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**TOPIC:** University System of Maryland: USM 403(b) Plan Amendments

**COMMITTEE:** Finance

**DATE OF COMMITTEE MEETING:** June 14, 2011

**SUMMARY:** Federal tax law permits limited options for employers to provide individual employees compensation which is deferred until the employee leaves employment. The USM already has a non-qualified Section 457(f) Contingent Deferred Compensation Plan. The 457(f) plan requires that compensation be subject to a substantial risk of forfeiture for a set period of time, making its use desirable under narrow circumstances. At the request of the Board's Committee on Organization and Compensation, USM staff and the Office of the Attorney General have explored other options permitted under federal tax law for deferred compensation to retiring USM personnel.

The attached, proposed amendments would authorize an additional option for USM. The amendments allow for post-severance contributions to a former employee's Section 403(b) retirement plan. Under this option, federal tax law affords governmental, educational institution employers considerable flexibility as to the timing and amounts of deferred compensation, as well as the selection of employees to whom it is offered. The option also has significant tax advantages to the employee, and it is particularly advantageous for certain employees who are nearing retirement. A summary of the major elements of post-severance contributions to a 403(b) Plan ("Plan") is attached.

In order for the USM to provide this option, the attached proposed amendments to the USM's 403(b) Plan are required. Adopting the amendments will not require USM to utilize the post-severance compensation feature, but instead will permit greater flexibility in structuring individual compensation packages. Accordingly, proposed amendments to Plan sections 2.01(c), 2.31, and 3.05 will authorize the USM to offer post-severance compensation. In addition, the attached document also includes a series of technical amendments to the Plan (Sections 2.26, 3.03, and 7.01) that merely reflect recent IRS guidance regarding participation by members in military service.

**ALTERNATIVES(S):** The Committee could decline to recommend that the Board adopt the amendments.

**FISCAL IMPACT:** Potential additional annual costs are dependent upon the individualized circumstances of each agreement to provide post severance contributions.

**CHANCELLOR'S RECOMMENDATION:** That the Committee recommend adoption of the proposed amendments to the USM's 403(b) Plan.

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COMMITTEE RECOMMENDATION:

DATE:

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BOARD ACTION:

DATE:

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SUBMITTED BY: Joseph F. Vivona (301) 445-1923

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SUMMARY  
Post-Severance Contributions to a Governmental  
Section 403(b) plan

An employer can make post-severance contributions to a Section 403(b) plan:

- In the year of severance, plus the five years following the year of severance
- In an annual amount limited to the lesser of 1) pre-retirement salary, or 2) \$49,000, as COLA-adjusted by the Internal Revenue
- For shorter periods of time or in lesser amounts

Employer Advantages:

- No FICA taxes are paid on post-severance additions
- A governmental Section 403(b) plan is not subject to anti-discrimination provisions, allowing use of post-severance contributions in a targeted manner (e.g., faculty members age 65 or older with 15+ years of service)
- Post-severance retirement contributions could be offered for a limited period of time, limiting this benefit to qualifying employees who severed employment within a specified interval
- The employer can spread the costs of a retirement incentive over a longer period than other available options such as a "2x" window program
- A post-severance contribution option may offer political advantages to cash buyouts and other cash incentives because it is a "retirement" benefit, offered through a vehicle that is generally familiar, and the outer parameters of use are established by the Internal Revenue Service

Employee advantages/disadvantages:

- Income taxes are deferred until contributions are withdrawn from Section 403(b) plan
- No FICA taxes on post-severance contributions
- Entire amount is not accessible until contributions are made (but offset because an employer can access existing account balance once employment is severed)
- Post-severance contributions end upon the death of an employee

To permit post-severance contributions, the Board of Regents must amend USM's Section 403(b) supplemental plan document to permit post-severance additions. Amendment of the plan document would not require post-severance contributions, but would permit the Board to authorize post-severance contributions on either an individual or categorical basis.

**UNIVERSITY SYSTEM OF MARYLAND  
SUPPLEMENTAL 403(b) RETIREMENT PLAN**

Amended and Restated June 17, 2011

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**UNIVERSITY SYSTEM OF MARYLAND  
SUPPLEMENTAL 403(b) RETIREMENT PLAN**

**ARTICLE I.**

**PLAN ESTABLISHMENT**

The University System of Maryland is a public university system established under Maryland law and an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The Board of Regents of the University System of Maryland ("Board") established a supplemental retirement plan pursuant to Code Section 403(b) and Sections 30-210 *et seq.* of the State Personnel and Pensions Article of the Annotated Code of Maryland (1978, 2004 Repl. Vol.), to provide eligible employees the opportunity to supplement their retirement benefits through voluntary contributions. The plan was, and is intended to remain, a Code Section 403(b) plan and a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

The Board now desires to reduce the terms of the plan to writing effective January 1, 2009, to comply with all applicable provisions of the Code and Maryland statutes, including the final regulations under Code Section 403(b). Except as otherwise specifically provided herein, the University System of Maryland Supplemental 403(b) Retirement Plan ("Plan") as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2009, and to transactions under the Plan on and after January 1, 2009. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2009, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

The Plan is funded exclusively through the purchase of Funding Vehicles from the Vendors described in Appendix A attached hereto, as that Appendix may be amended from time to time. The terms and conditions of such Funding Vehicles shall be considered part of, and shall be construed as having been incorporated into, this Plan, except to the extent that there are any provisions that conflict with the Plan. To the extent that there is any conflict between the terms of such Funding Vehicles and the terms of the Plan as provided herein, the terms of the Plan shall govern except as otherwise expressly provided herein.

**ARTICLE II.**

**DEFINITION OF TERMS USED**

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

**Section 2.01.** **Account.** The account(s) maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account reflecting his or her interest in such Annuity Contract or Custodial Account as follows:

(a) "Elective Deferral Account" means the account maintained to reflect the interest of the Participant in the Funding Vehicle attributable to Elective Deferrals made in the Plan on behalf of the Participant pursuant to Section 3.02. Such account may be further divided into a "Pre-1987 Elective Deferral Account" reflecting Elective Deferrals made to the Plan prior to 1987, and a "Post-1986 Elective Deferral Account" reflecting Elective Deferrals made to the Plan after 1986, including any earnings on the pre-1987 Elective Deferrals.

(b) "Rollover Account" means the account maintained to reflect the interest of the Participant in the Funding Vehicle attributable to his or her Rollover Contributions made to the Plan pursuant to Section 3.04.

(c) "Discretionary Employer Contribution Account" means the account maintained to reflect the interest of the Participant in the Funding Vehicle attributable to his or her Discretionary Employer Contributions made to the Plan pursuant to Section 3.04.

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

**Section 2.03. Administrator.** The Board; provided, however, to the extent that the Board has delegated any of its responsibilities as Administrator to any other person or persons, the term "Administrator" will be deemed to refer to that person or persons. For purposes of this definition, "person" may include an entity such as a corporation, partnership or committee.

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

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

**Section 2.06. Board.** The Board of Regents of the University System of Maryland.



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

**Section 2.08. Compensation.** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, which is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including an election made to reduce compensation in order to have Elective Deferrals under the Plan). Compensation does not include amounts "picked up" by the Employer within the meaning of Code Section 414(h). Compensation includes any compensation described in paragraphs (a) or (b), provided it is paid by the later of 2½ months after the Employee's Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer:

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

(b) a payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the Employee's Severance from Employment, and only if the Employee separately elects for such payment to be reduced on his or her Salary Reduction Agreement pursuant to Section 3.02.

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

**Section 2.09. Custodial Account.** The group or individual custodial account or accounts, as defined in Code Section 403(b)(7), established for each Participant by the Board, or by each Participant individually, with a Vendor to hold assets of the Plan.

**Section 2.10. Disabled.** The definition of disability provided in the applicable Individual Agreement that satisfies Code Section 72(m)(7).

**Section 2.11. Elective Deferral.** The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash Compensation. Elective Deferrals are limited to pre-tax salary deferral contributions.

**Section 2.12. Employee.** Each individual who is a common law employee of the Employer, other than non-resident aliens with no U.S. source income or students performing services described in Code Section 3121(b)(10). This definition is not applicable unless the employee's Compensation for performing services is paid by the Employer.

**Section 2.13. Employer.** One of the following Public Schools: the University System of Maryland Office; Bowie State University; Coppin State University; Frostburg State University; Salisbury University; Towson University; University of Baltimore; University of Maryland, Baltimore; University of Maryland, Baltimore County; University of Maryland, College Park; University of Maryland, Eastern Shore; University of Maryland University College; University of Maryland Biotechnology Institute; University System of Maryland Center for Environmental Science; and any other center, component, or institute established and operated by the University System of Maryland in accordance with its mission pursuant to Section 12-101 of the Annotated Code of Maryland (1978, 2006 Repl. Vol.).

**Section 2.14. Former Vendor.** The provider of an Annuity Contract or Custodial Account that ceases to be eligible to receive new contributions under the Plan; provided, however, that a Former Vendor shall not include any vendor that ceased to be eligible to receive new contributions under the Plan prior to January 1, 2005. A list of Former Vendors is hereby incorporated as part of this Plan and set forth in Appendix B. The Administrator may amend the list of Former Vendors to reflect changes in the providers who cease to be eligible to receive new contributions under the Plan.

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

**Section 2.16. Includible Compensation.** An Employee's compensation received from the Employer that is includible in the Employee's gross income for Federal income tax purposes (computed without regard to Code Section 911) for the most recent period that is a Year of Service which precedes the taxable year by no more than five years within the meaning of Code Section 403(b). Includible Compensation also includes any amounts excludable from taxable income because of an election under Code Section 403(b), 457(b), 125, 401(k) or 132(f) (including Elective Deferrals under this Plan). The amount of Includible Compensation is determined without regard to any community property laws. Includible Compensation does not include any amounts "picked-up" by the Employer within the meaning of Code Section 414(h). Includible Compensation includes any compensation described in paragraphs (a) or (b), provided the compensation is paid by the later of 2½ months after the Employee's Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer:

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

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

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

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

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

**Section 2.20. Plan.** The University System of Maryland Supplemental 403(b) Retirement Plan, as amended from time to time.

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

**Section 2.22. Public School.** A state sponsored educational organization described in Code Section 170(b)(1)(A)(ii).

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

**Section 2.24. Rollover Contribution.** An eligible rollover distribution that is contributed to the Plan pursuant to Section 3.04.

**Section 2.25. Salary Reduction Agreement.** An agreement entered into between an Employee and an Employer pursuant to Section 3.02, which agreement shall be effective only with respect to Compensation earned on or after the effective date of such agreement and which shall be binding on the parties and irrevocable with respect to Compensation earned while it is in effect.

**Section 2.26. Severance from Employment.** For purposes of the Plan, Severance from Employment means severance from employment with the Employer and any Related Employer. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of an Employer or Related Employer that is a Public School, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a Public School or in a capacity that is not employment with a Public School (e.g., ceasing to be an employee performing services for a Public School but continuing to work for the same State or local government employer).

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

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

**Section 2.29. Valuation Date.** Each business day that the NYSE is open.

**Section 2.30. Year of Service.** Each year during which the Employee is a full-time Employee of the Employer for the entire work period, and a fraction of a year for each part of a work period during which the Employee is a full-time or part-time Employee of the Employer, determined in accordance with the rules under Treasury Regulation Section 1.403(b)-4(e).

**Section 2.31. Discretionary Employer Contribution.** Employer contributions to the Plan on behalf of a Participant in connection with the Participant's Severance from Employment as determined in the sole and absolute discretion of the Board (or the Board's delegee).

### **ARTICLE III.**

#### **ELIGIBILITY AND CONTRIBUTIONS**

**Section 3.01. Eligibility.** Each Employee is eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf to the Plan immediately upon becoming employed by the Employer.

**Section 3.02. Elective Deferral Contributions.**

(a) **General Rule.** An Employee becomes a Participant by executing an election to reduce or redirect his or her Compensation in any flat dollar amount (and have that amount contributed to the Plan as an Elective Deferral on his or her behalf) and filing it with his or her Employer. This election will be made on the Salary Reduction Agreement provided by the Employer under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time. The Employee must also execute an agreement provided by the Vendor designating the Investment Options under the Funding Vehicles to which Elective Deferrals are to be made and designating a Beneficiary, and file it with the Vendor. Any such elections or designations will remain in effect until a new election is filed with the Administrator or Vendor, as applicable, and such election takes effect. From time to time, changes in the Investment Options and Vendors may also necessitate changes in a Participant's elections because an Investment Option selected by an Employee is no longer available under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. All Elective Deferrals will be made on a pre-tax basis. An Employee will become a Participant as soon as administratively practicable following the date applicable under the Employee's election.

(b) **Information Provided by the Employee.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if

there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

(c) **Change in Elective Deferral Election.** Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation elections, including a change of the amount of his or her Elective Deferrals, his or her investment direction, and his or her designated Beneficiary. A change in the Elective Deferral amount, investment direction or Beneficiary designation will take effect as soon as administratively practicable following the date applicable under the Employee's change in participation elections and will be on as uniform basis as is practicable for all Employees.

(d) **Contributions Made Promptly.** Elective Deferrals under the Plan will be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

(e) **Leave of Absence.** Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan will continue to the extent that Compensation continues.

(f) **Default Investment Option.** In the event that an Employee fails to designate the Investment Options under the Funding Vehicles to which Elective Deferrals are to be made, the Elective Deferrals will be invested in a default fund selected by the Administrator in its sole discretion. In the event that an Investment Option designated by an Employee is no longer available under the Plan, due either to change in Investment Options or change in Vendors, the Elective Deferrals may be invested in a default fund selected by the Administrator in its sole discretion.

**Section 3.03. Protection of Persons Who Serve in a Uniformed Service.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended; effective January 1, 2009, the Heroes Earnings Assistance and Relief Tax Act of 2008; and Code Section 414(u). For this purpose, an Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Elective Deferrals upon resumption of employment with the Employer up to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). Effective January 1, 2009, if an Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) receives a differential

wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, the differential wage payment will be treated as Includible Compensation.

**Section 3.04. Eligible Rollover Contributions to the Plan.**

(a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such Rollover Contributions will be made in the form of cash only, not in-kind. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code Section 402(c)(8)(B). However, in no event does the Plan accept a Rollover Contribution from a Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) or a Roth IRA described in Code Section 408A.

(b) **Eligible Rollover Distribution.** For purposes of Section 3.04(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (i) any installment payment for a period of 10 years or more, (ii) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (iii) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9). An eligible retirement plan means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a qualified trust described in Code Section 401(a), an annuity plan described in Code Section 403(a) or 403(b), or an eligible governmental plan described in Code Section 457(b), that accepts the eligible rollover distribution.

(c) **Separate Accounts.** The Vendor will establish and maintain for the Participant a separate Rollover Contribution Account for any eligible rollover distribution paid to the Plan.

**Section 3.05. Discretionary Employer Contributions.** The Employer may make such Discretionary Employer Contributions to the Plan in an amount and for such Employee or Employees as determined by the Board (or the Board's delegee), in its sole and absolute discretion, each Plan Year. Discretionary Employer Contributions shall be allocated to the Discretionary Employer Contribution Account of the Participant as of the date of the contribution, and shall be made in accordance with Code Section 403(b) and Treasury Regulation Section 1.403(b)-4(d).

## **ARTICLE IV.**

### **LIMITATIONS ON CONTRIBUTIONS**

**Section 4.01. Basic Annual Limitation for Elective Deferrals.** Except as provided in Sections 4.02 and 4.03, the maximum amount of Elective Deferrals contributed to the Plan for any calendar year will not exceed the applicable dollar amount for the calendar year. The applicable dollar amount is the amount established under Code Section 402(g)(1)(B), as adjusted for cost-of-living after 2008 to the extent provided under Code Section 402(g).

**Section 4.02. Age 50 Catch-up Elective Deferrals.** A Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals is \$5,000 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under Code Section 414(v).

**Section 4.03. Elective Deferral Catch-Up Provision Coordination.** Elective Deferrals in excess of the limitation set forth in Section 4.01 shall be allowed only up to an amount equal to the age 50 catch-up contribution limit under Section 4.02 and only for a Participant eligible under Section 4.02, and the special catch-up provided for under Code Section 4.02(g)(7) shall not apply.

**Section 4.04. Special Rule for a Participant Covered by Another Defined Contribution Plan.** For purposes of this Article IV, if the Participant is or has been a participant in one or more other plans under Code Section 403(b) (and any other plan that permits elective deferrals under Code Section 402(g)), then this Plan and all such other plans will be considered as one plan for purposes of applying the foregoing limitations of this Article IV. For this purpose, the Administrator will take into account any other such plan maintained by any Related Employer and will also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Employer will be taken into account for purposes of Section 4.02 only if the other plan is Section 403(b) plan.

**Section 4.05. Correction of Excess Elective Deferrals.** If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds these limitations when combined with other amounts deferred by the Participant under another plan of the Employer under Code Section 403(b) (and any other plan that permits elective deferrals under Code Section 402(g) for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of the applicable limitations (adjusted for any income or loss in value, if any, allocable thereto), will be distributed to the Participant.

**Section 4.06. Annual Additions Limitation.**

(a) Notwithstanding any provision of the Plan to the contrary, annual additions to the Plan and to any other Section 403(b) plan (or, if required by Code

Section 415 and the Treasury Regulations thereunder, to any other defined contribution plan) for a Participant will not exceed the limitation set forth in Code Section 415(c), except to the extent permitted under Code Section 414(v).

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

(1) \$40,000, adjusted for cost-of-living to the extent provided under section 415(d) of the Code; or

(2) 100% of the Participant's Includible Compensation.

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

(1) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer or a Related Employer, or both (as applicable); and

(2) mandatory employee contributions to a defined benefit plan maintained by the Employer, unless the contributions are "picked-up" by the Employer pursuant to Code Section 414(h)(2).

**Section 4.07. Excess Annual Additions.** Excess annual additions will be allocated to an excess annual additions Account under the Annuity Contract or Custodial Account in accordance with Treasury Regulation Sections 1.403(b)-3(b)(2) and 1.403(b)-4(f)(2) for the year of excess and each year thereafter.

## **ARTICLE V.**

### **VESTING**

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



## ARTICLE VI.

### LOANS

**Section 6.01. Loans.** Loans will be permitted under the Plan in accordance with Code Section 72(p) to the extent permitted by the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured. Loans shall be subject to separate loan procedures issued by the Vendor under the Plan; provided, however, that (a) no loans are permitted for former Employees who have had a Severance from Employment with the Employer, (b) a Participant who has defaulted on a loan shall not be entitled to a future loan under the Plan, and (c) no loans are permitted from Former Vendors. Participants may be charged a reasonable processing fee per loan.

**Section 6.02. Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable Federal and State law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator will take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 6.03, including the collection of information from Vendors and Former Vendors, and transmission of information requested by any Vendor or Former Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator will also take such steps as may be appropriate to collect information from Vendors and/or Former Vendors, and to transmit any information to any Vendor or Former Vendor, concerning any failure by a Participant to timely repay any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator may delegate this responsibility to a Vendor or to another service provider pursuant to Section 9.02 of the Plan.

**Section 6.03. Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of:

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

(b) one half of the value of the Participant's Vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved by the Administrator), or any lesser amount in accordance with the Individual Agreements.

For purposes of this Section 6.03, any loan from any other Section 403(b) plan maintained by the Employer will be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan will be considered a Vested interest under this Plan; provided, however, that the provisions of this paragraph will not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

## **ARTICLE VII.**

### **BENEFIT DISTRIBUTIONS**

#### **Section 7.01. Distribution of Elective Deferrals.**

(a) A Participant may request a distribution from the Plan on the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, has a financial hardship, or attains age 59½.

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

(c) Notwithstanding paragraph (a), to the extent permitted by the applicable Individual Agreement, a Participant may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.

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

**Section 7.02. Forms of Payment.** A Participant may elect to receive his or her Account under any payment option available under and subject to the other provisions of this Article and the terms and conditions of the Individual Agreements.

**Section 7.03. Small Account Balances.** The terms of the Individual Agreement may permit distributions to be made in the form of a lump sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed \$1,000 (determined without regard to any separate Account that holds Rollover Contributions).

**Section 7.04. Minimum Distributions.** For purposes of applying the distribution rules of Code Section 401(a)(9), each Individual Agreement is treated as an individual retirement account (IRA) and distributions will be made in accordance with the provisions of Treasury Regulation Section 1.408-8, except as provided in Treasury Regulation Section 1.403(b)-6(e). Notwithstanding the preceding sentence, each Vendor will separately comply with the minimum distribution requirements under Code Section 401(a)(9) and the regulations thereunder with respect to its Funding Vehicles under the Plan.

#### **Section 7.05. Hardship Withdrawals.**

(a) Hardship withdrawals of Elective Deferrals (excluding any earnings on such Elective Deferrals after December 31, 1988) will be permitted under the Plan for financial hardship incurred by a Participant who at the time of the hardship withdrawal is an Employee, the Participant's spouse, or the Participant's tax code dependent in accordance with the safe harbor rules under Treasury Regulation Sections 1.401(k)-1(d)(3)(iii)(B) and 1.401(k)-1(d)(3)(iv)(E), but only to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the

hardship. No Elective Deferrals will be allowed under the Plan during the six month period beginning on the date the Participant receives a distribution on account of hardship. Participants are required to complete a new Salary Reduction Agreement in accordance with Section 3.02 following the end of the six month suspension.

(b) The Individual Agreements will provide for the exchange of information among the Employer and the Vendors and/or the Former Vendors to the extent necessary to comply with the hardship rules, including the Vendor and/or Former Vendor notifying the Employer of the withdrawal in order for the Employer to implement the resulting six month suspension of the Participant's right to make Elective Deferrals under the Plan. The Administrator may delegate this responsibility to a Vendor or to another service provider pursuant to Section 9.02 of the Plan.

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

**Section 7.06. Death Benefits.** If a Participant dies before the entire distribution of his or her Account has been made, his or her remaining Account, if any, will be distributed to his or her Beneficiary as soon as administratively feasible after the Participant's death, unless the Beneficiary elects a later payment date on the appropriate form as designated and furnished by the Vendor, subject to the minimum distribution requirements of Code Section 401(a)(9) and regulations thereunder. A Beneficiary may elect to receive the deceased Participant's Account under any payment option available under and subject to the terms and conditions of the Individual Agreements.

**Section 7.07. Rollover Distributions from Plan.**

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

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

(c) Subject to the Individual Agreements, a Participant may elect to rollover the Participant's Rollover Account to another eligible retirement plan at any time.

**Section 7.08. Permissive Service Credit Transfers.**

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

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

**ARTICLE VIII.**

**INVESTMENT OF CONTRIBUTIONS**

**Section 8.01. Manner of Investment.** All Elective Deferrals, Rollover Contributions or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights will be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account will provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

**Section 8.02. Investment of Contributions.** Each Participant or Beneficiary will direct the investment of his or her Account among the Investment Options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under the applicable Treasury Regulations in accordance with Section 8.03.

**Section 8.03. Investment Changes.** A Participant or Beneficiary is permitted to change the investment of his or her Account among the Investment Options available under the Plan, subject to the terms of the Individual Agreements. An investment change that includes an investment with a Former Vendor or other vendor that is not eligible to receive contributions under the Plan is not permitted; provided, however, that a Participant or Beneficiary is permitted to change the investment of his or her Account from an Investment Option with a Former Vendor to an Investment Option with a current Vendor. A change of investment of a Participant's Account among the Vendors under the Plan (or from a Former Vendor to a current Vendor under the Plan) must satisfy the conditions of this Section:

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

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

**Section 8.04. Current Vendors.** The Administrator will maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan and set forth in Appendix A. Each Vendor and the Administrator will exchange such information as may be necessary to satisfy Code Section 403(b) or other requirements of applicable law. The Administrator may amend the list of Vendors contained at Appendix A to reflect the deletion or addition of a Vendor as a designated company, in accordance with Section 30-210 of the State Personnel and Pensions Article of the Annotated Code of Maryland.

**Section 8.05. Former Vendors.** The Board will make a good faith reasonable effort to enter into an information sharing agreement with each Former Vendor to the extent that any existing agreement with that Former Vendor does not already provide for such information sharing on a continuing basis. The agreement will provide for mutual sharing of the following information:

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

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

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

## **ARTICLE IX.**

### **PLAN ADMINISTRATION**

#### **Section 9.01. Administrator.**

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

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

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

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

(3) to direct the Vendors and Former Vendors to make payments to Participants, their Beneficiaries, and other persons as the Administrator may determine pursuant to the terms of the Plan, subject to the terms and conditions of the Individual Agreements (to the extent that the Individual Agreements are not inconsistent with the Plan document or instructions of the Administrator communicated to the Vendor prior to the issuance of an Individual Agreement);

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

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

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

(d) Benefits are payable under the Plan only if the Administrator, in its sole discretion and subject to the terms and conditions of the Individual Agreements (to the extent that the Individual Agreements are not inconsistent with the Plan document or instructions of the Administrator communicated to the Vendor prior to the issuance of an Individual Agreement), determines the benefits are payable under the provisions of the Plan.

**Section 9.02. Delegation by Administrator.**

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

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

(c) The Administrator may designate one of the Vendors or another service provider to provide for the collection and coordination of information relating to hardship withdrawals, loans, contribution limits, and any other administrative function under the Plan.

**Section 9.03. Employment of Consultants.** The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

**Section 9.04. Requests for Information Concerning Eligibility, Participation and Contributions.** Requests for information concerning eligibility, participation, contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the Administrator of the Plan. If a written request is denied, the Administrator shall, within a reasonable period of time, provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Administrator and may submit issues and comments in writing to the Administrator. The Administrator shall provide to the Participant a written decision upon such request for review of a denied claim.

**Section 9.05. Requests for Information Concerning Annuity Contracts and Custodial Accounts.** Requests for information concerning the Annuity Contracts and Custodial Accounts and their terms, conditions, and interpretations thereof, claims thereunder, any requests for review of such claims, and service of legal process, should be in writing and directed to the Vendor. If a written request is denied, the Vendor shall, within a reasonable period of time,

provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Vendor and may submit issues and comments in writing to the Vendor. The Vendor shall provide to the Participant a written decision upon such request for review of a denied claim.

**Section 9.06. Plan Expenses.** All reasonable expenses of administering the individual Accounts in the Plan will be charged against and paid from the Participants' Accounts, subject to the terms of the Individual Agreements (to the extent that the Individual Agreements are not inconsistent with the Plan document or instructions of the Administrator communicated prior to the issuance of the Individual Agreement).

## **ARTICLE X.**

### **AMENDMENT AND PLAN TERMINATION**

**Section 10.01. Termination of Contributions.** The Board has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Board has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance by resolution of the Board.

**Section 10.02. Amendment and Termination.** The Board reserves the authority to amend or terminate this Plan at any time.

**Section 10.03. Distribution upon Termination of the Plan.** The Board may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative Section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Treasury Regulations.

## **ARTICLE XI.**

### **MISCELLANEOUS**

**Section 11.01. Non-Assignability.** Except as provided below for a domestic relation order or IRS levy, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary will have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

**Section 11.02. Domestic Relation Orders.** Notwithstanding Section 11.01, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's



Account Balance will be paid in the manner and to the person or persons so directed in the domestic relations order to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p). Such payment will be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan, but is subject to the terms of the Individual Agreements. The Administrator will establish reasonable procedures for determining the status of any such decree or order as a QDRO and for effectuating distribution pursuant to the QDRO. A participant may be charged a reasonable processing fee per domestic relations order.

**Section 11.03. IRS Levy.** Notwithstanding Section 11.01, the Administrator may pay from a Participant's or Beneficiary's Account Balance, in accordance with the terms of the Funding Vehicles, the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**Section 11.04. Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under Code Section 3121). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Code Section 3401 and the Employment Tax Regulations thereunder). A payee will provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

**Section 11.05. Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator or the Vendor, benefits will be paid to a court appointed guardian or in accordance with the terms of a court order. Such payments will be considered a payment to such Participant or Beneficiary and will, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**Section 11.06. Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) will be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

**Section 11.07. Procedure When Distributee Cannot Be Located.** The Vendor will make reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. If the Vendor is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Funding Vehicle will continue to hold the benefits due such person.

**Section 11.08. Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of Code Section 403(b) and the Treasury Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Code Section 403(b).

**Section 11.09. Governing Law.** The Plan will be construed, administered and enforced according to the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Maryland without regard to conflict of law principles.

**Section 11.10. Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

**Section 11.11. Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

**Section 11.12. Federal and State Taxes.** It is intended that contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries. However, the Administrator does not guarantee that any particular Federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

**Section 11.13. Erroneous Payments.** If the Vendor makes any payment that, according to the terms of the Plan and the benefits provided thereunder, should not have been made, the Vendor may recover that incorrect payment by whatever means necessary, whether or not it was made due to the error of the Administrator or the Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Vendor may deduct it when making any future payments directly to that Participant.

**Section 11.14. Limitation on Rights and Obligations.** Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor the purchase of any Annuity Contract or Custodial Account, nor any act or omission under the Plan or resulting from the operation of the Plan will be construed:

- (a) as conferring upon any Participant, Beneficiary, or any other person any right or claim against the Board, the Employer or the Administrator, except to the extent that such right or claim will be specifically expressed and provided in the Plan;
- (b) as creating any responsibility or liability of the Board or Employer for the validity or effect of the Plan;
- (c) as a contract or agreement between the Board, Employer and any Participant or other person;
- (d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Participant or other

person to continue or terminate the employment relationship at any time, except as otherwise provided under any applicable collective bargaining agreement; or

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

**Section 11.15. Counterparts.** The Plan may be executed in any number of counterparts, each of which will be deemed to be an original. All counterparts will constitute but one and the same instrument and will be evidenced by any one counterpart.

IN WITNESS WHEREOF, the Board has caused this Plan amendment and restatement to be executed by its duly authorized representative as of the date written below, but effective as of June 17, 2011.

**ON BEHALF OF THE  
UNIVERSITY SYSTEM OF MARYLAND  
BOARD OF REGENTS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **APPENDIX A**

### **CURRENT APPROVED VENDORS**

The purpose of this Appendix A is to set forth the approved Vendors under the Plan.

#### **1.1 Current List of Approved Vendors.**

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

TIAA-CREF

Fidelity Investments

#### **1.2 Right to Add or Delete Vendors and Investment Options.**

The current selection of Vendors is not intended to limit future additions or deletions of Vendors. The Board reserves the right to add or delete Vendors at any time, in its sole discretion, and to amend this Appendix A to reflect the addition or deletion of Vendors.

**ON BEHALF OF THE  
UNIVERSITY SYSTEM OF MARYLAND  
BOARD OF REGENTS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed

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Title

\_\_\_\_\_  
Date

## **APPENDIX B**

### **FORMER VENDORS**

The purpose of this Appendix A is to set forth the Former Vendors under the Plan.

1.3 **List of Former Vendors.**

As of January 1, 2009, AIG/VALIC is a Former Vendor under the Plan.

1.4 **Right to Add or Delete Vendors and Investment Options.**

The current selection of Vendors is not intended to limit future additions or deletions of Vendors. The Board reserves the right to add or delete Vendors at any time, in its sole discretion, and to amend this Appendix B to reflect any change in status from Vendor to Former Vendor.

**UNIVERSITY SYSTEM OF MARYLAND  
BOARD OF REGENTS**

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Signature

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Title