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U.S. DEPT. OF LABOR
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100 Institute Road • Worcester, MA 01609-2280
Phone 508-831-5000 • Fax 508-831-5753 • <http://www.wpi.edu/>

July 9, 2002

Top Hat Plan Exemption
Pension and Welfare Benefits Administration
Room N-5644
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

To Whom It May Concern:

Enclosed please find the documents pertaining to WPI's newly implemented top-hat retirement plan; which became effective on May 1, 2002.

If there are any questions or concerns please contact Tracy Hassett, Director of Human Resources, at 508-831-5470.

Sincerely,

Melanie A. Desiata
Benefits Coordinator
Human Resources



100 Institute Road • Worcester, MA 01609-2280
Phone 508-831-5000 • Fax 508-831-5753 • <http://www.wpi.edu/>

ADOPTION AGREEMENT

FOR THE

457(b) DEFERRED COMPENSATION PLAN

OF

Worcester Polytechnic Institute

1. **General Information**

- (A) Name of Tax-Exempt Employer: **Worcester Polytechnic Institute**
- (B) Address of Tax-Exempt Employer: **100 Institute Road
Worcester, MA 01609**
- (C) Name of Plan: **WPI 457(b) Deferred Compensation Plan**
- (D) Federal Tax ID Number of Tax-Exempt Employer: **04-2121659**
- (E) Plan Administrator's Name and Address: **Worcester Polytechnic Institute
100 Institute Road
Worcester, MA 01609**

2. **Compensation (Section 1.4)**

- Select this Box 2 and complete this Item only if it is desired that Compensation is to be defined as other than total cash remuneration. Instead, Compensation will be defined as follows:

3. **Effective Date / Restated Effective Date**
(Sections 1.5 and 1.19)

- (A) The Plan is a new plan. The Effective Date is May 1, 2002.
- (B) The Plan is a restated plan. The Restated Effective Date is _____ . The Plan's initial Effective Date was _____ .

4. **Eligible Employee** (Section 1.8)

- Eligible Employee shall be limited to the top hat group of Employees, which shall be defined as Employees who are classified as follows:

Members of the President's Cabinet

5. **Investment Options** (Section 1.12)

Investment Options shall include a TIAA Group Annuity Contract ("TIAA GA") and a CREF Group Annuity Contract ("CREF GA").

- (A) The following additional Investment Options will also be available:

- (B) By selecting this Box 5(B), all alternatives offered under the TIAA GA and the CREF GA as of the date this Adoption Agreement is executed, and such alternatives to be offered thereunder in the future, will not be made available under this Plan. Instead, the following limitations will apply:

6. **Normal Retirement Age** (Section 1.14)

- If this Box 6 is selected, Normal Retirement Age will not be age 65. Instead, Normal Retirement Age will be age _____.

7. **Plan Year** (Section 1.18)

Plan Year means:

- (A) The calendar year.
- (B) The Plan Year is a twelve (12) month period beginning on **July 1st** and ending on the following **June 30th**.
- (C) The initial Plan Year is a short Plan Year beginning on **May 1, 2002** ending on **June 30, 2002**. Thereafter, the Plan Year will be the twelve (12) month period selected in Box 7(A) or Box 7(B) above.

8. **Elective Deferrals (Section 3.1)**

- (A) Elective Deferrals may be made to the Plan up to the maximum amount permitted by law.
- (B) Elective Deferrals may be made to the Plan up to a maximum amount equal to _____, provided that in no event may such deferrals exceed the maximum amount permitted by law.
- (C) Elective Deferrals may not be made to the Plan.

9. **Employer Non-Elective Contributions (Section 3.4)**

- (A) The Employer will make non-elective contributions to the Plan on behalf of each Active Participant in an amount equal to _____% of the Participant's Compensation.
- (B) The Employer will make non-elective contributions to the Plan on behalf of each Active Participant in an amount equal to:

- (C) The Employer will make non-elective contributions to the Plan as follows:

- (D) The Employer will not make any non-elective contributions to the Plan.

10. **Employer Matching Contributions (Section 3.5)**

- (A) The Employer will make matching contributions to the Plan on behalf of each Active Participant who makes an Elective Deferral pursuant to a Voluntary Salary Deferral Agreement in an amount equal to _____% of the Participant's Compensation that is contributed to the Plan for the Plan Year.
- (B) The Employer will make matching contributions to the Plan on behalf of each Active Participant who makes an Elective Deferral pursuant to a Voluntary Salary Deferral Agreement in an amount equal to _____% of the first _____% of the Participant's Compensation that is contributed to the Plan for the Plan Year.

(C) The Employer will make matching contributions to the Plan as follows:

(D) The Employer will not make any matching contributions to the Plan.

11. **Transfers** (Section 3.8)

(A) Transfers may be made to the Plan from any other eligible deferred compensation plan to the extent permitted by law.

(B) Transfers may be made to the Plan from another eligible deferred compensation plan, subject to the following limitations:

(C) Transfers may not be made to this Plan from any other eligible deferred compensation plan.

12. **Payment of Benefits** (Section 5.1)

Select this Box 12 only if it is desired that payment of benefits under the Plan will be made directly by the Employer to the Participant. If this Box 12 is selected, the applicable Investment Sponsor will not make payment of benefits directly to the Participant.

13. **Beneficiary Designation** (Section 6.1)

Select this Box 13 only if it is desired that a Participant will **not** have any right to designate a Beneficiary, or amend or revoke a designation of a Beneficiary. If this Box 13 is selected, only the Employer will have the right to designate a Beneficiary, and to amend and to revoke a designation of a Beneficiary.

14. **Investment Allocation** (Section 7.3)

Select this Box 14 only if it is desired that a Participant will **not** have any right to select an investment allocation from among the Investment Options that are made available under the Plan. If this Box 14 is selected, only the Employer will have the right to select an investment allocation from among the Investment Options that are made available under the Plan.

By executing this Adoption Agreement, the Employer adopts the 457(b) Deferred Compensation Plan described herein and in the Plan document. The selections and specifications contained in this Adoption Agreement together with the terms, provisions and conditions provided in the Plan document constitute the Plan.

It is understood that TIAA-CREF is not a party to the Plan and shall not be responsible for any tax or legal aspects of the Plan. The Employer assumes responsibility for these matters.

The Employer acknowledges that it has counseled, to the extent necessary, with its attorney or other tax advisor. The obligations of the Investment Sponsors shall be governed solely by the provisions of its contracts and policies. TIAA-CREF shall not be required to inquire into any action taken by the Employer, the Plan Administrator or its designee, and shall be fully protected in taking, permitting or omitting any action on the basis of the actions of the Employer, the Plan Administrator or its designee. TIAA-CREF shall incur no liability or responsibility for carrying out actions as directed by the Employer, the Plan Administrator or its designee.

IN WITNESS WHEREOF, this Adoption Agreement has been executed this 1 day of May, 2002.

Employer: **Worcester Polytechnic Institute**

By:

Michael J. Lamer

Title:

Assistant Vice President, Human Resources

TIAA/CREF Voluntary Salary Deferral Agreement 457(b)
Worcester Polytechnic Institute
Worcester, MA

By this Agreement, made between _____ and Worcester Polytechnic Institute we agree as follows:

Effective with respect to amounts paid or otherwise made available on or after _____, 20____, which date is subsequent to the execution of this Agreement, the Employee's salary will be reduced by the amount indicated below.

This Agreement shall be legally binding and irrevocable with respect to amounts paid or otherwise made available while this Agreement is in effect. This Agreement may be modified or otherwise terminated as of the first pay period commencing with or during the first month following receipt of a new TIAA/CREF Voluntary Salary Deferral Agreement 457(b) form.

The amount of the salary deferral shall be:
(Select one)

(1) _____ % of gross annual salary.

OR

(2) The maximum amount permitted by law. Effective January 1, 2002 the maximum amount permitted by law is \$11,000.

The amount deferred hereunder will produce a total deferral that does not exceed the applicable limitations of Internal Revenue Code Section 457(b).

Employee Signature

Date

Human Resources Signature

Date



WPI

Department of Human Resources
100 Institute Road • Worcester, MA 01609-2280
Phone 508-831-5470 • Fax 508-831-5715 • <http://www.wpi.edu/>

Name of Tax-Exempt Employer: **Worcester Polytechnic Institute**

Address of Tax-Exempt Employer: **100 Institute Road**

Worcester, MA 01609

E.I.N.: **04-2121659**

Top-Hat Statement

By Plan Administrator

Worcester Polytechnic Institute (the "Employer"), hereby declares that the purpose of the 457(b) Deferred Compensation Plan of **Worcester Polytechnic Institute** (the "Plan") is to provide deferred compensation primarily for a select group of who exercise an element of control and are members of the President's Cabinet. In addition, the Employer, maintains **one (1)** unfunded top-hat plan described in Department of Labor Regulation Section 2520.104-23(b).

Date: 5/1/02

By: Michael J. Carney

Title: Assistant Vice President, Human Resources
(On Behalf of the Plan Administrator)

**457(b) DEFERRED
COMPENSATION PLAN
OF
*Worcester Polytechnic Institute***

**Teachers Insurance and Annuity Association
College Retirement Equities Fund
730 Third Avenue
New York, New York 10017**

INTRODUCTION

The purpose of the Plan is to provide deferred compensation primarily for a select group of management and highly compensated employees covered under the Plan.

The Plan document and the Adoption Agreement are designated as constituting parts of a plan intended to constitute a top hat plan under Sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended, and to constitute an eligible deferred compensation plan within the meaning of Section 457 of the Internal Revenue Code of 1986, as amended, regulations issued thereunder and other applicable law.

ARTICLE I - DEFINITIONS

- 1.1 **Adoption Agreement** means the separate agreement that is executed by the Employer which sets forth the elective provisions of the Plan. The Adoption Agreement and this Plan document collectively constitute the Plan.
- 1.2 **Beneficiary** means the individual, trustee, estate or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death.
- 1.3 **Code** means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code includes not only the section but any comparable section or sections of any future legislation that amends, supplements or supersedes the section.
- 1.4 **Compensation** means, unless otherwise set forth in the Adoption Agreement, the total amount of cash remuneration earned by an Employee for personal services rendered to the Employer for the calendar year. In all cases, Compensation shall include amounts deferred under this Plan and any reductions pursuant to any salary reduction agreement with the Employer with regard to any plan established under Code Section 457(b), 403(b), 401(k), 125 or 132(f).
- 1.5 **Effective Date** means the date set forth in the Adoption Agreement if this is a new plan.
- 1.6 **Elective Deferral** means the annual amount of Compensation that a Participant elects to defer pursuant to a properly executed Voluntary Salary Deferral Agreement.
- 1.7 **Eligible Deferred Compensation Plan or Eligible Plan** mean a plan that constitutes an eligible plan within the meaning of Section 457 of the Code.
- 1.8 **Eligible Employee** means any person who performs services for the Employer as an Employee and who, pursuant to the terms of the Adoption Agreement, is eligible to participate in this Plan. Eligible Employee shall not include (i) an Employee whose employment is governed by the terms of a collective bargaining agreement between Employee representatives (within the meaning of Code Section 7701(a)(46)) and the Employer, (ii) a leased employee as defined in Code Section 414(n), (iii) any individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole and absolute discretion, other than a trustee of the Employer who shall be deemed an Eligible Employee if so set forth in the Adoption Agreement, or (iv) any individual who is performing services for the Employer pursuant to an agreement that provides that

such individual shall not be eligible to participate in this Plan or other benefit plans of the Employer. If any individual is not classified as an Eligible Employee by the Employer and is subsequently reclassified as an Eligible Employee by any governmental or regulatory authority, such individual shall nevertheless be deemed to have become an Eligible Employee prospectively only, effective as of the date of such reclassification (and not retroactive to the date on which he or she was found to have first become eligible for any other purposes), and then only if he or she otherwise satisfies the requirements of this Plan.

- 1.9 **Employee** means any person who performs services for the Employer to whom compensation is paid on a regular basis. Employee shall also include any leased employee as defined in Section 414(n) of the Code. The term Employee shall not include any self employed individual or any individual classified by the Employer as an independent contractor, other than a trustee of the Employer, in accordance with its general administrative policies.
- 1.10 **Employer** means the entity that has adopted this Plan and is named in the Adoption Agreement.
- 1.11 **Includible Compensation** means compensation for services performed for the Employer which is currently includible in the Employee's gross income for the taxable year for Federal income tax purposes (W-2 earnings). Such term does not include any amount excludible from gross income under this Plan or any other plan described in Section 457(b) of the Code, or any amount excludible from gross income under Section 403(b) of the Code, Section 401(k) of the Code, Section 125 of the Code or Section 132(f) of the Code.
- 1.12 **Investment Options** means the accounts offered by TIAA-CREF under the TIAA Group Annuity ("TIAA GA") and the CREF Group Annuity ("CREF GA") and any other alternatives made available by any other Investment Sponsor and designated pursuant to the terms of this Plan document and the Adoption Agreement as being available for the purpose of measuring investment experience attributable to book entry accounts established under this Plan. Unless the Employer otherwise elects pursuant to the terms of the Adoption Agreement, all such alternatives offered by TIAA and CREF under the TIAA GA and the CREF GA, respectively, and any such alternatives offered by TIAA and CREF in the future will automatically be made available.
- 1.13 **Investment Sponsors** means TIAA-CREF and any other insurance company, regulated investment company, or other entity providing Investment Options under the Plan.
- 1.14 **Normal Retirement Age** means age 65 unless otherwise provided in the Adoption Agreement, provided that in no event shall Normal Retirement Age be earlier than the earliest date on which a Participant may retire under the Employer's basic

retirement plan, if any, without the Employer's consent, and receive immediate retirement benefits without incurring an actuarial or similar reduction in benefits.

- 1.15 **Participant** means an Eligible Employee or former Eligible Employee who shall have become a Participant in the Plan in accordance with Article II hereof. An Employee shall cease to become a Participant at such time as he or she no longer has any interest in accounts under the Plan. An "Active Participant" means a Participant who is an Employee other than one who is no longer an Eligible Employee.
- 1.16 **Plan** means the 457(b) Deferred Compensation Plan set forth herein and in the Adoption Agreement, as amended from time to time.
- 1.17 **Plan Administrator** means the individuals or committee appointed by the Employer to administer the Plan. If the Employer fails to make such appointment, the Employer shall be the Plan Administrator.
- 1.18 **Plan Year** means the twelve consecutive month period designated by the Employer in the Adoption Agreement.
- 1.19 **Restated Effective Date** means the date set forth in the Adoption Agreement if this is a restated plan.
- 1.20 **TIAA-CREF** means Teachers Insurance and Annuity Association and College Retirement Equities Fund.
- 1.21 **Voluntary Salary Deferral Agreement** means the agreement between a Participant and the Employer to defer receipt by the Participant of Compensation not yet paid or otherwise made available. Such agreement shall state the Elective Deferral amount to be withheld from a Participant's Compensation and shall become effective no earlier than the first day of the month following execution of such agreement. Once executed, the Voluntary Salary Deferral Agreement shall be legally binding and irrevocable with regard to amounts paid or otherwise made available while the agreement is in effect.

ARTICLE II – PARTICIPATION IN THE PLAN

2.1 **Eligibility.**

- (a) If this is a new plan, any Employee who is classified as an Eligible Employee as of the Effective Date shall be eligible to participate in the Plan on the Effective Date. If this is a restated plan, each present Participant shall continue to be a Participant in the Plan. Any other Employee who is classified as an Eligible Employee as of the Restated

Effective Date shall be eligible to participate in the Plan on the Restated Effective Date.

- (b) If this is a new plan, any Employee who is not eligible to participate in the Plan as of the Effective Date pursuant to paragraph (a) above, shall be eligible to participate in the Plan upon classification as an Eligible Employee. If this is a restated plan, any Employee who is not eligible to participate in the Plan as of the Restated Effective Date pursuant to paragraph (a) above, shall be eligible to participate in the Plan upon classification as an Eligible Employee.

- 2.2 ***Enrollment In Plan.*** To participate in the Plan, each Eligible Employee shall complete and return the applicable forms, including a Voluntary Salary Deferral Agreement, and submit them to the Employer or its designee. Enrollment shall be effective on or after the first day of the month following the date the enrollment forms are properly completed by the Employee and accepted by the Employer or its designee.

ARTICLE III – DEFERRAL OF COMPENSATION

- 3.1 ***Elective Deferrals.*** If elected pursuant of the terms of the Adoption Agreement, an Eligible Employee may elect to make Elective Deferrals to the Plan pursuant to a Voluntary Salary Deferral Agreement with the Employer. Any such Elective Deferrals may be made up to the amount set forth in the Adoption Agreement. Subject to the rules of the applicable Investment Sponsor, each Eligible Employee who elects to contribute to the Plan pursuant to a Voluntary Salary Deferral Agreement must agree to voluntarily defer a minimum of twenty-five (\$25) per pay period.
- 3.2 ***Modifications to Amount Deferred.*** A Participant may elect to change his or her Elective Deferral rate with respect to future Compensation by submitting a new properly executed Voluntary Salary Deferral Agreement to the Employer or its designee. Such change shall take effect as soon as administratively practicable but not earlier than the first pay period commencing with or during the first month following receipt by the Employer or its designee of such Voluntary Salary Deferral Agreement.
- 3.3 ***Termination of Deferral.*** A Participant may terminate his or her election to have Compensation deferred by so notifying the Employer or its designee in writing. Such termination shall take effect as soon as administratively practicable, but not earlier than the first pay period commencing with or during the first month following receipt by the Employer or its designee of satisfactory written notice of such revocation.

3.4 ***Employer Non-Elective Contributions.*** If elected pursuant to the terms of the Adoption Agreement, the Employer shall make non-elective contributions (other than Employer matching contributions, if any, made pursuant to Section 3.5 below) to the Plan on behalf of each Active Participant. No Participant shall have the right to elect to receive any amount to be contributed pursuant to this Section 3.4 as cash in lieu of a contribution. All such non-elective contributions shall be made at the rate set forth in the Adoption Agreement.

3.5 ***Employer Matching Contributions.*** If elected pursuant to the terms of the Adoption Agreement, the Employer shall make matching contributions (other than Employer non-elective contributions, if any, made pursuant to Section 3.4 above) to the Plan on behalf of each Active Participant who makes Elective Deferrals to the Plan pursuant to a Voluntary Salary Deferral Agreement. No Participant shall have the right to elect to receive any amount to be contributed pursuant to this Section 3.5 as cash in lieu of a contribution. All such matching contributions shall be made at the rate set forth in the Adoption Agreement and shall be based on the amount of Elective Deferrals properly made by an Active Participant to the Plan during the year.

3.6 ***Maximum Deferral.***

- (a) **Primary Limitation.** The maximum amount that may be contributed to the Plan pursuant to Sections 3.1, 3.4 and 3.5 hereof on behalf of any Participant, other than by means of a rollover or transfer, shall not exceed the lesser of: (1) the applicable dollar amount, as set forth in Code Section 457 (e)(15) (\$11,000 in 2002), or (2) 100% of the Participant's Includible Compensation for the taxable year.
- (b) **General Catch-Up Limitation.** For one or more of the last three taxable years ending before a Participant's attainment of Normal Retirement Age, the maximum amount that may be contributed to the Plan pursuant to Sections 3.1, 3.4 and 3.5 hereof on behalf of a Participant, other than by means of a rollover or transfer, shall be the lesser of X or Y. X shall be twice the applicable dollar amount in effect under Code Section 457(b)(2)(A) for such year. Y shall be the sum of (i) the primary limitation amount determined under Section 3.6(a) above for the year, and (ii) that portion of the primary limitation amount determined under Section 3.6(a) above not utilized by the Participant in prior taxable years in which the Participant was eligible to participate in the Plan. The general catch-up limitation is available to a Participant during one three-year period only. If the Participant uses the general catch-up limitation and then postpones retirement or returns to work after retirement, the general catch-up limitation shall not be available again.

- (c) **Coordination With Other Plans.** If a Participant participates in more than one Code Section 457(b) plan, the maximum deferral under all such plans shall not exceed the applicable limit described in Section 3.6(a) above (subject to modification by the catch-up limitation described in Section 3.6(b) above).
- (d) To the extent that any amount deferred hereunder for any taxable year exceeds the limitations of this Section 3.6, such excess shall be deemed to be a contribution under a plan described in Code Section 457(f). Such excess shall first be deemed to be attributable to contributions made pursuant to Section 3.5 hereof, and then to the extent required, attributable to contributions made pursuant to Section 3.4 hereof, and then, to the extent required, attributable to contributions made pursuant to a Voluntary Salary Deferral Agreement under Section 3.1 hereof.

3.7 **Vesting.** A Participant shall be fully vested at all times in his or her accrued benefits under this Plan. Such accrued benefits shall be non-forfeitable at all times.

3.8 **Transfers of Funds from Another Plan.** If so provided in the Adoption Agreement and subject to any limitations set forth in the Adoption Agreement, a Participant may elect to make, and each Investment Sponsor shall accept, subject to the rules of such Investment Sponsor, contributions which are transferred directly from any other eligible deferred compensation plan. Notwithstanding anything herein to the contrary, transfers shall be permitted only to the extent permitted by law. Such funds and the accumulation generated from them shall be fully vested and nonforfeitable at all times.

ARTICLE IV – DISTRIBUTIONS

4.1 **Eligibility for Payment.** Distribution of benefits from the Plan shall be made no earlier than (i) Severance from Employment, (ii) the calendar year in which the Participant attains age 70-1/2 or (iii) in the event of an approved financial hardship due to an Unforeseeable Emergency, as defined below.

- (a) “Severance from Employment” means the termination of a Participant’s employment with the Employer for any reason including the Participant’s death, disability or retirement. A Participant will be deemed to have incurred a Severance from Employment without regard to whether such Participant continues in the same job for a different employer following a liquidation, merger, consolidation or other similar transaction.
- (b) “Unforeseeable Emergency” means a severe financial hardship to the

Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

- (1) Through reimbursement or compensation by insurance or otherwise;
- (2) By liquidation of the Participant's assets, to the extent that liquidation of such assets would not itself cause severe financial hardship; or
- (3) By cessation of deferrals under the Plan.

The need to send a Participant's child to college or the desire to purchase a home shall not be considered to be an Unforeseeable Emergency.

4.2 ***Distribution Due to Unforeseeable Emergency.*** A Participant may request a distribution due to an Unforeseeable Emergency by submitting a written request to the Employer or its designee, accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency. The Employer or its designee shall have the authority to require such evidence, as it deems necessary to determine if a distribution shall be warranted. If an application for a distribution due to an Unforeseeable Emergency is approved, the distribution shall be limited to an amount sufficient to meet the Unforeseeable Emergency.

4.3 ***Commencement of Distributions.***

- (a) A Participant may commence distribution of benefits at any time following Severance from Employment. Distribution of benefits shall commence on the date selected by the Participant during the sixty day period following Severance from Employment, unless the Participant subsequently makes a one time additional written election in accordance with Code Section 457(e)(9)(B) to defer commencement of benefits to a specified later date. In the event a Participant fails to make an election during the sixty day period following Severance from Employment, the Participant shall receive a lump sum distribution within ninety days following Severance from Employment.
- (b) Notwithstanding the provisions of Section 4.3(a) above in no event shall distribution of benefits commence with respect to any Participant later than the April 1st of the calendar year following the calendar year in which

the Participant attains age 70-½, or if later, the April 1st of the calendar year following the calendar year in which the Participant incurs a Severance from Employment.

4.4 ***Distribution Requirements.***

- (a) **General Rule.** This Section 4.4 is intended to comply with Code Section 457(d) and the regulations issued thereunder. To the extent that there is any conflict between the provisions of Code Section 457(d) and the regulations issued thereunder and any other provision in this Plan, the provisions of Code Section 457(d) and the regulations issued thereunder will control.
- (b) **Limits on Income Options.** Distributions, if not made in a single lump sum shall be made over a period that does not exceed:
 - (1) the life of the Participant;
 - (2) the lives of the Participant and his or her designated Beneficiary;
 - (3) a period certain not extending beyond the life expectancy of the Participant; or
 - (4) a period certain not extending beyond the life expectancies of the Participant and his or her designated Beneficiary.
- (c) **Minimum Amounts to be Distributed.** If a Participant's retirement payments are to be distributed in a form other than a single lump sum, the amount to be distributed each year, and the times those amounts are paid, shall satisfy the requirements specified in Section 401(a)(9) of the Code and the regulations issued thereunder.
- (d) **Death Distribution Provisions.**
 - (1) **Death After Distributions Begin.** If the Participant dies after distribution of his or her interest has commenced, the remaining portion of such interest shall continue to be distributed at least as rapidly as the method of distribution being used prior to the Participant's death.
 - (2) **Death Before Distributions Begin.** If the Participant dies before distribution of his or her interest has commenced, distribution of the Participant's entire interest shall be completed by the December 31 of the calendar year containing the fifth anniversary

of the Participant's death, except to the extent that the recipient of such benefits elects to receive distributions in accordance with (i) or (ii) below:

- (i) If any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made in substantially equal annual payments over the life of the designated Beneficiary, or over a period certain not extending beyond the life expectancy of the designated Beneficiary, and commencing no later than the December 31 of the calendar year immediately following the calendar year in which the Participant died;
- (ii) If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (i) above shall be the December 31 immediately following the calendar year in which the Participant died or, if later, the December 31 of the calendar year in which the Participant would have attained age 70-½.

If the Participant has not made an election pursuant to this Section 4.4 by the time of his or her death, the Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (1) the December 31 of the calendar year in which distributions would be required to begin under this Section 4.4, or (2) the December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (3) For purposes of Section 4.4(d), if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of Section 4.4(d) with the exception of paragraph (ii) shall be applied as if the surviving spouse were the Participant.
- (4) For purposes of this Section 4.4, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.
- (5) For the purposes of this Section 4.4, distribution of a Participant's

interest is considered to begin on the Participant's required beginning date (or, if applicable, the date distribution is required to begin to the surviving spouse). If distribution in the form of an annuity irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

- 4.5 ***Plan-to-Plan Transfers.*** Notwithstanding any provision of the Plan to the contrary, to the extent permitted by law, all or any part of the account balance of a Participant in the Plan shall be transferred to another eligible deferred compensation plan in which the former Participant has become a participant, if: (i) the plan receiving such amounts provides for acceptance of such transfers and (ii) the Participant gives written direction to the Employer or its designee in a satisfactory form to make such transfer.

ARTICLE V – FORMS OF PAYMENTS

- 5.1 ***Election.*** Subject to the rules of the Investment Sponsor, a Participant or Beneficiary may elect the form of distribution of his or her benefits and may revoke that election, with or without a new election, at any time at least thirty days before his or her benefits begin, or such other time as permitted by the Employer or its designee, by notifying the Employer or its designee in writing of his or her election. Unless otherwise set forth in the Adoption Agreement, all distributions of benefits paid pursuant to the terms of this Plan shall be made directly by the applicable Investment Sponsor to the Participant.

- 5.2 ***Forms of Payments.*** The forms of benefit payments shall include:

- (a) **Lump Sum.** A single lump sum payment of the entire balance credited to a Participant's book entry account.
- (b) **Single Life Annuity.** An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
- (c) **Joint Life Annuity.** An annuity payable in equal installments for the joint lives of the Participant and his or her Beneficiary.
- (d) **Fixed Period Payments.** Payments for a fixed period of not less than five years and not more than thirty years.

All forms of payments shall be subject to the limitations of the applicable Investment Sponsor.

- 5.3 ***Failure to Make Election.*** If a Participant or Beneficiary fails to elect a form of

payment in a timely manner, benefits shall be paid in a lump sum.

ARTICLE VI – BENEFICIARY INFORMATION

- 6.1 **Designation.** Unless otherwise set forth in the Adoption Agreement, a Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time prior to commencement of benefits, in writing, in a form approved by the Employer or its designee. Such designation, amendment or revocation shall be effective upon satisfactory receipt by the Employer or its designee.
- 6.2 **Failure to Designate a Beneficiary.** Benefits shall be paid to a Participant's estate, in the event: (i) a Participant has the right to designate a Beneficiary pursuant to the terms of Section 6.1 above and the Adoption Agreement, and (ii) prior to the date a Participant commences to receive payment of benefits under the Plan, the Participant has not designated a Beneficiary or no designated Beneficiary survives the Participant and benefits are payable following the Participant's death.

ARTICLE VII – PLAN ADMINISTRATION

- 7.1 **Plan Administration.** The Employer shall be responsible for appointing a Plan Administrator to administer the Plan. The Plan Administrator may authorize a committee comprised (to the extent possible) of not less than three persons, to act collectively with regard to administration of the Plan. The Plan Administrator shall have sole discretionary responsibility for the interpretation of the Plan, enrolling Participants in the Plan, directing investments of deferrals made pursuant to the Plan, and for performing other duties required for the operation of the Plan. Any action taken on any matter within the discretion of the Plan Administrator shall be made in its sole and absolute discretion based on this Plan document and the Adoption Agreement, and shall be final, conclusive, and binding on all parties. In order to discharge its duties hereunder, the Plan Administrator shall have the power and authority to delegate ministerial duties and to employ such outside professionals as may be required for prudent administration of the Plan. The Plan Administrator shall also have authority to enter into agreements on behalf of the Employer necessary to implement this Plan.
- 7.2 **Accounts and Expenses.** The Employer shall establish and maintain a book entry account on behalf of each Participant. Each such book entry account shall reflect the aggregate of Elective Deferrals, Employer non-elective contributions, Employer matching contributions, transfers and rollovers, if any, made on behalf of a Participant, and shall also reflect the investment experience attributable to

each such book entry account based upon the investment experience described in Section 7.3 below. The book entry account shall also reflect any reductions due to expense charges applied to, and distributions made from, each such account.

7.3

Investment Experience. Amounts credited to a Participant's book entry account shall reflect the investment experience of the Investment Options selected under the Plan. Unless otherwise set forth in the Adoption Agreement, the Employer authorizes each Participant to select the Investment Options under the Plan that will be used to measure the investment experience of such Participant's account. The Investment Options shall include the Investment Options made available by TIAA-CREF and may, in addition, include Investment Options made available by additional approved Investment Sponsors. The initial allocation request may be made at the time of enrollment in the Plan. Once made, an investment allocation request shall remain in effect for all subsequent contributions until changed by the Employer, or the Participant, as the case may be. Unless otherwise set forth in the Adoption Agreement, a Participant may change any allocation made by such Participant hereunder by submitting a written request to the Employer or its designee on such form as may be required by the Employer or its designee. Any such changes shall become effective as soon as administratively feasible after the Employer or its designee receives a satisfactory written request. Notwithstanding anything herein to the contrary, the Employer retains the right to allocate amounts hereunder without regard to a Participant's request. The Employer or its designee shall credit investment experience to each Participant's book entry account as of the last business day of each calendar quarter or such other dates selected by the Employer or its designee, in its sole and absolute discretion.

7.4

Claims Procedures. Any claim by a Participant or Beneficiary with respect to eligibility, participation, contributions, benefits or other aspects of the operation of the Plan shall be made in writing to the Plan Administrator or a committee acting on behalf of the Plan Administrator. If the Plan Administrator or the committee acting on its behalf believe that the claim should be denied, it shall notify the claimant in writing of the denial of the claim within ninety (90) days after receipt thereof (this period may be extended an additional ninety (90) days in special circumstances). Such notice shall (a) set forth the specific reason or reasons for the denial, making reference to the pertinent provisions of the Plan or the Plan documents on which the denial is based, (b) describe any additional material or information necessary to perfect the claim, and explain why such material or information, if any, is necessary, and (c) inform the Participant or Beneficiary making the claim of his right pursuant to this Section 7.4 to request a review of the decision. If notice of denial is not given to a claimant within such period of time, the claim will be deemed denied for purposes of seeking review of the claim. Any such person may appeal the denial of a claim by submitting a written request for review to the Plan Administrator or the committee acting on its behalf, as the case may be, within sixty (60) days after the date on which such denial is received. Such period may be extended for good cause shown. The

person making the request for review or his duly authorized representative may discuss any issues relevant to the claim, may review pertinent documents and may submit issues and comments in writing. If the Plan Administrator or the committee acting on its behalf deem it appropriate, it may hold a hearing as to a claim. If a hearing is held, the Claimant shall be entitled to be represented by counsel. The Plan Administrator or the committee acting on behalf of the Plan Administrator shall decide whether or not to grant the claim within sixty (60) days after receipt of the request for review, but this period may be extended for up to an additional sixty (60) days in special circumstances (the Participant or Beneficiary shall be notified of the delay); in any event such decision shall be rendered not later than one hundred twenty (120) days after receipt of the request for review. The decision shall be in writing, shall include specific reasons for the decision and shall refer to pertinent provisions of the Plan or the Plan documents on which the decision is based. Any claim not decided upon in the required time period shall be deemed denied. All interpretations, determinations and decisions of the Plan Administrator or the committee acting on behalf of the Plan Administrator, or its designee, with respect to any claim under the Plan shall be made in its sole and absolute discretion, based on the Plan document, and other related documents and shall be final and conclusive.

ARTICLE VIII – AMENDMENT OR TERMINATION OF PLAN

- 8.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Employer reserves the right at any time to amend, otherwise modify, or terminate the Plan without any liability for such action. No amendment shall increase the duties or responsibilities of any Investment Sponsor without its prior consent thereto in writing. In the event of a termination of the Plan, the Employer shall notify Participants of the termination.

ARTICLE IX – UNFUNDED PLAN

- 9.1 ***Unfunded Status.*** The Plan is intended to constitute an unfunded plan and all amounts held hereunder shall be allocated to the Employer. Any amount due and payable pursuant to the terms of the Plan shall be paid out of the general assets of the Employer. All assets of the Plan shall be subject to the claims of creditors of the Employer. Participants and Beneficiaries shall not have interest in any specific asset of the Employer or any specific asset held hereunder as a result of participation in this Plan. The Employer shall have no obligation to set aside any funds for the purpose of making any benefit payments under this Plan. Nothing contained herein shall give any Participant any rights that are greater than those of an unsecured creditor of the Employer with respect to any unpaid amount as to which the Participant has a vested interest. No action taken pursuant to the terms

of this Plan shall be construed to create a funded arrangement, a plan asset, or fiduciary relationship among the Employer, its designee, any Investment Sponsor, and a Participant or Beneficiary.

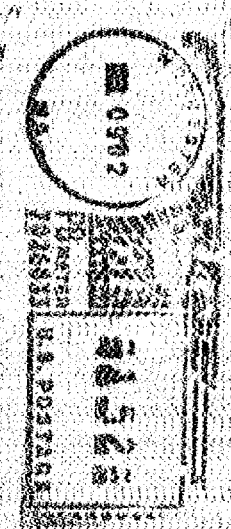
ARTICLE X – MISCELLANEOUS

- 10.1 ***Plan Non-Contractual.*** Nothing contained in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Employer, and nothing contained in this Plan will be construed as a commitment on the part of the Employer to continue the employment or the rate of compensation of any person for any period, and all Employees of the Employer will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 ***Claims of Other Persons.*** The provisions of the Plan will in no event be construed as giving any Participant or any other person, firm, corporation or other legal entity, any legal or equitable right against the Employer, its officers, employees, directors or trustees, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 ***Assignments.*** No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily, other than as provided under Section 401(a)(13) of the Code. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in Section 414(p) of the Code.
- 10.4 ***Pronouns.*** Whenever used herein, the masculine pronoun is deemed to include the feminine. The singular form, whenever used herein, shall mean or include the plural form where applicable, and vice versa.
- 10.5 ***Representations.*** The Employer does not represent or guarantee that any particular Federal or State income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Employer does not represent or guarantee investment returns with respect to any Investment Options and shall not be required to restore any loss which may result from such investment or lack of investment.
- 10.6 ***Severability.*** If a court of competent jurisdiction holds any provision of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue

to be fully effective.

10.7

Applicable Law. This Plan shall be construed in accordance with applicable Federal law and, to the extent otherwise applicable, the laws of the State in which the Employer is located.



WPI

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