance had that balance been invested in accordance with the same instructions used to invest the ~~Participant's employee and employer contributions~~ Participant's Individual Account under the ~~ORP~~ Plan, provided such instructions exclusively utilize an authorized vendor approved by ~~The~~ the University ~~of North Carolina~~.

**5.02** ~~5.2~~ **Commencement of Benefits.** Payment of benefits ~~to a participant will begin under this Arrangement~~ to a Participant will occur coincident with the payment of ~~benefits as determined by the ORP.~~ Withdrawals from the Arrangement prior to the Benefit Commencement Date are not permitted under any circumstances Plan benefits.

**5.03** ~~5.3~~ **Form of Benefit Payment.** Upon commencement, benefits shall be determined pursuant to the ~~ORP~~ Plan. Any election of benefit form under the ~~ORP~~ Plan shall also be applicable under this Arrangement, to the extent such form is available.

**5.04** **Beneficiary Designation.** A Participant's "Arrangement Beneficiary" shall be the Participant's Beneficiary as determined pursuant to the Plan. Any changes to a Participant's Beneficiary under the Plan shall automatically be applied to this Arrangement.

~~5.4 Election of Benefit Payment Form.~~ Each Participant shall, prior to the date benefits begin to accrue hereunder, make an affirmative written election on a form to be provided by ~~the Plan Administrator~~ as to the form of distribution applicable to benefits under the Arrangement. Elections under the ORP shall be deemed controlling hereunder. ~~In the event that no such election is made prior to the date benefits begin to accrue hereunder,~~ distributions from this Arrangement shall be governed by the normal form of payment under the ORP.

~~5.5 Beneficiary Designation.~~ Upon commencing participation, each Participant shall designate a Beneficiary on forms furnished by the Plan Administrator or its delegate. Such forms shall be maintained in files held by the Plan Administrator or its delegate. From time to time, the Participant may change his Beneficiary by written notice ~~to the Plan Administrator or its delegate.~~ Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under this Arrangement shall cease. Any beneficiary designation under the ORP ~~shall be deemed controlling hereunder.~~

Further, to the extent there is no ~~beneficiary~~Beneficiary designation under the ~~ORP~~Plan at the date of death of the Participant, or if the Beneficiary designated has died prior to the death of the Participant, or if the Participant has revoked a prior designation in writing filed with the Plan Administrator without having filed a new designation, then any death benefits which would have been payable to the Beneficiary hereunder shall be payable to the ~~Participant's~~Participant's spouse, if living; if not living, equally to the ~~Participant's~~Participant's children; or if none survive, then to the ~~Participant's~~Participant's estate.

**5.05** ~~5.6~~ **Vesting Provisions.** ~~For purposes of determining vested status in this Plan, years of participation in the ORP shall constitute years of participation in the Arrangement. Therefore, all employer provided benefits in the Arrangement shall be vested to the same extent (as measured by the vesting percentage) as are employer provided benefits in the ORP. Employee provided benefits under the Arrangement shall be 100% vested at all times. To the extent an Arrangement Contribution is made to this Arrangement on behalf of a Participant for a Plan Year, such Arrangement Contribution shall be subject to the same vesting conditions applicable to the corresponding Contributions made to the Plan for such Plan Year. In the event that no Contributions may be made on behalf of a Participant to the Plan for a particular Plan Year due to the application of the maximum Annual Addition limitation described in Section 3.08 of the Plan (thereby entitling such Participant to an Arrangement Contribution to this Arrangement equal to the amount of the contemplated Contribution to the Plan), such Arrangement Contribution shall be subject to the vesting conditions that would have been applicable to the contemplated Contribution had the University been able to make such Contribution to the Plan.~~

**5.06** **Forfeiture Provisions.** Any Forfeitures occurring during the Plan Year shall be used, first, to pay Plan expenses; second, to reduce any University Contributions to the Plan.

**5.07** ~~5.7~~ **Non-Alienation Provisions.** A ~~Participant's~~Participant's right to benefit payments under the Arrangement are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Participant or the ~~Participant's~~Participant's Beneficiary.

## ARTICLE VI~~ARTICLE VI~~

### UNFUNDED STATUS

Participants and their Beneficiaries will have no right or property interest in any assets held to support the liabilities created hereunder. Participants have the status of general unsecured creditors of the Eligible Employer, and this Plan constitutes a mere promise by the Eligible Employer to make benefit payments in the future. Any and all payments made to or on behalf of a Participant pursuant to the Arrangement shall be made from the general assets of the Eligible Employer. Any and all annuity contracts or mutual funds purchased to support the liabilities hereunder shall be registered in the name of the employer and held as a general asset on its books of account.

## ARTICLE VII~~ARTICLE VII~~

### PLAN ADMINISTRATION

**7.01** ~~7.1~~ **Powers and Duties.** The Plan Administrator shall administer the Arrangement. It shall have the authority to interpret, construe, and implement the Arrangement, to adopt and review rules and regulations relating to the Arrangement and to make all other determinations relating to the administration of the Arrangement. Any

decision or interpretation of any provision of the Arrangement adopted by the Plan Administrator shall be final and conclusive. The Plan Administrator may delegate

authority to carry out these duties ~~as described in Section 1.8, Article I, hereof~~ pursuant to the terms of the Plan. A Participant who is also delegated administrative authority under the Arrangement ~~Section 1.8, Article I~~, shall not participate in any decision involving any requests made by him or her or relating in any way solely to his or her rights, duties and obligations as a Participant under the Arrangement.

**7.02** ~~7.2~~ **Consultants.** Consistent with any applicable laws, regulations, or policies of the State of North Carolina, the Plan Administrator may employ such counsel, accountants, actuaries and other agents as it shall deem advisable. ~~UNC~~ The University shall pay the compensation of such counsel, accountants, actuaries and other agents and any other due and proper expenses incurred by the Plan Administrator in the administration of the Arrangements to offset the liabilities created by this Arrangement that are not otherwise accommodated through products purchased under this Arrangement.

## ARTICLE VIII ~~ARTICLE VIII~~

### AMENDMENT AND TERMINATION

**8.01** ~~8.1~~ **Amendment.** ~~UNC~~ The University reserves the right to amend or to modify the Arrangement at any time, including retroactively, by formal action of its Board of Governors or its delegate, so long as the amendment or modification does not reduce a ~~Participant's~~ Participant's benefits that accrued under this Arrangement prior to the earlier of the date on which such amendment is authorized or executed.

**8.02** ~~8.2~~ **Termination.** ~~UNC~~ The University reserves the right to terminate the Arrangement at any time by formal action of its Board of Governors, so ~~Jonglong~~ as the termination does not reduce a ~~Participant's~~ Participant's benefits that accrued under the Plan prior to the date of such termination.

## ARTICLE IX ~~ARTICLE IX~~

### GENERAL PROVISIONS

**9.01** ~~9.1~~ **Governing Law.** Except to the extent superseded by federal law, the laws of the State of North Carolina shall be controlling in all matters relating to this Arrangement, including the construction and performance hereof, notwithstanding principles of conflicts of laws.

**9.02** ~~9.2~~ **Captions.** The captions of Articles and Sections of this Arrangement are for convenience of reference only and shall not control or affect the meaning or construction of any of its provisions.

**9.03** ~~9.3~~ **Facility of Payment.** Any amounts payable hereunder to any person who is under legal disability or who, in the judgment of the Plan Administrator, is unable to manage his financial affairs properly may be paid to the legal representative of such person or may be applied for the benefit of such person in any manner that the Plan Administrator may select, and any such payment shall be deemed to be payment for such ~~person's~~person's account.

**9.04** ~~9.4~~ **Withholding.** To the extent required by the laws in effect at the time payments are made hereunder, ~~UNC~~the University shall withhold from such payments, any taxes required to be withheld for federal, state or local government purposes.

**9.05** ~~9.5~~ **Administrative Expenses.** Except as provided in the products used to underwrite liabilities hereunder, all other expenses relating to the Arrangement and its administration shall be borne by ~~UNC~~the University.

**9.06** ~~9.6~~ **Severability.** Any provision of this Arrangement prohibited by the law of any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such ~~—~~prohibition without invalidating the remaining provisions hereof.

**9.07** ~~9.7~~ **Liability.** Except as otherwise expressly provided herein, no member of the Board of Governors of ~~UNC~~the University no delegate of the Plan Administrator, and no officer, employee or agent of the Eligible Employer or the Plan Administrator Committee (specifically including, but not limited to an employee of ~~UNC~~the University acting at the direction of the Plan Administrator) shall have any liability to any person, firm or corporation based on or arising out of the Arrangement except in the case of gross negligence or fraud. ~~UNC~~ The University agrees to indemnify each member of its Board of Governors, each delegate of the Plan Administrator and each officer and employee of the Eligible Employer against all liabilities arising out of the performance of his duties hereunder, excluding liabilities resulting from the ~~individual's~~individual's gross negligence or fraud.

**9.08** ~~9.8~~ **Binding Effect.** This Arrangement shall be binding upon and shall inure to the benefit of ~~LTNC~~the University, its successors and assigns and each Participant and his heirs, executors, administrators and legal representatives.

**9.09** ~~9.9~~ **Construction.** Any words herein used in the masculine shall be read and construed in the feminine where they would so apply. Words in the singular shall be read and construed as though used in the plural in all cases where they would so apply.

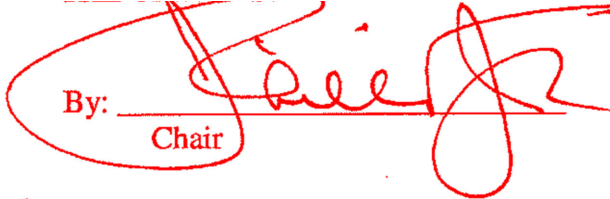


**ARTICLE X**  
**ADOPTION OF THE ARRANGEMENT**

As evidence of ~~is~~its adoption of the Arrangement, the Board ~~of Governors of The University of North Carolina~~ has caused this instrument to be signed by its ~~chairman~~Chair therefore duly authorized and its corporate seal to be affixed hereto this ~~8<sup>th</sup>~~15<sup>th</sup> day of ~~June 2007~~May, 2025.

THE BOARD OF GOVERNORS OF  
THE

(Deleted)

By:   
Chair

ATTEST:

By:   
Secretary

6/14/07

<b>Summary report:</b> <b>Litera Compare for Word 11.11.0.158 Document comparison done on</b> <b>4/28/2025 4:29:05 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> iw://dmsus.mwllp.dom/active/197194813/1 - UNC - ORP - Qualified Excess Benefit Arrangement - Amendment and Restatement (2024) - Working Draft.docx	
<b>Modified DMS:</b> iw://dmsus.mwllp.dom/active/197194813/6 - UNC - ORP - 415(m) Qualified Excess Benefit Arrangement - Amendment and Restatement (2025) - Working Draft.docx	
<b>Changes:</b>	
<a href="#">Add</a>	221
<del>Delete</del>	213
<del>Move From</del>	41
<a href="#">Move To</a>	41
<a href="#">Table Insert</a>	0
<del>Table Delete</del>	2
<a href="#">Table moves to</a>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	519

**THE UNIVERSITY OF NORTH CAROLINA OPTIONAL RETIREMENT PROGRAM**

**APPENDIX:**

**THE UNIVERSITY OF NORTH CAROLINA QUALIFIED GOVERNMENTAL EXCESS  
BENEFIT ARRANGEMENT**

**AMENDED AND RESTATED  
JANUARY 1, 2025**

## TABLE OF CONTENTS

	Page
<b>INTRODUCTION.....</b>	<b>1</b>
<b>ARTICLE I DEFINITIONS .....</b>	<b>1</b>
<b>ARTICLE II PARTICIPATION.....</b>	<b>1</b>
2.01 Eligible Class .....	1
<b>ARTICLE III ARRANGEMENT CONTRIBUTIONS.....</b>	<b>2</b>
3.01 Arrangement Contributions Under this Arrangement.....	2
3.02 Amount of.....	2
3.03 Timing of .....	2
3.04 Cessation of Arrangement Contributions.....	2
<b>ARTICLE IV INVESTMENTS.....</b>	<b>2</b>
<b>ARTICLE V PAYMENT OF BENEFITS.....</b>	<b>3</b>
5.01 Benefit Amounts.....	3
5.02 Commencement of Benefits.....	3
5.03 Form of Benefit Payment.....	3
5.04 Beneficiary Designation .....	3
5.05 Vesting Provisions .....	3
5.06 Forfeiture Provisions.....	3
5.07 Non-Alienation Provisions.....	3
<b>ARTICLE VI UNFUNDED STATUS .....</b>	<b>4</b>
<b>ARTICLE VII PLAN ADMINISTRATION .....</b>	<b>4</b>
7.01 Powers and Duties .....	4
7.02 Consultants.....	4
<b>ARTICLE VIII AMENDMENT AND TERMINATION .....</b>	<b>4</b>
8.01 Amendment.....	4
8.02 Termination.....	4
<b>ARTICLE IX GENERAL PROVISIONS.....</b>	<b>5</b>
9.01 Governing Law .....	5
9.02 Captions .....	5
9.03 Facility of Payment.....	5
9.04 Withholding .....	5
9.05 Administrative Expenses .....	5
9.06 Severability .....	5
9.07 Liability.....	5
9.08 Binding Effect.....	5
9.09 Construction.....	5

**The University of North Carolina Optional Retirement Program Appendix**  
**The University of North Carolina**  
**Qualified Governmental Excess Benefit Arrangement**

**INTRODUCTION**

WHEREAS, The University of North Carolina (the “**University**”) is a public institution of higher education of the State of North Carolina and is a “body politic and corporate” of said State;

WHEREAS, the University has established an Optional Retirement Program, which is a governmental retirement plan intended to qualify, and which has been found by the Internal Revenue Service to qualify, as a qualified plan under Sections 401(a) and 403(a) of the Internal Revenue Code of 1986, as amended, (“**Code**”);

WHEREAS, Section 415(m) of the Code authorizes a governmental organization to establish a qualified excess benefit plan as a portion of a governmental plan, as provided by Section 415(m) of the Code;

WHEREAS, the purpose of The University of North Carolina Qualified Governmental Excess Benefit Arrangement (the “**Arrangement**”) is to provide participants in the Optional Retirement Program of The University of North Carolina (the “**Plan**”) that portion of a participant’s benefits that would otherwise be payable under the terms of the Plan except for the limitations on benefits imposed by Section 415 of the Code; and

WHEREAS, this Arrangement is intended to comply with Section 415(m) of the Code and is intended to be an appendix to the Plan.

NOW, THEREFORE, the University hereby establishes this Arrangement as amended and restated, effective January 1, 2025.

**GENERAL PROVISIONS**

Except as noted herein, this Arrangement shall operate in accordance with the Plan and the policies and procedures adopted hereunder.

**ARTICLE I**

**DEFINITIONS**

Capitalized terms used but not defined in this Arrangement shall have the meanings given to them in the Plan.

**ARTICLE II**

**PARTICIPATION**

**2.01 Eligible Class.** All employees of the Eligible Employer shall participate in the Arrangement if they are Participants in the Plan and the net amount determined in Sections 3.1, 3.2, and 3.3 of the Arrangement exceeds zero for any month.

## ARTICLE III

### ARRANGEMENT CONTRIBUTIONS

**3.01 Arrangement Contributions Under this Arrangement.** Notwithstanding anything herein to the contrary, contributions made to this Arrangement (“**Arrangement Contributions**”) shall only be made when the contemplated Contributions to the Plan for any Plan Year (as described in Sections 3.02, 3.03, and 3.04 of the Plan) exceeds the maximum Annual Addition amount (as described in Section 3.08 of the Plan).

**3.02 Amount of Arrangement Contributions.** The amount of the Arrangement Contribution made on behalf of a Participant to this Arrangement for any Plan Year in which the circumstance described in Section 3.1 applies shall equal:

(a) The amount of the Contributions for such Plan Year, determined pursuant to Sections 3.02, 3.03, and 3.04 of the Plan, without regard for the application of the maximum Annual Addition limitation described in Section 3.08 of the Plan, minus

(b) The actual amount of the Contributions for such Plan Year, determined pursuant to Sections 3.02, 3.03, and 3.04 of the Plan after applying the maximum Annual Addition limitation described in Section 3.08 of the Plan.

Notwithstanding the foregoing, no Arrangement Contribution for any Plan Year may be based on an amount of a Participant’s Compensation in excess of the limit on maximum allowable compensation set forth under Code Section 401(a)(17) as of the first day of such Plan Year.

**3.03 Timing of Arrangement Contributions.** Any Arrangement Contributions made on behalf of a Participant to this Arrangement shall be made at the same time as the corresponding Contributions are made to the Plan. In the event that no Contributions may be made on behalf of a Participant to the Plan for a particular Plan Year due to the application of the maximum Annual Addition limitations described in Section 3.08 of the Plan (thereby entitling such Participant to a Arrangement Contributions to this Arrangement equal to the amount of the contemplated Contribution to the Plan), such Arrangement Contribution shall be made within two and one-half months following the end of the Plan Year to which such Arrangement Contribution relates.

**3.04 Cessation of Arrangement Contributions.** No Arrangement Contributions made pursuant to this Arrangement shall be made on behalf of a Participant after the payment of benefits to that Participant has commenced under this Arrangement.

## ARTICLE IV

### INVESTMENTS

Arrangement Contributions under this Arrangement shall be deemed to be invested in the same form and manner as amounts held in the Participant’s Individual Account under the Plan, as if all investment elections under the Plan equally applied to amounts credited to a Participant’s “**Arrangement Account**” under this Arrangement. The Participant’s Arrangement Account shall be the bookkeeping account maintained by the University to track the value of the Participant’s benefit under this Arrangement.

## ARTICLE V

### PAYMENT OF BENEFITS

**5.01 Benefit Amounts.** The benefits payable to or on behalf of a Participant under this Arrangement shall be equal to the Participant's Arrangement Account balance under this Arrangement, which shall be the sum of all Arrangement Contributions made under this Arrangement for the Participant, reduced by Plan or Arrangement expenses properly chargeable to the Participant, and increased or decreased (as appropriate) by the Participant's "**investment factor**," as described below.

A Participant's "investment factor" shall be equal to the return on investment realized on the Participant's Arrangement Account balance had that balance been invested in accordance with the same instructions used to invest the Participant's Individual Account under the Plan, provided such instructions exclusively utilize an authorized vendor approved by the University.

**5.02 Commencement of Benefits.** Payment of benefits under this Arrangement to a Participant will occur coincident with the payment of Plan benefits.

**5.03 Form of Benefit Payment.** Upon commencement, benefits shall be determined pursuant to the Plan. Any election of benefit form under the Plan shall also be applicable under this Arrangement, to the extent such form is available.

**5.04 Beneficiary Designation.** A Participant's "Arrangement Beneficiary" shall be the Participant's Beneficiary as determined pursuant to the Plan. Any changes to a Participant's Beneficiary under the Plan shall automatically be applied to this Arrangement.

Further, to the extent there is no Beneficiary designation under the Plan at the date of death of the Participant, or if the Beneficiary designated has died prior to the death of the Participant, or if the Participant has revoked a prior designation in writing filed with the Plan Administrator without having filed a new designation, then any death benefits which would have been payable to the Beneficiary hereunder 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.

**5.05 Vesting Provisions.** To the extent an Arrangement Contribution is made to this Arrangement on behalf of a Participant for a Plan Year, such Arrangement Contribution shall be subject to the same vesting conditions applicable to the corresponding Contributions made to the Plan for such Plan Year. In the event that no Contributions may be made on behalf of a Participant to the Plan for a particular Plan Year due to the application of the maximum Annual Addition limitation described in Section 3.08 of the Plan (thereby entitling such Participant to an Arrangement Contribution to this Arrangement equal to the amount of the contemplated Contribution to the Plan), such Arrangement Contribution shall be subject to the vesting conditions that would have been applicable to the contemplated Contribution had the University been able to make such Contribution to the Plan.

**5.06 Forfeiture Provisions.** Any Forfeitures occurring during the Plan Year shall be used, first, to pay Plan expenses; second, to reduce any University Contributions to the Plan.

**5.07 Non-Alienation Provisions.** A Participant's right to benefit payments under the Arrangement are not subject in any manner to anticipation, alienation, sale, transfer, assignment,

pledge, encumbrance, attachment or garnishment by creditors of the Participant or the Participant's Beneficiary.

## **ARTICLE VI**

### **UNFUNDED STATUS**

Participants and their Beneficiaries will have no right or property interest in any assets held to support the liabilities created hereunder. Participants have the status of general unsecured creditors of the Eligible Employer, and this Plan constitutes a mere promise by the Eligible Employer to make benefit payments in the future. Any and all payments made to or on behalf of a Participant pursuant to the Arrangement shall be made from the general assets of the Eligible Employer. Any and all annuity contracts or mutual funds purchased to support the liabilities hereunder shall be registered in the name of the employer and held as a general asset on its books of account.

## **ARTICLE VII**

### **PLAN ADMINISTRATION**

**7.01 Powers and Duties.** The Plan Administrator shall administer the Arrangement. It shall have the authority to interpret, construe, and implement the Arrangement, to adopt and review rules and regulations relating to the Arrangement and to make all other determinations relating to the administration of the Arrangement. Any decision or interpretation of any provision of the Arrangement adopted by the Plan Administrator shall be final and conclusive. The Plan Administrator may delegate authority to carry out these duties pursuant to the terms of the Plan. A Participant who is also delegated administrative authority under the Arrangement, shall not participate in any decision involving any requests made by him or her or relating in any way solely to his or her rights, duties and obligations as a Participant under the Arrangement.

**7.02 Consultants.** Consistent with any applicable laws, regulations, or policies of the State of North Carolina, the Plan Administrator may employ such counsel, accountants, actuaries and other agents as it shall deem advisable. The University shall pay the compensation of such counsel, accountants, actuaries and other agents and any other due and proper expenses incurred by the Plan Administrator in the administration of the Arrangements to offset the liabilities created by this Arrangement that are not otherwise accommodated through products purchased under this Arrangement.

## **ARTICLE VIII**

### **AMENDMENT AND TERMINATION**

**8.01 Amendment.** The University reserves the right to amend or to modify the Arrangement at any time, including retroactively, by formal action of its Board of Governors or its delegate, so long as the amendment or modification does not reduce a Participant's benefits that accrued under this Arrangement prior to the earlier of the date on which such amendment is authorized or executed.

**8.02 Termination.** The University reserves the right to terminate the Arrangement at any time by formal action of its Board of Governors, so long as the termination does not reduce a Participant's benefits that accrued under the Plan prior to the date of such termination.



## ARTICLE IX

### GENERAL PROVISIONS

**9.01 Governing Law.** Except to the extent superseded by federal law, the laws of the State of North Carolina shall be controlling in all matters relating to this Arrangement, including the construction and performance hereof, notwithstanding principles of conflicts of laws.

**9.02 Captions.** The captions of Articles and Sections of this Arrangement are for convenience of reference only and shall not control or affect the meaning or construction of any of its provisions.

**9.03 Facility of Payment.** Any amounts payable hereunder to any person who is under legal disability or who, in the judgment of the Plan Administrator, is unable to manage his financial affairs properly may be paid to the legal representative of such person or may be applied for the benefit of such person in any manner that the Plan Administrator may select, and any such payment shall be deemed to be payment for such person's account.

**9.04 Withholding.** To the extent required by the laws in effect at the time payments are made hereunder, the University shall withhold from such payments, any taxes required to be withheld for federal, state or local government purposes.

**9.05 Administrative Expenses.** Except as provided in the products used to underwrite liabilities hereunder, all other expenses relating to the Arrangement and its administration shall be borne by the University.

**9.06 Severability.** Any provision of this Arrangement prohibited by the law of any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

**9.07 Liability.** Except as otherwise expressly provided herein, no member of the Board of Governors of the University no delegate of the Plan Administrator, and no officer, employee or agent of the Eligible Employer or the Plan Administrator Committee (specifically including, but not limited to an employee of the University acting at the direction of the Plan Administrator) shall have any liability to any person, firm or corporation based on or arising out of the Arrangement except in the case of gross negligence or fraud. The University agrees to indemnify each member of its Board of Governors, each delegate of the Plan Administrator and each officer and employee of the Eligible Employer against all liabilities arising out of the performance of his duties hereunder, excluding liabilities resulting from the individual's gross negligence or fraud.

**9.08 Binding Effect.** This Arrangement shall be binding upon and shall inure to the benefit of the University, its successors and assigns and each Participant and his heirs, executors, administrators and legal representatives.

**9.09 Construction.** Any words herein used in the masculine shall be read and construed in the feminine where they would so apply. Words in the singular shall be read and construed as though used in the plural in all cases where they would so apply.

As evidence of its adoption of the Arrangement, the Board has caused this instrument to be signed by its Chair therefore duly authorized and its corporate seal to be affixed hereto this 15<sup>th</sup> day of May, 2025.

THE BOARD OF GOVERNORS OF  
THE UNIVERSITY OF NORTH CAROLINA

---

CHAIR

ATTEST:

By: \_\_\_\_\_  
Secretary  
The University of North Carolina

SEAL

## Exhibit D

Estimated CIT savings- as of 12/31/2024

Period Ending 12.31.24 | Q4 24

Current Investment	Total Assets (12/31)	Current Expense Ratio	Current Total Cost	CIT Option	Expense Ratio	Total Cost	Total Possible Savings
Cohen & Steers Realty Shares	\$ 90,292,450	0.75%	\$ 677,193	Cohen & Steers U.S. Realty Fund Class CT	0.65%	\$ 586,901	\$ 90,292
JHancock Disciplined Value R6	\$ 229,641,109	0.66%	\$ 1,515,631	John Hancock Disciplined Value Trust - P1	0.41%	\$ 941,529	\$ 574,103
T. Rowe Price Large Cap Gr I	\$ 250,090,141	0.56%	\$ 1,400,505	T. Rowe Price Large Cap Growth Tr -D	0.40%	\$ 1,000,361	\$ 400,144
MFS Mid Cap Value R6	\$ 183,685,685	0.62%	\$ 1,138,851	MFS Mid Cap Value CIT Cl CT	0.57%	\$ 1,047,008	\$ 91,843
American Funds EuroPacific Gr R6	\$ 140,956,703	0.47%	\$ 662,497	GQG Partners International Equity CIT E	0.52%	\$ 732,975	\$ (70,478)
<b>Total Savings</b>							<b>\$1,085,904</b>

CAPTRUST



See Attached Defined Contribution Quarterly Review - Q4 2024