

UNIVERSITY OF PITTSBURGH

401(a) RETIREMENT PLAN

**AMENDED AND RESTATED
EFFECTIVE AS OF JANUARY 1, 2016**

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ARTICLE ONE

Effective Date

1.01 ***Effective Date:*** The provisions of this Plan and the associated Trust Agreements were approved by the Board of Trustees of the University on June 23, 1993, were effective as of January 1, 1994, were amended and restated effective as of January 1, 1997, January 1, 2006, and January 1, 2009, and are amended and restated effective as of January 1, 2016 except as otherwise provided.

- (a) Provisions related to Roth 403(b) Contributions became effective as of October 1, 2008.
- (b) Subsection 3.04(c) shall not apply to any Participant who became a Participant in this Plan prior to January 1, 1996.
- (c) Changes required under the IRC §415 regulations that were issued on April 5, 2007 became effective as of January 1, 2008. For Limitation Years beginning prior to January 1, 2008, corrective action (if needed) was taken in accordance with Treasury regulation §1.415-6(b)(6) of the 1981 regulations.
- (d) The reference to IRC §403(b) in Subsection 11.05(a) became effective as of January 1, 2007.
- (e) References to Rev. Proc. 2013-12 became effective as of April 1, 2013. Rev. Proc. 2008-50 applied from January 1, 2009 through March 31, 2013. Rev. Proc. 2006-27 applied prior to January 1, 2009. Any reference to Rev. Proc. 2013-12 includes any Revenue Procedure that supersedes it and any subsequent Revenue Procedures, such as Rev. Proc. 2015-27 and 2015-28, that modify it.
- (f) Subsection 8.01(e) became effective as of January 1, 2007.
- (g) Provisions related to Qualified Optional Survivor Annuities became effective as of January 1, 2008.
- (h) Provisions relating to differential wage payments became effective as of January 1, 2009.
- (i) The current version of Subsection 11.04(d) became effective as of November 1, 2012.
- (j) **Same-Sex Marriage:** Changes to Section 10.02, Paragraph 11.02(b)(ii), Section 14.08, and Section 14.09 became effective as of September 16, 2013.

ARTICLE TWO

Designation of Plan and Trusts

2.01 ***Profit-Sharing Plan:*** The Plan and associated Trust Agreements established hereunder shall be known as the University of Pittsburgh 401(a) Retirement Plan (hereinafter called the “Plan”) and shall be for the exclusive benefit of the Participants and their beneficiaries. The terms of the Plan are intended to comply with the Internal Revenue Code of 1986, as amended, and Treasury regulations issued in connection therewith, in order that the associated Trusts may qualify as tax-exempt trusts. This Plan is a profit-sharing plan.

2.02 ***Trust:*** Non-annuity assets are held in trust. Prior to January 1, 2015 there were separate trust agreements with the Vanguard Fiduciary Trust Company and JP Morgan Chase Bank, N.A. that governed the trusts that held assets of the Plan.

- (a) Effective as of January 1, 2015 TIAA-CREF Trust Company, FSB became trustee of the trust that held the non-annuity TIAA-CREF assets.
- (b) Effective as of February 9, 2015 Plan assets invested in Vanguard mutual funds were transferred to the trust of which TIAA-CREF Trust Company, FSB was the trustee.

ARTICLE THREE

Definitions

When used herein, the following words shall have the following meanings unless the context clearly indicates otherwise:

3.01 “**Account Balance**” shall mean the balance of a Participant Account held under the Plan.

3.02 “**Alternate Payee**” shall mean any spouse, former spouse, child, or other dependent of a Participant who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such Participant.

3.03 “**Anniversary Date**” shall mean December 31 of each year.

3.04 “**Compensation**” shall mean:

- (a) **Basic Definition:** Except as otherwise provided, the total amount of base compensation (including third-term compensation) which is subject to federal income tax withholding (determined without regard to whether amounts are excludable from gross income under IRC §911, §931, or §933) which is paid (or otherwise becomes taxable) to an Eligible Employee (or former Eligible Employee) by the University for services rendered while an Eligible Employee and shall:
- (i) include the amount of any salary reductions made pursuant to any plan or arrangement which meets the requirements of IRC §125, §132(f)(4), §401(k), §403(b) or §457(b); provided that any cash payment made to any participant who waives insurance coverage under an IRC §125 plan shall be excluded, and
 - (ii) except as provided in paragraph (i), exclude any reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation, amounts taxable under IRC §117, lump-sum cash-outs of vacation or sick pay paid to terminating employees, and welfare benefits (including long-term disability benefits), and
 - (iii) exclude any compensation which is paid (or otherwise becomes taxable) to an Eligible Employee for services rendered while he was not a Participant in the Plan; and

- (iv) exclude any non-base compensation, including bonuses, commissions, overtime, supplemental compensation, overloads, honoraria, payments under any severance, early retirement, or tenure buy-back program, any compensation to the extent that the terms of the Participant's employment contract provide that fringe benefits will not be based upon it, and similar forms of remuneration; provided that payments under the retention incentive plan for officers are included;
 - (v) include payments identified in clause (b)(vii)(1),
 - (vi) include differential wage payments within the meaning of IRC §414(u)(12), and
 - (vii) exclude any scholarships, grants, stipends, or fellowship payments that are not payments for services.
- (b) ***IRC §415 Limit:*** For purposes of Article Seven, the total of all wages, salary and other amounts which is paid (or otherwise becomes taxable, or would be taxable but for IRC §911, §931, or §933) to a Participant for personal services actually rendered; provided that:
- (i) Effective for Limitation Years beginning after 2007, Compensation shall not include items listed in reg. §1.415(c)-2(c), such as deferred compensation, stock options, and other remunerations which receive special tax benefit. [Prior to January 1, 2008 items listed in reg. §1.415-2(d)(3) were excluded from Compensation.]
 - (ii) Salary reduction contributions under a §401(k), §403(b), §457(b), §132(f)(4) or cafeteria (§125) plan or arrangement shall be included as Compensation.
 - (iii) Effective for Limitation Years beginning after 2007, Compensation includes amounts includible in income because of the making of an election under IRC §83(b), under IRC §409A, or under IRC §457(f)(1)(A), or because the amounts are constructively received.
 - (iv) Compensation includes any amounts not available to a Participant in cash in lieu of group health coverage (in accordance with Revenue Ruling 2002-27) if the University does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.
 - (v) Nonqualified deferred compensation which is paid (or otherwise becomes taxable) to a Participant while he or she is still employed by the University (or Related Organization) shall be Compensation when it is paid (or otherwise becomes taxable).

- (vi) Effective for Limitation Years beginning after 2007, Compensation for purposes of this subsection is subject to the limitation of IRC §401(a)(17).
 - (vii) Effective for Limitation Years beginning after 2007, if a Participant terminates employment with the University during a Plan Year, his Compensation for that Plan Year shall include payments made after his termination of employment during the remainder of the Plan Year. In addition, payments that are made during the next Plan Year that are also made within 2½ months of his termination of employment shall be compensation for the next Plan Year. Notwithstanding the above, compensation under this paragraph is limited to: (1) amounts that would have been paid to the Participant prior to termination of employment had he remained an employee of the University (or Related Organization), and (2) cash outs of unused leave that the Participant would have been able to use had he remained employed. This paragraph does not apply to severance, separation, termination, or similar pay, the right to which arises upon termination of employment.
 - (viii) Effective for Plan Years and Limitation Years beginning after 2008 differential wage payments within the meaning of IRC §414(u)(12) are included in Compensation.
 - (ix) Compensation shall be determined without regard to exclusions from gross income under IRC §872, §893, §894, §911, §931, and §933.
 - (x) Back pay, within the meaning of reg. §1.415(c)-2(g)(8), shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages or compensation that would otherwise be included in Compensation for purposes of this subsection.
- (c) ***IRC §401(a)(17) Limit:*** Notwithstanding the other subsections of this section, the Compensation of a Participant for a Plan Year or a Limitation Year shall not include compensation in excess of the limit under IRC §401(a)(17), which is two hundred sixty-five thousand (\$265,000) dollars for Plan Years and Limitation Years beginning in 2015 or 2016 (except, in the case of a governmental plan, for any Participant who became Participant prior to January 1, 1996). The limit is adjusted periodically in accordance with IRC §401(a)(17). See Section 14.10. If a Plan Year or Limitation Year contains fewer than twelve (12) calendar months, then the dollar limit on Compensation for that Plan Year or Limitation Year shall be the limit under IRC §401(a)(17) multiplied by the number of full months in the Plan Year or Limitation Year and divided by twelve (12) months.
- (d) ***Disabled Participants:*** Effective as of January 1, 2002, in the case of a Participant who is entitled to benefits under the University's long-term disability plan, the Participant shall (to the extent permitted under IRC §415) be deemed to have "Compensation" at the rate paid immediately before he or she became disabled.

- (e) **Common Paymaster:** Notwithstanding the above, any amount disbursed by a common paymaster (other than the University) for services by a common law employee of the University to the University shall not fail to be Compensation because the common paymaster, rather than the University, was responsible for withholding.

3.05 **“Defined Contribution Plan”** shall mean a plan which meets the requirements of IRC §401 and which provides for an individual account for each participant and for benefits based solely on:

- (a) The amount contributed to the participant’s account; and
- (b) Any income, expenses, gains and losses, and forfeitures of accounts of other participants which may be allocated to the participant’s account.

This Plan is a Defined Contribution Plan. For purposes other than Section 11.05 and Article Fifteen, the term “Defined Contribution Plan” is limited to plans sponsored by either the University or a Related Organization. The 403(b) Plan is not a Defined Contribution Plan.

3.06 **“Distribution Starting Date”** shall mean:

- (a) in the case of a benefit to be paid in the form of an annuity, the first day of the first period for which an amount is payable as an annuity, or
- (b) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such benefit.

3.07 **“Domestic Relations Order”** shall mean any judgment, decree, or order (including approval of a property settlement agreement) which:

- (a) Relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant, and
- (b) Is made pursuant to a state domestic relations law (including a community property law).

3.08 **“Eligible Employee”** shall mean any employee of the University who is in a category of employees eligible to participate in the Plan under the terms of Section 4.01.

Effective for Plan Years beginning after December 31, 2008 any former employee receiving from the University differential wage payments within the meaning of IRC §414(u)(12) shall be treated as an employee.

Whether a person is an employee of the University shall be determined without regard to the disregarded entity rules under the Internal Revenue Code.

3.09 **“Employment Commencement Date”** shall mean the first date on which an Employee is credited with an Hour of Service.

3.10 **“Entry Dates”** shall mean the first day of each month; however in the case of a Participant who is paid every two weeks, his or her Entry Date shall be the Sunday of the pay period related to the first pay date of a month.

3.11 **“Fiduciary”** shall mean any person who exercises any discretionary management of the Plan or exercises any authority or control respecting management or disposition of its assets, renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the Plan, or has authority or responsibility in the administration of the Plan.

3.12 **“Foundation”** shall mean the University of Pittsburgh and University of Pittsburgh Medical Center Medical and Health Sciences Foundation.

3.13 **“Hour of Service”** shall mean:

- (a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the University. These hours shall be credited to the employee for the computation period in which the duties are performed;
- (b) Each hour for which an employee is paid, or entitled to payment, by the University on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military or leave of absence). No more than 501 Hours of Service shall be credited under this subsection. All such hours shall be calculated and credited pursuant to section 2530.200b-2 of the Department of Labor regulations, which are incorporated herein by this reference;
- (c) Each hour for which back pay, irrespective of mitigation of damages, is awarded or agreed to by the University. The same Hours of Service shall not be credited both under subsection (a) or subsection (b), as the case may be, and under this subsection (c). These hours shall be credited to the employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made; and
- (d) Each hour for which an individual would have received credit as an employee but for the fact that the individual is absent from work for one of the following reasons:
 - (i) The pregnancy of the individual,
 - (ii) The birth of a child of the individual,

- (iii) The placement of a child in connection with the adoption of a child by the individual, or,
- (iv) The caring for the child during the period immediately following the birth or placement for adoption.
- (v) A leave of absence pursuant to the Family and Medical Leave Act but only if the employee returns to provide service after such leave.

If the Plan Administrator is unable to determine the hours for which the individual shall receive credit, the individual shall receive credit for eight (8) Hours of Service for each normal workday during the absence. The number of Hours of Service credited under this subsection shall not exceed the number necessary for the individual to be credited with a total of 501 Hours of Service under this section. Service credited under this subsection shall be credited in the Plan Year in which the absence begins to the extent necessary to prevent the individual from being credited with less than 501 Hours of Service. The Plan Administrator may refuse to credit service under this subsection unless the individual furnishes information necessary to establish that the absence occurred for one of the reason listed above and the number of days for which there was such an absence.

3.14 ***“IRC”*** shall mean the Internal Revenue Code of 1986, as amended.

3.15 ***“Joint and Survivor Annuity”*** shall mean an immediate annuity:

- (a) For the life of the Participant with a survivor annuity for the life of his spouse which is fifty (50%) percent of the amount of the annuity which is payable during the joint lives of the Participant and the spouse, and
- (b) Which is the actuarial equivalent of a single straight life annuity for the life of the Participant.

A Joint and 50% Survivor Annuity has a survivor percentage of fifty (50%) percent of the amount payable during the joint lives of the Participant and the spouse. A Joint and 75% Survivor Annuity has a survivor percentage of seventy-five (75%) percent of the amount payable during the joint lives of the Participant and the spouse. Both a Joint and 50% Survivor Annuity and a Joint and 75% Survivor Annuity are types of Joint and Survivor Annuities.

A Joint and 75% Survivor Annuity is the "Qualified Optional Survivor Annuity" for purposes of this Plan.

3.16 ***“Limitation Year”*** shall mean the calendar year.

3.17 ***“Normal Retirement Age”*** shall mean age sixty-five (65).

3.18 ***“Normal Retirement Date”*** shall mean the first day of the month next following the date the Participant attains Normal Retirement Age.

3.19 **“Officer”** shall mean an employee who is an officer within the meaning of IRC § 416(i)(1)(A)(i).

3.20 **“Participant”** shall mean an employee or former employee of the University who is participating in the Plan in accordance with Article Four or who is or will be receiving benefits pursuant to Article Eleven. A former Employee who receives Compensation under Clause 3.04(b)(vii)(1) shall be treated as an Employee and shall be eligible for allocations under Article Six.

3.21 **“Plan”** shall mean this Plan as it shall be amended from time to time.

3.22 **“Plan Administrator”** shall mean the “party or parties” named or appointed as such pursuant to Article Twelve.

3.23 **“Plan Year”** shall mean the twelve (12) consecutive-month period ending on December 31.

3.24 **“Qualified Domestic Relations Order”** shall mean any Domestic Relations Order:

- (a) Which clearly specifies:
 - (i) The name and the last known mailing address (if any) of the Participant and the name and mailing address of each Alternate Payee covered by the Order,
 - (ii) The amount or percentage of the Participant’s benefits to be paid by the Plan to each such Alternate Payee, or the manner in which such amount or percentage is to be determined,
 - (iii) The number of payments or period to which such Order applies, and
 - (iv) Each plan to which such Order applies, and
- (b) Which:
 - (i) Does not require the Plan to provide any type or form of benefits or any option, not otherwise provided under the Plan,
 - (ii) Does not require the Plan to provide increased benefits (determined on the basis of actuarial value), and
 - (iii) Does not require the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another Order previously determined to be a Qualified Domestic Relations Order.

3.25 ***“Preretirement Survivor Annuity”*** shall mean a single straight life annuity for the life of the surviving spouse.

3.26 ***“Related Organization”*** shall mean, to the extent required by law, any corporation, partnership, or trade or business which is required to be aggregated under IRC §414(b), (c), (m) or (o) with the University.

3.27 ***“Rollover Amount”*** shall mean any rollover amount or rollover contribution defined in IRC §402(c)(4), §402A(c)(3), §403(a)(4), §403(b)(8), §408(d)(3), or §457(e)(16) that is rolled into the trust in accordance with Section 14.04.

3.28 ***“TIAA”*** shall mean the Teachers Insurance & Annuity Association (“TIAA”). As of the effective date of this Plan document, TIAA is a third-party record keeper for the Plan. TIAA and CREF are both issuers of annuity contracts that hold Plan assets. The term “TIAA” refers to TIAA in its capacity as a third-party record keeper.

3.29 ***“TIAA-CREF”*** shall mean the Teachers Insurance & Annuity Association (“TIAA”) and the College Retirement Equities Fund (“CREF”, collectively “TIAA-CREF”). As of the effective date of this Plan document, some plan assets were held in annuity contracts (in accordance with IRC §401(f)) issued by TIAA or CREF. The term “TIAA-CREF” refers to both TIAA and CREF in their capacity as annuity issuers.

3.30 ***“Total Disability”*** shall mean a “Permanent and Total Disability” within the meaning of IRC §22(e)(3), which at the time that this document was adopted was a condition of a Participant which renders him unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

3.31 ***“Trust Agreements”*** shall mean the trust agreements or group annuity contracts which provide for the holding and investing of the amounts contributed pursuant to this Plan. Any group annuity contract shall comply with IRC §401(f) and be treated for purposes of this Plan document as if it were a trust.

3.32 ***“Trustee”*** shall mean the party or parties holding the assets of the trust pursuant to the terms of this Plan and the associated Trust Agreements. The Trustees shall be appointed by the University. Effective as of February 9, 2015 all non-annuity assets of the Plan were held in a trust of which TIAA-CREF Trust Company, FSB was the Trustee.

3.33 ***“University”*** shall mean the University of Pittsburgh of the Commonwealth System of Higher Education, a Pennsylvania not for profit organization, and any Related Organization, successor organization or other organization which adopts this Plan. Each employer shall be considered separately for purposes of determining who is an Officer. The University is an instrumentality of the Commonwealth of Pennsylvania and is exempt from taxation under IRC §501(c)(3).

3.34 **"UPMC"** shall mean the University of Pittsburgh Medical Center.

3.35 **"UPP"** shall mean University of Pittsburgh Physicians.

3.36 **"Valuation Dates"** shall mean the last day of the Plan Year and any other date selected by the Plan Administrator. However, to the extent any assets are invested with an insurance or other investment company (including TIAA-CREF or the Vanguard Group of Investment Companies), Valuation Dates shall be determined in accordance with the investment contracts.

3.37 **"Vested Interest"** shall mean that portion of a Participant's Account Balance which has become vested (and therefore is nonforfeitable) in accordance with Article Eight.

3.38 **"Vesting Computation Period"** shall mean the Plan Year.

3.39 **"Year of Service"** shall mean any Vesting Computation Period during which a Participant completes one thousand (1,000) or more Hours of Service.

3.40 **"Year of Participation"** shall mean:

- (a) Any Plan Year during which a Participant both completes at least one thousand (1,000) Hours of Service and receives allocations under Section 6.02 for at least six different months of the Plan Year. A Participant who has not terminated employment with the University but receives no Compensation for a particular month shall be deemed to have received allocations under Section 6.02 for that month if he or she does receive allocations for the most recent month that he or she did receive Compensation; and
- (b) Any Plan Year for which a Participant is entitled to credit under Section 15.01 (which deals with employees who worked for UPMC, UPP, or the Foundation).

3.41 **"403(b) Plan"** shall mean the University of Pittsburgh 403(b) Plan (formerly the University of Pittsburgh Contributory Tax-Deferred Annuity Plan) which is available to University employees and which is intended to comply with IRC §403(b). The 403(b) Plan is not a Defined Contribution Plan.

3.42 **"403(b) Contribution"** shall mean either a 403(b) Contribution or a Roth 403(b) Contribution as those terms are used in the 403(b) Plan. All 403(b) Contributions are either "Matched Contributions" or "Unmatched Contributions". A "Matched Contribution" or a "Roth Matched Contribution" is a contribution that does not exceed 8% of the Participant's Compensation for the pay period. Note: For purposes of the 403(b) Plan an Unmatched Contribution also includes 403(b) Contributions and Roth 403(b) Contributions made by or for employees who are not Eligible Employees for purposes of this Plan.

ARTICLE FOUR

Eligibility and Participation

4.01 ***Eligibility Requirements:*** An employee's eligibility to participate in this Plan depends on his employment category.

- (a) ***Eligible Employees:*** The following categories of employees are eligible to receive allocations of Matching Contributions:
- (i) Faculty full-time regular,
 - (ii) Librarians full-time regular,
 - (iii) Research associates full-time regular,
 - (iv) Staff (non-union) full-time regular,
 - (v) Part-time faculty in the tenure stream or tenured for no less than half-time,
 - (vi) Staff (non-union) part-time regular,

 - (vii) Postdoctoral associates (full-time) with an appointment date on or before June 30, 2005.

 - (viii) Members of collective bargaining units, if and only if, both the terms of this Plan, as amended, and the terms of the applicable collective bargaining agreement provide for participation.

For purposes of this subsection, an employee's category of employment shall be determined in accordance with what has been entered into the University's Payroll System.

- (b) ***Participants in the Defined Benefit Plan:*** Notwithstanding subsection (a) or Section 6.02, any employee of the University who is an active participant in the University of Pittsburgh Noncontributory Defined Benefit Pension Plan shall not be eligible to receive allocations of Matching Contributions for the period during which he or she is eligible to receive credit for a year (or partial year) of service under that Defined Benefit Plan. The prior sentence applies regardless of whether the individual fails to receive credit under that Defined Benefit Plan for a year (or partial year) of service because he does not receive credit for the minimum number of hours necessary to receive credit for a year (or partial year) of service.
- (c) ***Employees Covered by a Collective Bargaining Agreement:*** If an employee's terms of employment are covered by a collective bargaining agreement, and if the collective bargaining agreement provides that he or she shall be eligible to participate in the Plan, he or she shall participate on the same terms, and be subject to the same restrictions, as a non-union staff employee.

- (d) ***Ineligible Classes of Employees:*** Notwithstanding the other provisions of this article, the following categories of employees are not eligible to participate:
- (i) ***Students and Fellows:*** Students, including graduate students, and post-doctoral degree fellows are not eligible to participate regardless of whether any services they perform is covered by IRC §3121(b)(10).
 - (ii) ***Nonresident Aliens:*** Nonresident aliens with no U.S. source income are not eligible to participate.
 - (iii) ***Related Organizations:*** Employees of Related Organizations are not eligible to participate unless the Related Organization specifically adopts this Plan with the consent of the University.
 - (iv) ***Part-time Faculty:*** Part-time faculty not in the tenure stream are not eligible to participate.
 - (v) ***Minimum Age Requirement:*** Employees who are under the age of eighteen (18) are not eligible to participate.
 - (vi) ***Accelerated Option:*** Effective as of January 1, 2002, except as required by Section 6.06 (relating to veterans), 120 months after an Employee enters the “Accelerated Option”, he ceases to be an Eligible Employee for purposes of this Plan, even if he is otherwise eligible to be treated as a new hire under Section 4.03.
 - (vii) ***Postdoctoral Associates:*** Postdoctoral associates with appointments dated on or after July 1, 2005 are not eligible to participate.
 - (viii) ***Temporary Employees:*** Temporary employees are not eligible to participate.
- (e) ***Long-Term Disability:*** A former employee of the University who is receiving benefits under a long-term disability plan of the University shall be treated as an Eligible Employee under subsection (a) if:
- (i) He or she was an Eligible Employee (or would have been an Eligible Employee had this Plan been in existence) immediately prior to his or her termination of employment on account of disability, and
 - (ii) He or she is entitled, under the terms of the University’s long-term disability plan, to receive benefits that replace contributions to this Plan or the 403(b) Plan that would otherwise be lost because of the disability.

4.02 *Entry Dates*

- (a) ***Current Employees:*** Notwithstanding any other provision of this Article, any Employee who was eligible to participate in the Plan as of the Effective Date of this amended and restated Plan (as described in Article One) shall continue to be eligible to participate as of such Effective Date.
- (b) ***Other Employees:*** Effective as of November 3, 2015, if an employee becomes an Eligible Employee (either as a new hire or as a result of a change in status), and:
 - (i) If the Eligible Employee's first day of work is on or before the first business day of the month, he or she becomes a Participant as of the first day of the next month. However, if he or she is paid every two weeks instead of monthly, he or she becomes Participant as of the first day of the pay period related to the first pay date of the next month.
 - (ii) If the Eligible Employee's first day of work is after the first business day of the month, he or she becomes a Participant as of the first day of the second month following the month during which he or she became an Eligible Employee. However, if he or she is paid every two weeks instead of monthly, he or she becomes Participant as of the first day of the pay period related to the first pay date of the second month following the month during which he or she became an Eligible Employee.

4.03 *Former Participants:*

- (a) ***Faculty:*** If a Participant who is a member of the faculty (or is treated as a member of the faculty for benefits purposes) terminates employment with the University and more than three hundred sixty-five (365) days pass before he or she again becomes an employee of the University, he or she will be treated as a new hire when he or she again becomes an employee of the University. If a Participant either ceases to be an Eligible Employee (without terminating employment with the University) or terminates employment with the University for less than three hundred sixty-six (366) days, he or she will become a Participant again as of the first day that he or she again becomes an Eligible Employee and will not be treated as a new hire.
- (b) ***Staff:*** If a Participant who is not a member of the faculty (or treated as a member of the faculty for benefits purposes):
 - (i) involuntarily terminates employment with the University due to position elimination or an employer-initiated reorganization and more than three hundred sixty-five (365) days pass before he or she again becomes an employee of the University, he or she will be treated as a new hire when he or she again becomes an employee of the University.

- (ii) involuntarily terminates employment with the University due to position elimination or an employer-initiated reorganization and less than one three hundred sixty-six (366) days pass before he or she again becomes an employee of the University, he or she will become a Participant again as of the first day that he or she again becomes an Eligible Employee and will not be treated as a new hire.
- (iii) terminates employment with the University for any reason not covered by paragraph (i) or (ii), he or she will be treated as a new hire if he or she again becomes an employee of the University; provided, that any former employee who again becomes an employee not later than the tenth day after his or her last day of prior employment is treated as if he or she had not terminated employment.
- (iv) ceases to be an Eligible Employee without terminating employment with the University, he or she will become a Participant again as of the first day that he or she again becomes an Eligible Employee and will not be treated as a new hire.

For purposes of this section, a reorganization shall not be treated as an employer-initiated reorganization unless it is determined to be such by the Chancellor, the Executive Vice Chancellor, the Provost, or the Senior Vice Chancellor, Health Sciences, or his or her delegate.

Notwithstanding the above, if a Participant terminated employment prior to January 1, 2009 and is rehired in 2009, subsection (a) shall apply to that Participant (regardless of his job classification) with respect to the first time that he is rehired in 2009.

- (c) **Veterans:** Notwithstanding subsections (a) and (b), someone who terminates employment for military duty shall not be treated as a new hire if he or she is re-employed by the University at a time that he or she is entitled to re-employment benefits under Section 6.06.
- (d) **Long-Term Disability:** Notwithstanding subsections (a) and (b), someone who terminates employment because of a disability and who is entitled to benefits under a long-term disability plan of the University shall not be treated as a new hire and shall be treated as if he or she were on an unpaid leave of absence if he or she recovers from his or her disability and again becomes an active employee of the University within 365 days of the date on which he or she has been medically released to return to work.
- (e) **365th Day:** A 365-day period shall start with the first day after the individual's actual last day of work for the University and end 364 days later. However, if the University is not open for business on the 365th day, then a three hundred sixty-five (365) day period under this section shall be extended until the close of

business of the University's Office of Human Resources on the first business day following the 365th day.

4.04 **Leased Employees:** Leased employees (as defined in IRC §414(n)) shall not be eligible to participate. Effective as of January 1, 1997, a Leased Employee is any person who is not an employee of the University (or any Related Organization) and who provides services to the University if:

- (a) the services are provided pursuant to an agreement between the University (or a Related Organization) and any other person (the "leasing organization"),
- (b) the person has performed services for the University (or a Related Organization) on a substantially full time basis for a period of at least one year, and
- (c) such services are performed under the primary direction or control by the University (or a Related Organization).

4.05 **Certain UPP Employees:**

- (a) **Faculty:** Notwithstanding any contrary provision in the Plan, any individual who as of January 1, 1999 held a faculty appointment in the School of Medicine, was employed by University of Pittsburgh Physicians (UPP), and was enrolled in the 403(b) Plan became a Participant in this Plan on January 1, 1999. Furthermore, such an Employee was given credit for a Year of Participation for every Plan Year during which he or she held a faculty appointment since the effective date of his or her most recent appointment (prior to January 1, 1999) to the faculty.
- (b) **Administrative Directors:** Notwithstanding any contrary provision in the Plan, any individual who as of January 1, 1999 was employed by both the School of Medicine and the University of Pittsburgh Physicians (UPP) as an Administrative Director and was enrolled in the 403(b) Plan became a Participant in this Plan on January 1, 1999. Furthermore, such an employee was given credit for a Year of Participation for every Plan Year during which he or she was employed by a "Practice Plan" affiliated with the School of Medicine since his or her most recent date of employment.

4.06 **Independent Contractors:** Notwithstanding the other sections of this Article, no individual whom the University regards as not being an employee of the University shall be eligible to participate even if it is later determined by a court of law, the Internal Revenue Service, the Social Security Administration, or any other government agency that he or she should have been an employee. No individual will be considered to be an employee of the University by virtue of receiving a payment, such as a scholarship, grant, stipend or fellowship payment, that is not for the performance of services for the University.

ARTICLE FIVE

Contributions

5.01 ***University Contributions:*** For each Plan Year the University shall make a University Contribution to the Trust in an amount which shall be determined by the Board of Trustees of the University in its sole and absolute discretion. The University Contribution for any Plan Year should be paid to TIAA-CREF or the Trustee of the Plan no later than the fifteenth (15th) day of the sixth calendar month following the close of the University's tax year with or within which the Plan Year ends.

If a Participant is receiving benefits under a long-term disability plan of the University and the plan provides for the insurer to make payments (on account of the disability) that replace contributions that would otherwise have been made to this Plan or the 403(b) Plan, those payments shall be treated as a University Contribution to this Plan.

5.02 ***Conditions of University Contributions:*** All University Contributions shall be expressly conditioned upon the initial qualification of this Plan. University Contributions which shall fail to meet such condition shall be subject to the provisions of Section 14.03.

ARTICLE SIX

Allocations

6.01 ***Separate Accounts:*** The Plan Administrator shall maintain a separate Participant Account for each Participant setting forth the Participant's Account Balance. The Plan Administrator shall separately account for those portions of such Participant Account attributable to Matching Contributions, LTD Contributions, and rollovers. The Plan Administrator shall make the allocations among such Participant accounts as set forth in this Article. The Plan Administrator may, in accordance with Section 12.06, delegate its duties under this section to a third-party record keeper or the Trustee.

6.02 ***Allocation of Contributions:***

- (a) ***Post- 2001 Eligibility:*** For Plan Years beginning after December 31, 2001, Matching Contributions shall be allocated to the Account of each Eligible Employee who elects (or is deemed to have elected) to have Matched Contributions, Roth Matched Contributions, or after-tax contributions made to his or her account under the 403(b) Plan.
- (b) ***Pre- 2002 Eligibility:*** For Plan Years beginning before January 1, 2002, Matching Contributions were allocated to the account of each Eligible Participant who elected to have a six (6%), seven (7%), or eight (8%) percent (of Compensation) Matched Contribution or after-tax contribution made to his or her account under the 403(b) Plan. In addition, Matching Contributions were allocated to the account to each Eligible Participant whose Account Balance was not one hundred (100%) percent vested in accordance with Article Eight (regardless of his or her level of contribution)
- (c) ***Amount of Match:***
 - (i) ***In General:*** Except as otherwise provided, the amount of the Matching Contribution shall be one hundred fifty (150%) percent of the amount of Matched Contributions, Roth Matched Contributions, or after-tax contributions allocated to the account under the 403(b) Plan.
 - (ii) ***Accelerated Option:*** An Eligible Employee who has attained age 52 and whose Account Balance is 100% vested (in accordance with Section 8.01) may elect to participate in the "Accelerated Option".

If an Eligible Employee elects to participate in the "Accelerated Option", and: (A) if he or she elects to have to have 403(b) Contributions, Roth 403(b) Contributions, or after-tax contributions of at least eight (8%) percent of Compensation allocated to his or her account under the 403(b) Plan, then a Matching Contribution of two and one-half (2.5%) percent of

Compensation shall be allocated to his or her account under this Plan in addition to the allocation under Paragraph 6.02(c)(i); and (B) except as provided in Section 6.06 (relating to veterans), once 120 months have passed after a Participant enters the Accelerated Option (or the Participant attains age sixty-five (65) if earlier), no Matching Contribution shall be allocated to the Participant's account (even if the Participant terminates employment, returns and is otherwise treated as a new hire).

A Participant may revoke an election to participate in the Accelerated Option by submitting a revocation in writing to the Human Resources Benefits Department by the last day of the twenty-third (23rd) month following the month during which the election became effective. If a Participant revokes an election to participate in the Accelerated Option, he or she may not elect to participate in the Accelerated Option again.

If a Participant revokes his or her participation in the Accelerated Option, then, beginning on the effective date of the revocation, no Matching Contribution will be allocated to his or her account until the amount of Matching Contributions (in dollars) that would have been allocated to his or her account (if Paragraph 6.02(c)(i) applied) equals 105% of the amount of Matching Contributions (in dollars) attributable to the Accelerated Option (the extra 2.5% match) actually allocated to his or her account from the date that his or her election to participate in the Accelerated Option became effective until the date that the revocation became effective. Afterward, the Matching Contribution to be allocated to the Participant's account shall be determined under Paragraph 6.02(c)(i).

- (iii) ***New Participants:*** Notwithstanding the above, the amount of the Matching Contribution allocated to the account of a Participant who is not one hundred (100%) percent vested shall be one hundred (100%) percent of the amount of the Matched Contributions, Roth Matched Contributions, or after-tax contributions allocated to his or her account under the 403(b) Plan. See Sections 8.02 and 15.02 regarding rehires and transfers.

- (d) ***Timing:*** Matching Contributions shall be allocated at the same time as the 403(b) Contributions, Roth 403(b) Contributions, or after-tax contributions which are being matched are allocated. Therefore, if a Participant elects to have a six (6%) percent contribution made to the 403(b) Plan, Matching Contributions will be allocated to his or her account under this Plan for the period that the six (6%) percent election is in effect, even if his or her contributions to the 403(b) Plan for the entire Plan Year are more or less than six (6%) percent of his or her Compensation.

- (e) **Limits:** Matching Contributions are subject to the limits of Article Seven. Any Matching Contribution that may not be allocated under this Plan as a consequence of the limits of IRC §415 (Section 7.02) shall be contributed to and allocated under the 403(b) Plan (subject to the limits of IRC §403(b) and §415). In addition, if the Plan Administrator reasonably anticipates that an allocation under this Plan would cause the Plan to violate IRC §415, the Plan Administrator may prospectively direct that the amount be contributed to or allocated under the 403(b) Plan (subject to the limits of IRC §403(b) and §415).

Notwithstanding subsection (c), no Matching Contribution shall be based on any contribution that is distributed to any Participant under the 403(b) Plan because of the IRC §401(m) (“ACP”) nondiscrimination test, the IRC §402(g) limit, or the IRC §415 limit.

- (f) **LTD Contributions:** Any payments under a long-term disability plan that are treated as University Contributions to this Plan shall be allocated to the accounts of Participants entitled to receive the benefits under the long-term disability plan. The allocations under this subsection shall be subject to the limits of Article Seven.

6.03 **Allocation of Gain or Loss:** Accounts shall be valued, and gains, losses, costs, and expenses shall be allocated (but not less frequently than annually) in accordance with the terms of the applicable investment contracts.

6.04 **Allocation of Forfeitures and Excess Annual Additions:** Forfeitures and amounts allocated to a suspense account under Section 7.05 shall be treated as part of the University Contribution for the Plan Year and shall be allocated in accordance with Section 6.02.

6.05 **Directed Investments:** Notwithstanding the provisions of Article Twelve or the other sections of this Article, in the event that the Plan Administrator establishes such a policy, any Participant, beneficiary (with an Account Balance), or Alternate Payee may direct the TIAA-CREF or the Trustee or direct the Plan Administrator to direct TIAA-CREF or the Trustee to invest all, or a certain portion, of his or her account in any investment lawfully permitted. Notwithstanding Section 6.03, all expenses, income or losses attributable to such directed investments shall be separately allocated to the respective account of the Participant. (See IRC §408(m) for a list of investments that are not lawfully permitted.) To the extent that the Participants do not exercise their rights under this section, the allocation of expenses, income or losses shall be made pursuant to Sections 6.03 and 12.04. To the extent that Participants do not exercise their rights under this section, investment of their accounts shall be made pursuant to the associated Trust Agreements. To the extent permitted by law, the TIAA-CREF, the Trustee, and Plan Administrator shall be relieved of any fiduciary responsibility for investment decisions made pursuant to this section, provided, however, that the Plan Administrator or Trustee or TIAA-CREF has followed the instructions of the Participant and that said instructions are in accordance with applicable law. Upon the death or incapacity of the Participant, the powers granted to the Participant under this section shall inure to the benefit of the Participant’s beneficiary, trustee or legal representative.

6.06 **Veterans:** If an Employee enlists or is inducted into military service in the Armed Forces of the United States under such circumstances as would entitle him to reemployment rights under governing provisions of law, he shall be deemed to be on an “authorized leave of absence” unless a resignation is given by him and accepted by the University. Effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service (as defined in IRC §414(u)(5)) will be provided in accordance with IRC §414(u). A Participant who is reemployed by the University in accordance with Chapter 43 of Title 38 of the United States Code:

- (a) shall be treated with respect to this Plan as not having incurred a break in service by reason of such Participant’s period of qualified military service;
- (b) shall have each period of qualified military service credited as service with the University for purposes of determining the vesting and accrual of the Participant’s Account under the Plan;
- (c) shall be permitted to make additional 403(b), Roth 403(b), or after-tax contributions under the 403(b) Plan in the maximum amount that the Participant would have been permitted to make under the annual Plan limitations if the Participant had continued to be employed by the University and received Compensation during his or her period of qualified military service, provided such contributions are made during a period beginning on the first day of reemployment and continuing for the lesser of five (5) years or three (3) times the Participant’s period of qualified military service; and
- (d) to the extent that 403(b), Roth 403(b), or after-tax contributions are made in accordance with subsection (c), shall be entitled to the Matching Contributions that would have been allocated had the contributions in subsection (c) been made while the Participant was on military leave.

If a Participant dies while performing qualified military service (within the meaning of IRC §414(u)), his beneficiaries will be entitled to any additional benefits (other than benefit accruals relating to the period of military service) that would have been provided under the Plan had the Participant resumed employment with the University and then died while an employee.

Nothing in this section shall require any allocation of (i) any Plan forfeitures with respect to a period of qualified military service or (ii) any investment performance with respect to any Plan contributions before they are made.

6.07 **Revenue Credit Account:** The University has a record keeping agreement with TIAA. With respect to the Plan, the record keeping operations of TIAA are paid out of the management fee that TIAA-CREF receives for investing assets held by the Plan. The University and TIAA-CREF have negotiated an amount (a revenue requirement expressed as basis points) that TIAA is to receive for providing record keeping services. To the extent that the record keeping operations of TIAA receive revenue in excess of the negotiated revenue requirement, the excess will be contributed to the Plan. Such amounts will be credited to the Revenue Credit

Account. Amounts in the Revenue Credit Account may be used to pay expenses of the Plan. To the extent that amounts are not used to pay expenses they will be allocated not less frequently than annually in proportion to the Participants' Account Balances weighted in proportion to the funds that generated the excess revenue. An allocation shall be based on Participants' most recently available Account Balances. For purposes of allocations under this section, amounts invested in Vanguard funds and amounts invested in institutional class shares of TIAA-CREF products shall not be counted as part of Participants' Account Balances.

6.08 *Employee Plans Compliance Resolution System:* If there is an operational failure within the meaning of Rev. Proc. 2013-12, and if the University decides to make a corrective contribution that is permitted under Rev. Proc. 2013-12, the Plan Administrator may allocate that corrective contribution in accordance with Rev. Proc. 2013-12. Any reference to Rev. Proc. 2013-12 shall include any revenue procedures, such as Rev. Proc. 2015-27 and Rev. Proc. 2015-28, that modify it and any revenue procedure (or other IRS guidance) that supersedes it.

ARTICLE SEVEN

Limitations on Annual Additions

7.01 **“Annual Addition”:** For purposes of this Article, Annual Addition” shall mean the sum of (unless the context clearly indicates otherwise):

- (a) University Contributions made directly or indirectly,
- (b) After-tax contributions,
- (c) Forfeitures,
- (d) Contributions to an “individual medical benefit account” as defined in IRC §415(1), and
- (e) In the case of a key employee (as defined in IRC § 416(i)(1)), contributions for postretirement medical benefits to a welfare benefit fund, as required by IRC §419A(d).

For purposes of this section, a Participant’s “Annual Addition” shall include contributions made by the University, by any Related Organization, or by the Participant to this or to any other Defined Contribution Plan, or to any defined contribution account within a defined benefit Plan. The “Annual Addition” does not include any Rollover Amounts or restorative payments (within the meaning of reg. §1.415(c)-1(b)(2)(ii)(C)).

Historical Note: If, prior to 2002, a Participant made the election under IRC §415(c)(4)(C) with respect to the 403(b) Plan for a Limitation Year, then for that Limitation Year, the 403(b) Plan was for purposes of this Article treated as a Defined Contribution Plan sponsored by the University with respect to that Participant.

7.02 **Limitation on Annual Additions:** Notwithstanding any other provision of this Plan or any other Defined Contribution Plan sponsored by the University, the Annual Addition with respect to a Participant Account in any Limitation Year may not exceed the lesser of:

- (a) Fifty-three thousand (\$53,000) dollars, or
- (b) One Hundred (100%) percent of the Participant’s Compensation in the Limitation Year.

Contributions specified in Subsection 7.01(d) or (e) shall not count against the limitation of subsection (b). The dollar amount in subsection (a) is for the Limitation Year beginning in 2015 or 2016 and is adjusted periodically in accordance with IRC §415(c) and §415(d). See Section 14.10. The dollar amount in subsection (a) shall be reduced in accordance with reg.

§1.415(j)-1(d) if there is a change in the Limitation Year (including a Plan termination that is effective on a date other than the last day of the Limitation Year).

7.03 **Multiple Plan Reduction:** For Limitation Years beginning before January 1, 2000 Annual Additions were subject to the limits under IRC § 415(e), which applied only to Participants who had also participated in the University of Pittsburgh Noncontributory Defined Benefit Pension Plan.

7.04 **Time Annual Additions Deemed Credited:** An Annual Addition with respect to a Participant account shall be deemed credited to such Participant account with respect to a Limitation Year if it is allocated to such Participant account under the terms of the Plan as of any date within such Limitation Year. A University Contribution may be allocated for a Limitation Year if it was contributed to the Trust not later than the 15th day of the tenth calendar month following the end of the fiscal year of the University with which or within which the Limitation Year ends. A contribution made pursuant to Section 6.06 is an Annual Addition for the Limitation Year to which the contribution relates, regardless of when the contribution is made to the Trust.

7.05 **Allocation of Excess Amounts:** If the Annual Addition for a Participant would otherwise exceed the limitations specified herein, the Plan Administrator has discretion to prospectively reduce the amount of contributions that would otherwise be allocated to the Participant's account. If the Annual Addition for any Participant exceeds the limitations specified herein, such Annual Addition shall be reduced in accordance with methods permitted under Rev. Proc. 2013-12 (or its successor).

ARTICLE EIGHT

Vested Interest

8.01 *General Rule:*

- (a) ***Participants with Entry Dates Before March 1, 1995:*** Any Participant whose most recent Entry Date into the Plan was before March 1, 1995 shall have a Vested Interest in one hundred (100%) percent of his Account Balance.
- (b) ***Participants with Entry Dates on or After March 1, 1995:*** A Participant whose most recent Entry Date is on or after March 1, 1995 shall not have any Vested Interest in his or her Account Balance until he or she has been credited with three (3) Years of Participation or attains Normal Retirement Age. A Participant who has completed three (3) Years of Participation, or who, while employed by the University, dies, suffers a Total Disability, or attains Normal Retirement Age shall have a Vested Interest in one hundred (100%) percent of his Account Balance.
- (c) ***Employees Who Have Employment Commencement Dates Prior to February 1, 1995 or Who Have Formal Commitments by June 30, 1994:*** Notwithstanding subsection (b), the following Participants have a Vested Interest in one hundred (100%) percent of their Account Balances:
 - (i) Any Participant who had an Employment Commencement Date prior to February 1, 1995 and an Entry Date of March 1, 1995; and
 - (ii) Any Participant who received a signed formal commitment for employment by the University on or before June 30, 1994 and who elected to participate in the 403(b) Plan during his or her first eligibility period beginning on his or her first Employment Commencement Date.
- (d) ***LTD Contributions:*** A Participant shall have a Vested Interest in one hundred (100%) of the portion of his Account Balance attributable to amounts allocated under Subsection 6.02(f).
- (e) ***Military Duty:*** Effective as of January 1, 2007, a Participant who dies while performing qualified military service (within the meaning of IRC §414(u)) will be treated for purposes of this section as having died while employed by the University.

8.02 ***Rehired Participants:***

- (a) ***General Rule:*** Notwithstanding Section 8.01, if a Participant terminates employment with the University and is rehired, he or she shall be treated as a new employee with a new Entry Date (determined in accordance with Section 4.02). Any allocations made on or after the new Entry Date shall be subject to the vesting schedule of Subsection 8.01(b). Therefore, a Participant's account may have vested contributions made prior to a termination of employment and unvested contributions made subsequent to a prior termination of employment. For purposes of Section 6.02, such a Participant's Account Balance is not one hundred (100%) percent vested.
- (b) ***365 Day Rule (1996-2008):*** Effective for the period beginning as of March 1, 1996 and ending as of December 31, 2008 and notwithstanding subsection (a), if an individual's employment with the University terminated and the individual again became an employee of the University within no more than three hundred sixty-five (365) days of the individual's last day of prior employment with the University, that individual was treated for purposes of Section 6.02 and this Article as if he or she had not terminated employment with the University. Any individual whose employment with the University terminated in 1995, or January 1996, or February 1996 and whose employment with the University resumed within three hundred sixty-five (365) days of the date of termination shall be treated for purposes of Section 6.02 and this Article as if he or she had not terminated employment in 1995 or 1996.
- (c) ***University Employees:*** Notwithstanding subsection (a), if a Participant terminates employment with the University, again becomes a Participant, and is not treated as a new hire for purposes of Section 4.03, then he shall be treated for purposes of Section 6.02 and this Article as if he had not terminated employment with the University.
- (d) ***UPMC, UPP, and the Foundation:*** See Section 15.02 regarding employees who transfer from UPMC, UPP, or the Foundation.

8.03 ***Equivalency:*** If and only if the University does not maintain an Employee's employment records by counting actual Hours of Service, then the determination of Hours of Service to be credited to such Employee shall be determined under this section. For purposes of determining a Year of Service under this Article, an Employee will be credited with 190 Hours of Service for each calendar month for which said Employee would be required (if ERISA applied to the Plan) to be credited with at least one Hour of Service under Department of Labor regulation § 2530.200b-2.

ARTICLE NINE

Retirement Benefits

9.01 ***Normal Retirement Benefit:*** A Participant may retire at his or her Normal Retirement Date after which his or her Vested Interest shall be paid to him or her in the manner and at the time provided in Article Eleven. A Participant may continue to work (and participate in the Plan) as long as he or she and the University agree as to the terms and conditions of the employment. The University shall act in a uniform and nondiscriminatory manner in applying the terms and conditions of employment after the Normal Retirement Date and in accordance with any and all federal and state laws regarding retirement.

9.02 ***Disability Retirement Benefit:*** If the Plan Administrator shall find that the employment of a Participant has been terminated due to his Total Disability, his Vested Interest shall be paid to him or her in the manner and at the time provided in Article Eleven.

9.03 ***Benefit Upon Termination:*** If a Participant's employment is terminated for a reason other than death, Total Disability or retirement, he or she shall be paid a benefit equal to the amount of his Vested Interest. Such benefit shall be paid to such terminated Participant in the manner and at the time provided in Article Eleven.

See Subsection 11.04(e) regarding Participants who begin employment with the Foundation.

9.04 ***Forfeiture of Unvested Amounts:***

- (a) ***Forfeitures:*** If a Participant terminates employment with the University, the unvested portion of his Account Balance shall be forfeited as of the first day that he would have been eligible for a distribution had he or she been vested.
- (b) ***Rehired Participants:*** If a Participant who has terminated employment with the University (on or after January 1, 2002) is rehired and is not treated under Section 4.03 as a new hire, then his or her account shall be restored in accordance with Section 9.05.

9.05 ***Restoration of an Account:***

- (a) ***When Applicable:*** Accounts shall be restored if the conditions of Section 9.04(b) are met.
- (b) ***Amount:*** The amount of the restoration shall be the amount which was forfeited.
- (c) ***Funds:*** The account shall be restored using forfeitures for the Plan Year during which such restoration is effective. If the amount of forfeitures is insufficient, University Contributions for the Plan Year shall be used.

ARTICLE TEN

Death Benefit

10.01 ***Death Benefit:*** If a Participant dies, a benefit equal to his Vested Interest shall be paid to his or her designated beneficiary in the manner and at the time provided in Article Eleven.

10.02 ***Beneficiary Designation:*** Each Participant may from time to time file with the Plan Administrator (or its delegate) a designation of one or more primary or secondary beneficiaries to whom the death benefit shall be paid. The most recent of such designations shall control. Notwithstanding this designation, if the Participant has a surviving spouse, that spouse shall automatically be designated sole beneficiary unless the spouse has consented in a writing witnessed by a Plan representative or notary public to waive his or her right to be sole beneficiary. The spouse's consent shall be irrevocable, but a new spousal consent is needed if the Participant changes his or her beneficiary designation to someone other than the spouse. The spouse may condition his or her consent upon a particular party or parties being named as beneficiary.

Except as otherwise provided in a Qualified Domestic Relations Order, if a Participant divorces his spouse, any beneficiary designation naming his former spouse as beneficiary that became effective prior to the date of the divorce shall become void as of the effective date of the divorce.

10.03 ***Lack of Beneficiary Designation:*** Upon notification of the death of a Participant, the Plan Administrator shall direct TIAA-CREF or the Trustee to pay the death benefit to the beneficiary or beneficiaries currently designated by the Participant subject to Section 10.02. If no such designation has been made, or if all beneficiaries so designated have predeceased the Participant, then the Plan Administrator shall direct TIAA-CREF or the Trustee to pay the death benefit to the Participant's estate.

10.04 ***Alternate Payees Under Qualified Domestic Relations Orders:*** An Alternate Payee under a Qualified Domestic Relations Order will be considered to be a designated beneficiary to the extent needed to comply with the order as provided in Section 11.08.

ARTICLE ELEVEN

Payment of Benefits

11.01 ***Valuation of Account Balance:*** Upon determining that a distribution shall be made to a Participant pursuant to Section 11.04, the Plan Administrator shall determine the fair market value of the Participant's Account Balance as of the last Valuation Date preceding or coincident with the date on which such distribution shall begin. That portion of such Account Balance to which such Participant is entitled according to the provisions of this Plan shall be paid to him as set forth in this Article. The Plan Administrator may, in accordance with Section 12.06, delegate its duties under this section to TIAA-CREF or the Trustee.

11.02 ***Method of Payment:***

- (a) ***Optional Forms of Benefits:*** Except as otherwise provided, any benefit payment to a Participant (or his beneficiary) shall be made in one of the following methods as elected by the Participant:
- (i) In a lump sum;
 - (ii) By the purchase of an annuity for the life of the Participant; or
 - (iii) By the purchase of a Joint and Survivor Annuity (if the Participant is married).

For purposes of this section a lump sum may include a distribution of an annuity contract, a rollover, a direct rollover, or a transfer or some combination thereof as long as the Participant's entire Vested Interest is distributed.

- (b) ***Limits on Optional Forms of Benefits:*** Notwithstanding subsection (a),
- (i) ***Mandatory Lump-Sums:*** If the Plan Administrator determines that a Participant's, beneficiary's, or alternate payee's Vested Interest is five thousand (\$5,000) dollars or less (not including any Rollover Amounts and before the distribution of any annuity payments), his or her Vested Interest shall be transferred to an individual retirement account (IRA) or individual retirement annuity unless the individual elects to receive a lump-sum distribution.
 - (ii) ***Married Participant:*** A married Participant may not elect to receive any annuity other than a Joint and Survivor Annuity without the consent of his spouse in a writing which is witnessed by a notary public or a plan representative. A spouse's consent does not limit a Participant's right to revoke or change his or her election to a non-annuity form of distribution.

The spouse must consent each time a Participant elects to receive any form of annuity other than a Joint and Survivor Annuity. A spouse must receive a notification of her rights at least thirty (30) and not more than one hundred eighty (180) days before the date of the first distribution. The spouse must be given at least thirty (30) days to decide whether to consent to the election. The spouse may waive the thirty (30) day period as long as he or she has at least seven (7) days to revoke his or her consent.

- (iii) ***Annuities:*** Any annuity distributed under the Plan shall be non-transferable and shall comply with the terms of this Plan and the requirements of IRC §401(a)(9).

If an investment organization offers any annuity form of distribution, it must offer married Participants the opportunity to receive both a Joint and 50% Survivor Annuity and the Qualified Optional Survivor Annuity, and a married Participant must, in accordance with Section 11.09, waive his right to receive a Joint and 50% Survivor Annuity in order to receive any other form of annuity.

- (iv) ***Beneficiaries:*** If a Participant dies before electing a method of distribution, the Participant's beneficiary may elect the method of distribution if the election is made by the earlier of thirty (30) days prior to the date that a distribution is payable under the Plan or December 31 of the calendar year which contains the fifth anniversary of the death of the Participant.

- (c) ***Directed Investment Options:*** Notwithstanding subsection (a), if the Plan Administrator permits Participants to direct the investment of their Account Balances, a Participant may elect to have his or her Account Balance (or portion thereof) distributed in any method available from the investment organization which holds the assets of his account (or portion thereof), provided:

- (i) A Participant may not elect any option that violates IRC §401(a)(9) or is not consistent with the requirements of reg. §1.401(a)(9)-1 through §1.401(a)(9)-9;
- (ii) A Participant may not elect any option which either the Plan Administrator or the investment organization has decided not to make available to all similarly situated Participants in the Plan;
- (iii) To the extent that a Participant divides his Account Balance among different investment options (whether or not with the same investment organization), the Participant shall be subject to whatever limitations on transfers or distributions which the investment organization has chosen to apply to the investment options which the Participant has elected;

- (iv) If a Participant transfers assets from one investment organization to another, and if the Participant wants a distribution option available only from the organization from which assets were transferred, the Participant must move assets back to the first investment organization in order to elect that distribution option.
- (d) **Tax Withholding:** The Plan Administrator, TIAA-CREF, or a Trustee may withhold taxes from any distribution in accordance with applicable law.

11.03 **Segregated Accounts:** The Plan Administrator may direct TIAA-CREF or the Trustee to segregate any undistributed portion of the Participant account of any Participant who has terminated employment with the University.

11.04 **Time of Payment:** Except as provided by Sections 11.06 and 11.08, no distribution shall be made before a Participant dies or terminates employment with the University. For purposes of this Article, a Participant does not “terminate employment” if he transfers to a Related Organization or becomes a leased employee (as defined in IRC §414(n)(2)) of the University or any Related Organization. Such a transferring Participant will be treated as terminating employment when he terminates employment with the Related Organization. Benefits under this Plan will be paid only if the Plan Administrator decides in its discretion that the applicant is entitled to them. The determination of the time of distribution shall be made by the Plan Administrator subject to the other sections of this Article and to the following restrictions:

- (a) **General Rule:** Distribution of a Participant’s Vested Interest shall begin within sixty (60) days after the end of the Plan Year during which the Participant attains age 70½ or, if later, terminates employment. However, a distribution under Paragraph 11.02(b)(i) shall be made as soon as it is administratively feasible to do so after the Participant terminates employment or dies.
- (b) **Participant Elections:** A Participant may elect to receive a distribution at any time after the Valuation Date coincident with or next following his termination of employment. The Plan Administrator may impose reasonable administrative limits on the ability of Participants to elect to receive distributions. All elections are subject to the restrictions of Section 11.02.
- (c) **Death:** If a Participant dies, regardless of whether he or she is employed by the University at death, the Plan Administrator shall distribute his or her Vested Interest in accordance with the method elected by the Participant or the beneficiary, provided that the method complies with IRC §401(a)(9), and the regulations thereunder, which provide that:
 - (i) if a Participant has begun to receive distributions after his or her Required Beginning Date and prior to his or her death, his or her Vested Interest will be paid out at least as rapidly as under the method of distribution in effect at his or her death, and

- (ii) if a Participant dies either before his or her Required Beginning Date or before he has begun to receive distributions, his or her Vested Interest will be distributed either within five (5) years after the Participant's death or over the life (or a period not extending beyond the life expectancy of) a designated beneficiary (determined under reg. §1.401(a)(9)-4). However, if the designated beneficiary is the surviving spouse of the Participant, distributions need not begin until the date on which the Participant would have attained age 70½, and if the surviving spouse dies before distributions begin, rules shall be applied as if the surviving spouse were the Participant.

- (d) **Latest Date:** Notwithstanding the above subsections, distribution of a Participant's Vested Interest must begin by his or her Required Beginning Date, which is the April 1 of the calendar year following the later of calendar year in which the Participant attains age 70½ or the calendar year in which the Participant terminates employment. For purposes of this subsection, a Participant who has transferred to the Foundation is treated as having terminated employment with the University.

Notwithstanding Section 11.02, TIAA-CREF or the Trustee shall make required minimum distributions for a Participant or beneficiary regardless of whether the Participant or beneficiary consents to such distributions. The amount that is required to be distributed under this subsection shall be calculated in accordance with reg. §1.401(a)(9)-1 through §1.401(a)(9)-9 and be based solely on the Participant's accounts under this Plan.

Nothing in this subsection prohibits a Participant or beneficiary from taking a distribution from the Plan that is greater than the amount calculated under the prior paragraph.

If the Internal Revenue Code is amended to permit a Participant or beneficiary to not take a required minimum distribution for a specified period of time, the requirement under this subsection for TIAA-CREF or a Trustee to make a distribution will (to the extent permitted by law) be suspended during that period. In accordance with IRC §401(a)(9)(H) required minimum distributions were optional for 2009.

- (e) **Foundation:** For purposes of Article Nine and this Article other than Subsection 11.04(d) and Section 11.06, if a Participant terminates employment with the University and begins employment with the Foundation within 10 days of his last day of employment with the University, he shall not be treated as having terminated employment with the University, and he shall be treated as having terminated employment with the University when he terminates employment with the Foundation. However, if he obtains a distribution under subsection (b) prior to beginning employment at the Foundation (or prior to the University's

becoming aware that he began employment with the Foundation), he shall be treated as having terminated employment with the University.

11.05 **Transfer of Accounts:** Notwithstanding anything to the contrary herein, whenever a Participant, a spousal beneficiary, or an Alternate Payee (who is a spouse or former spouse of the Participant) is eligible (in accordance with Section 11.04, 11.06, or 11.08 and reg. §1.402(c)-2) to receive within a year “eligible rollover distributions” of at least two hundred (\$200) dollars, he or she may elect that the Plan Administrator transfer all or part of the amount of the Participant’s Vested Interest (provided that the part is at least five hundred (\$500) dollars) to any “eligible retirement plan” capable of accepting such amounts. In order to make an election under this section, an individual must be given notice of his rights and options not more than one hundred eighty (180) days before the date of the transfer.) The Plan Administrator may require of the trustee of the recipient trust such assurances and representations as it may deem necessary.

- (a) An “eligible rollover distribution” is any distribution under the Plan except any: (i) annuity distribution, (ii) any minimum required distribution under IRC §401(a)(9), (iii) effective as of January 1, 2002, any hardship distribution, (iv) any distribution of after-tax contributions, (v) any loan offset, (vi) any corrective distribution under Article Seven, or (vii) any distribution that is one of a series of substantially equal periodic distributions over a period of ten (10) years or more. Clause (iv) does not apply to any after-tax contributions that are paid to an individual retirement account, individual retirement annuity, qualified defined contribution plan described in IRC §401(a), annuity described in IRC §403(a), or 403(b) plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income.
- (b) An “eligible retirement plan” is a qualified trust, custodial account (under IRC §401(f) or §408), individual retirement account (IRA), or individual retirement annuity capable of accepting such amounts. Effective as of January 1, 2002, an “eligible retirement plan” includes any annuity contract described in IRC §403(b) and an eligible plan under IRC §457(b) that is maintained by a state, political subdivision of a state, or agency or instrumentality of a state and that agrees to separately account for amounts transferred into such plan from this Plan. Prior to January 1, 2002, in the case of an eligible rollover distribution to a surviving spouse, an “eligible retirement plan” was an individual retirement account or individual retirement annuity. Effective as of January 1, 2008 a Roth IRA is an "eligible retirement plan".
- (c) **Roth 403(b) Contributions:** RESERVED
- (d) **Non-Spouse Beneficiaries:** If a distribution to a non-spouse beneficiary would otherwise be an “eligible rollover distribution”, the distribution may be transferred to an individual retirement account or individual retirement plan to the extent permitted by IRC §402(c)(11).

- (e) **Foundation/UPMC/UPP:** A Participant may not transfer his Account Balance under this Plan to a 403(b) plan or a Defined Contribution plan of the Foundation, UPMC, or UPP.

11.06 ***In-Service Withdrawals and Distributions:***

- (a) **Age 62:** A Participant who has attained age sixty-two (62), is still employed by the University and is no longer an Eligible Employee may elect to receive distributions of his Vested Interest as if he or she had terminated employment.
- (b) **Loan Defaults:** If a Participant is in default on a loan from this Plan, the Plan Administrator, TIAA-CREF, or the Trustee may offset the Participant's Vested Interest by the amount in default to the extent that the collateral backing the loan is contributions deposited in the trust more than twenty-four (24) months prior to the default (or accumulated gain attributable to such contributions). If the Participant has attained age 59½, the Plan Administrator, TIAA-CREF, or the Trustee may offset the Participant's Vested Interest by the amount in default without regard to the type of contributions being used as collateral.
- (c) **Phased Retirement:** A Participant who has attained age sixty-two (62) and who has entered into a phased retirement agreement with the Executive Vice Chancellor, Provost, or Senior Vice Chancellor, Health Sciences of the University may, if permitted under the agreement, elect to receive distributions of his Vested Interest as if he or she had terminated employment.
- (d) **QDROs:** The Plan Administrator may make a distribution in order to comply with a Qualified Domestic Relations Order.
- (e) **Rollover Accounts:** Effective as of January 1, 2016, a Participant may elect to withdraw any amount held in a rollover account (subject to any withdrawal restrictions imposed by TIAA-CREF on his or her investment).

11.07 ***Participant Loans:*** TIAA-CREF and the Trustee shall have the power (but not the obligation) to grant loans to Participants upon the following conditions:

- (a) The loan shall be in writing, be commercially acceptable and bear a reasonable rate of interest taking into account prevailing interest rates available from commercial lenders under similar circumstances and the Plan's investment experience, but in no event shall the rate be higher than a generally accepted rate of interest;
- (b) The loan shall be secured by up to one-half (½) of a Participant's Vested Interest.

- (c) A repayment schedule shall be established which will assure that the entire principal and the interest thereon is repaid to the trust not later than the last day of the five (5) year period immediately following the date of the loan.

Furthermore, the loan must provide for a repayment schedule not slower than substantially level payments (of interest and principal) to be made at least quarterly over the term of the loan. However, loan repayments may be suspended in accordance with IRC §414(u), which deals with employees on military duty. If a Participant is on an approved leave of absence that is not covered by IRC §414(u), TIAA-CREF and the Trustee have discretion to reduce or suspend loan payments for not more than one year (but not beyond the deadline of subsection (c)).

Subsection (c) shall not apply to any loan used to acquire or construct any dwelling unit which is to be used within a reasonable time (determined at the time the loan is made) as the principal residence of the Participant.

- (d) The loan (when added to the outstanding balance of all previous loans to the Participant) does not exceed the lesser of the following:
 - (i) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the trust during the one year period ending on the date before the date on which the loan was made over the outstanding balance of loans from the trust on the date on which the loan was made; or
 - (ii) One-half (½) of the Vested Interest of the Participant.

For purposes of this subsection, a loan or loans from other plans of the University or Related Organizations shall be deemed to have been granted from the trust.

- (e) The loan must be for a minimum amount of one thousand (\$1,000) dollars.
- (f) A Participant may borrow from the trust only if the University does not need to become involved with the administration of the loan. Therefore, a Participant must arrange to borrow directly from either TIAA-CREF or the Trustee and must abide by the terms and conditions imposed by TIAA-CREF or the Trustee. Multiple loans and refinanced loans must comply with the requirements of reg. §1.72(p)-1 Q & A-20.
- (g) Effective as of January 1, 2016, a Participant may not borrow if he or she has more than two loans outstanding.

The Plan Administrator shall establish procedures in order to administer this section in a feasible manner. The Plan Administrator shall exercise its discretion on a uniform and nondiscriminatory basis taking into account the investment objectives of the Plan, the Plan's liquidity needs and other relevant factors. Further, the Plan Administrator in exercising its discretion shall assure that loans are made available to Participants on a reasonably equivalent

basis and are not made available to Highly Compensated Employees (within the meaning of IRC §414(q)) or officers in an amount or percentage greater than the amount or percentage made available to other employees.

A default shall occur when a Participant fails to make a required loan payment, and the TIAA-CREF or the Trustee shall make a distribution of the amount in default unless it finds extenuating circumstances which are sufficient to protect Plan assets. The distribution shall be a deemed distribution unless an actual distribution may be made under Section 11.04 or 11.06. Unless the Participant has terminated employment, neither TIAA-CREF nor the Trustee shall make an actual or a deemed distribution until the end of the calendar quarter following the calendar quarter in which the Participant failed to make a level amortization payment as required by subsection (c). Under a deemed distribution TIAA-CREF or the Trustee reports the amount in default as taxable income to the Participant.

If the Plan Administrator permits Participants to direct investments, a loan shall be treated as a directed investment.

11.08 ***Qualified Domestic Relations Orders:*** Benefits shall be paid in accordance with the applicable requirements of any Qualified Domestic Relations Order.

- (a) The Plan Administrator shall not treat any Domestic Relations Order as failing to qualify because:
 - (i) It specifies the time or method of payments, which would otherwise be subject to the Plan Administrator's sole discretion, within the options permitted by this Article, or
 - (ii) It requires payment as if the Participant has terminated his employment on the earlier of his fiftieth (50th) birthday or the earliest date to which he is entitled to a distribution under this Article, or
 - (iii) It is issued after or revises another Domestic Relations Order or because it was issued after the death of the Participant, after the effective date of the Participant's divorce, or after the Participant's Distribution Starting Date.
- (b) In the case of any Domestic Relations Order received by the Plan:
 - (i) The Plan Administrator shall promptly notify the Participant and each Alternate Payee of the receipt of such Order and the Plan's procedures for determining the qualified status of Domestic Relations Orders, and
 - (ii) Within a reasonable period after receipt of such Order, the Plan Administrator shall determine whether such Order is a Qualified Domestic Relations Order and notify the Participant and each Alternate Payee of such determination.

- (c) The Plan Administrator shall establish reasonable procedures to determine the qualified status of Domestic Relations Orders and to administer distributions under such qualified Orders. Such procedures:
- (i) Shall be in writing,
 - (ii) Shall provide for the notification of each person specified in a Domestic Relations Order as entitled to payment of benefits under the Plan (at the address included in the Domestic Relations Order) of such procedures promptly upon receipt by the Plan of the Domestic Relations Order, and
 - (iii) Shall permit an Alternate Payee to designate a representative for receipt of copies of notices that are sent to the Alternate Payee with respect to a Domestic Relations Order.
- (d) During any period in which the issue of whether a Domestic Relations Order is a Qualified Domestic Relations Order is being determined (by the Plan Administrator, by a court of competent jurisdiction, or otherwise), the Plan Administrator shall separately account for the amounts which would have been payable to the Alternate Payee during such period if the Order had been determined to be a Qualified Domestic Relations Order.
- (i) If within eighteen (18) months the Order (or modification thereof) is determined to be a Qualified Domestic Relations Order, the Plan Administrator shall pay the segregated amounts (plus any interest thereon) to the person or persons entitled thereto.
 - (ii) If within eighteen (18) months:
 - (A) It is determined that the Order is not a Qualified Domestic Relations Order, or
 - (B) The issue as to whether such Order is a Qualified Domestic Relations Order is not resolved, then the Plan Administrator shall pay or credit the segregated amounts (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no Order.
 - (C) Any determination that an Order is a Qualified Domestic Relations Order which is made after the close of the eighteen (18) month period shall be applied prospectively only.
 - (D) The eighteen (18) month period referred to in this subsection begins on the date that the first payment would be required to be made under the Domestic Relations Order.

11.09 ***Waiver of Qualified Joint and Survivor Annuity Form of Benefit:*** A married Participant who has received the notice which must be provided to him under subsection (a) may elect to waive the Joint and 50% Survivor Annuity form of benefit, provided the requirements of subsections (b) through (g) are met.

- (a) ***Notice:*** The Plan Administrator shall provide to each Participant who is to receive a Joint and 50% Survivor Annuity no less than thirty (30) days (except as provided under reg. §1.417(e)-1(b)(3)(ii)) and no more than one hundred eighty (180) days before the Distribution Starting Date (and consistent with such regulations as the Secretary of the Treasury or his delegate may prescribe) a written explanation of:
 - (i) The terms and conditions of the Joint and 50% Survivor Annuity and the Qualified Optional Survivor Annuity,
 - (ii) The Participant's right to make, and the effect of, an election to waive the Joint and Survivor Annuity form of benefit,
 - (iii) The rights of the Participant's spouse under subsections (b) through (g), and
 - (iv) The right to make, and the effect of, a revocation of a previous election to waive the Joint and Survivor Annuity form of benefit.

The explanation will include a general explanation of the material features and relative values of the optional forms of benefit available under the Plan.

- (b) The Joint and 50% Survivor Annuity may be waived only during the one hundred eighty (180) day period ending on the Distribution Starting Date;
- (c) Any waiver may be revoked during the same period in which a waiver could be made;
- (d) No waiver shall be effective unless:
 - (i) The spouse of the Participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a Plan representative or notary public, or
 - (ii) It is established to the satisfaction of a Plan representative that the consent can not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury or his delegate may by regulations prescribe; provided that
 - (iii) Spousal consent is not needed if the Participant elects to receive a Joint and Survivor Annuity.

- (e) Any consent shall be effective only with respect to the spouse making the consent.
- (f) The spouse may condition his or her consent upon certain individual(s) being named as beneficiary(ies) or upon the benefit being paid in a certain form, and the spouse must be advised of these rights.
- (g) Unless the consent form indicates otherwise, a spouse's consent to a waiver shall be limited to the form of benefit or to the beneficiary(ies) specified on the waiver form.

ARTICLE TWELVE

Administration of Plan

12.01 ***Plan Administrator:*** The University shall be the Plan Administrator of this Plan and shall be considered the “named fiduciary” of the Plan and its agent for service of legal process. The University may appoint an individual to act as Plan Administrator.

12.02 ***Investment Policy:*** Except as provided in the Trust Agreements, the Plan Administrator shall determine and carry out the investment policy of the Plan which shall be consistent with the objectives and needs of the Plan and the requirements of law. Such determination shall include a decision of whether the Plan has a short-term need of liquidity or a long-term need of investment growth. Such determination shall be reviewed from time to time by the Plan Administrator. The University shall determine which investment options shall be made available to the Participants under the Plan.

12.03 ***General Powers and Duties:*** The Plan Administrator shall administer the Plan in accordance with its terms and shall have all the powers necessary to carry out the terms of the plan. The Plan Administrator shall interpret and administer the Plan and respond to questions concerning its application and administration. Such determinations shall be binding on all persons except as otherwise provided by law. The Plan Administrator shall give all instructions and directions to TIAA, TIAA-CREF, and the Trustee as shall be necessary to conduct the administration of the Plan.

12.04 ***Agents and Expenses:*** The Plan Administrator may employ agents to assist it in its duties and may rely upon the written certificates of any agent, counsel, accountant, investment manager, actuary or physician. The Plan Administrator shall be entitled to reimbursement from the Trust (unless the University at its discretion makes reimbursement) for all other proper charges and expenses incurred in carrying out its duties under this Plan, including compensation of agents.

12.05 ***Investment Manager:*** The University may appoint an investment manager to manage all or part of the assets of the Plan. In such event, neither TIAA-CREF nor the Trustee will be liable for any act or omission of such investment manager except as provided by law.

12.06 ***Delegation to TIAA-CREF:*** The University or Plan Administrator may, with the written consent of TIAA, TIAA-CREF, or the Trustee, delegate in writing to one or more of those parties all or any part of the responsibilities of the Plan Administrator under this Plan. Actions of TIAA, TIAA-CREF, or the Trustee in the exercise of such delegated responsibilities shall have the same force and effect as if such action had been taken by the Plan Administrator. The University may at any time revoke such delegation by delivery of a written instrument to that effect.

12.07 **Investment Discretion:** Except as provided in the Trust Agreements, the Plan Administrator may at its own discretion determine how the assets of the Plan shall be managed and invested and shall advise TIAA-CREF and the Trustee of such determination by directions in writing. To the extent such directions are not made, the TIAA-CREF and the Trustee shall retain the full authority and discretion to manage and to invest the assets of the Plan under their control. In the event that the Plan Administrator shall render such investment directions, TIAA-CREF's and the Trustee's rights and duties relative to investments shall incur to the benefit of and be binding upon the Plan Administrator to the extent of such directions. TIAA-CREF and the Trustee shall not be liable for any losses which shall occur as a result of its following such directions of the Plan Administrator or the provisions of Trust Agreements, except as provided by law.

12.08 **Uniformity of Discretion:** Wherever under the provisions of this Plan, the Plan Administrator is granted discretionary powers which shall affect the rights and benefits of Participants, such discretion shall be exercised uniformly so that all Participants similarly situated shall be similarly treated.

12.09 **Records and Reports:** The Plan Administrator shall keep records of all proceedings and actions, shall maintain all such books of account, records, and other data as shall be necessary for the proper administration of the Plan and shall meet the disclosure and reporting requirements of all applicable law.

12.10 **Indemnification:** The University shall indemnify the Plan Administrator and any individual (other than any annuity issuer or a Trustee) who may be appointed pursuant to this Article (or is considered to be a fiduciary as a result of duties performed in the ordinary course of his employment by the University) against any and all claims, losses, damages, expenses and liabilities arising from their duties and responsibilities pursuant to the provisions of this Plan, unless the same is determined to be due to gross negligence or willful misconduct.

12.11 **Claims Procedure:** If any person believes he is being denied any rights or benefits under the Plan, such person may file a claim in writing with the Plan Administrator. If any such claim is wholly or partially denied, the Plan Administrator will notify such person of its decision in writing. Such notification will be written in a manner calculated to be understood by such person and will contain:

- (a) specific reasons for the denial,
- (b) specific reference to pertinent Plan provisions on which the denial is based,
- (c) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and
- (d) a description of the Plan's review procedures and the time limits applicable to such procedures.

Such notification will be given within ninety (90) days after the claim is received by the Plan Administrator (or within one hundred eighty (180) days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances is given to such person within the initial ninety (90) day period). In no event shall such extension exceed a period of ninety (90) days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Plan Administrator expects to render the benefit determination.

12.12 **Review Procedure:** Within sixty (60) days after the date on which the claimant receives a written notice of a denied claim such claimant (or his duly authorized representative) may:

- (a) file a written request with the Plan Administrator for a review of his denied claim and of pertinent documents, and
- (b) submit written comments, pertinent documents, records, and other information to the Plan Administrator.

The claimant shall be provided with a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

The Plan Administrator shall provide the claimant with written or electronic notification of its decision. In the case of an adverse benefit determination, the notification shall be set forth in a manner calculated to be understood by the claimant and shall contain:

- (a) specific reasons for the adverse benefit determination,
- (b) specific reference to pertinent Plan provisions on which the adverse benefit determination is based,
- (c) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits, and
- (d) a statement describing any voluntary appeal procedures offered by the Plan and the claimant's right to obtain the information about such procedures.

The decision on review will be made within sixty (60) days after the request for review is received by the Plan Administrator, unless the Plan Administrator determines that special circumstances (such as the need to hold a hearing) require an extension of time for processing the claim. If the Plan Administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial sixty (60) day period. In no event shall such extension exceed a period of sixty (60) days from the end of the initial period. The extension notice shall indicate the special circumstances

requiring an extension of time and the date by which the Plan expects to render the determination on review.

12.13 **Lawsuits:** Any lawsuit contesting a denial of benefits shall be filed within three (3) years after the denial, in accordance with the review procedure under Sections 12.11 and 12.12, and shall be filed in a court situated in Allegheny County, Pennsylvania.

ARTICLE THIRTEEN

Amendment and Termination

13.01 **Amendment:** The University may amend the Plan at any time, such amendment to be effective upon delivery of a written instrument to TIAA-CREF or the Trustee, provided, however, that:

- (a) No amendment shall affect the rights, responsibilities or duties of an annuity issuer or a Trustee without the annuity issuer's or Trustee's written consent;
- (b) No amendment shall diminish a Participant's existing rights under the Plan, including his or her Vested Interest, on the later of the date such amendment is adopted or the date such amendment become effective;
- (c) No amendment shall revise the vesting schedule unless each Participant with three (3) or more Years of Service is permitted to elect within a reasonable period after the adoption of such amendment to have his Vested Interest calculated without regard to such amendment; such reasonable period shall end sixty (60) days after the latest of the date such amendment is adopted, the effective date of such amendment or the date upon which such Participant receives written notice of such amendment;
- (d) No amendment shall provide for the use of funds or assets held under the Plan other than for the benefit of Participants or their beneficiaries;
- (e) No amendment shall cause the reversion of any assets of the Trust to the University; and
- (f) In the case of the amendment to suspend contributions or terminate the Plan, the Amendment shall be effective immediately without notification of any annuity issuer or the Trustee.

13.02 **Retroactive Amendment:** The University may amend this Plan to qualify it under the provisions of IRC §401(a), and any such amendment, by its terms, may be effective retroactively.

13.03 **Merger, Consolidation or Transfer of Assets:** No merger or consolidation of this Plan with, or transfer of assets or liabilities of this Plan to, any other plan shall occur unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated).

13.04 ***Suspension of Contributions:*** The University reserves the right to suspend temporarily contributions to this Plan at any time. Such suspension shall not operate as a termination of the Plan and shall be subject to such terms and conditions as required under the IRC and the regulations promulgated thereunder.

13.05 ***Termination:*** The University reserves the right to terminate this Plan at any time by an instrument in writing executed by the University and delivered to TIAA-CREF and the Trustees. Such termination shall become effective upon receipt of such written instrument by TIAA-CREF and the Trustees. This Plan shall become terminated if the University shall be dissolved, become insolvent, or be merged with another organization; provided, however, that in the event of a dissolution, merger or consolidation of the University, provisions may be made by a successor for the continuance of the Plan, or the merger or consolidation of the Plan or the transfer of Plan assets in accordance with Section 13.03, and no termination shall result therefrom.

13.06 ***Vesting Upon Termination:*** Upon the termination or partial termination of this Plan, or upon complete discontinuance of contributions under this Plan, the Vested Interest of each affected Participant of the University in his Account Balance as of the date of such termination, partial termination or discontinuance shall be equal to one hundred (100%) percent of such Account Balance; provided, however, that in the case of a partial termination, this section shall only apply to the Participants whose participation has been so terminated.

13.07 ***Distribution of Assets:*** If this Plan is terminated, the Account Balance of each Participant shall be distributed to him in accordance with the provisions of Article Eleven.

13.08 ***Partial Termination or Discontinuance:*** If there shall be a partial termination or complete discontinuance of contributions such that Account Balances become one hundred (100%) percent vested in accordance with Section 13.06, the Plan Administrator, at his discretion, shall decide whether to terminate the Plan, making at that time full distribution of all Account Balances in accordance with Article Eleven, or to continue the Plan, in which case distribution shall be made in accordance with the provisions of this Plan in the usual manner.

13.09 ***Allocation of Suspense Account Upon Termination or Discontinuance:*** If there shall be any assets allocated to any Suspense Accounts established under this Plan at the time of the Plan's termination or discontinuance, then, such assets, to the extent not prohibited by IRC §415, shall be reallocated as University Contributions pursuant to Article Six. Any assets that may not be reallocated because of IRC §415 shall be returned to the University.

13.10 ***Reversion of Plan Assets to the University:*** Except as provided in Sections 5.02, 13.09 and 14.03, Plan assets shall never revert to the University, its successors, assigns or other representing the interests of the University or its creditors.

ARTICLE FOURTEEN

Miscellaneous Provisions

14.01 ***Employment Rights:*** This Plan shall not be construed to confer upon any Participant or other employee any right of employment or right to alter any contract of employment between the University and its employees. The University reserves and retains the right to deal with its employees, whether or not Participants, and to terminate their employment at any time, to the same extent as though this Plan had not been created.

14.02 ***Spendthrift:*** The interests and benefits under this Plan of any Participant or beneficiary shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration or other legal process, or to the claims of creditors, except as provided in Section 11.07, Section 11.08 or applicable law.

14.03 ***Return of Certain University Contributions:*** Notwithstanding any other provision of this Plan, the following University Contributions shall be returned to the University in the following manner:

- (a) Any University Contribution which is made by the University by a mistake of fact shall be returned to the University within one (1) year after the payment of the University Contribution; and
- (b) Any University Contribution which is conditioned upon the initial qualification of this Plan under IRC §401 shall be returned to the University within one (1) year after the date of the denial of the initial qualification of this Plan.

The amount which may be returned to the University because of the application of subsection (a) is the excess of the amount contributed over the amount that would have been contributed had there not occurred a mistake of fact or a mistake in determining the deduction.

14.04 ***Rollovers:***

- (a) ***Acceptance by Trustee:*** TIAA-CREF and the Trustee may, subject to the provisions of the Trust Agreement(s), accept a Rollover Amount on behalf of a Participant as permitted under the Internal Revenue Code. A rollover must take place within the sixty (60) day period immediately following the date on which the Participant received the Rollover Amount.

Notwithstanding the prior paragraph, neither TIAA-CREF nor a Trustee may accept a rollover:

- (i) of any amount that must be distributable in a method not available under Article Eleven or that must be subject to distribution restrictions not existing in the Plan;

- (ii) of any amount unless TIAA agrees to maintain records of such rollover;
- (iii) that includes after-tax contributions;
- (iv) of Roth 403(b) contributions, Roth 401(k) contributions, or contributions made to a Roth IRA;
- (v) of annuity contracts;
- (vi) of amounts from a 457(b) plan;
- (vii) that is not permitted under the Internal Revenue Code.

Either TIAA-CREF or a Trustee may accept a rollover of an account held by a Participant in his capacity as a surviving spouse or as a spouse or former spouse who is an alternate payee under a Qualified Domestic Relations Order.

Either TIAA-CREF or a Trustee may require of the Participant such assurances and representations as it may deem necessary.

- (b) ***Rollover Accounts:*** Any Rollover Amount accepted under subsection (a) shall be held in a separate Rollover Account, and such account shall at all times be one hundred (100%) percent vested.

14.05 ***Multiple Fiduciary Capacities:*** Any person or person may at any time and from time to time serve in more than one fiduciary capacity with respect to the Plan, including simultaneous service as Trustee and Plan Administrator.

14.06 ***Severability:*** If any provision of this Plan shall be held by judicial decision to be invalid and unenforceable, the valid and enforceable provisions which remain shall continue to be given effect and to bind the parties hereto.

14.07 ***Rule Against Perpetuities:*** If the indefinite continuance of this Plan and the Trust created herein would be in violation of the law, then this Plan and Trust shall continue for the maximum period permitted by law and shall then terminate, whereupon distribution of its assets shall be made as provided by Article Eleven and Article Thirteen.

14.08 ***Law Governing:*** This Plan shall be construed according to the laws of the Commonwealth of Pennsylvania to the extent not preempted by the Internal Revenue Code of 1986, as amended, the Employee Retirement Income Security Act of 1974, as amended, or other federal law.

14.09 ***Word Usage:*** Words used in the masculine shall apply to the feminine where applicable, and wherever the context dictates, the plural shall be read as the singular and the singular as the plural.

For purposes of this Plan, effective as of September 16, 2013, a Participant shall be considered to be married if he is considered to be married for federal tax purposes under Revenue Ruling 2013-17 (or any subsequent guidance), and an individual shall be considered to be the “spouse” of a Participant if that individual is considered to be the spouse of the Participant for federal tax purposes under Revenue Ruling 2013-17 (or any subsequent guidance).

14.10 ***Dollar Limits***: Unless otherwise noted, any dollar amount in this Plan shall be deemed to be adjusted periodically, without formal amendment, in accordance with changes in the law or with regulations issued by the Secretary of the Treasury or his delegate.

14.11 ***Paperless Technology***: Except as otherwise provided by law or regulation, the Plan Administrator may use electronic media rather than paper in order to administer the Plan.

ARTICLE FIFTEEN

UPMC, UPP, and the Foundation

15.01 ***Years of Participation:*** For purposes of determining the Years of Participation of a Participant who worked at UPMC, UPP, or the Foundation, if, and only if, the Participant is entitled under Section 15.02 for credit for service with UPMC or UPP, or the Foundation, then for that Participant, a “Year of Participation” shall include any Plan Year during which the Participant both completed at least one thousand (1,000) hours of service for UPMC, UPP, or the Foundation and received allocations under the 401(k) plan or 403(b) program of UPMC, UPP, or the Foundation for at least six different months of the year. A Participant who was employed by UPMC, UPP, or the Foundation but who received no compensation for a particular month shall be deemed to have received allocations for that month if he or she received allocations for the most recent month that he or she received compensation.

15.02 ***Vesting Service for Transfers from UPMC, UPP, or the Foundation:*** For purposes of Section 6.02, Article Eight, and Section 15.01 if an individual worked at UPMC, UPP, or the Foundation prior to his latest Employment Commencement Date at the University, he shall be given credit for his service at UPMC, UPP, or the Foundation as follows:

- (a) ***Faculty Appointments:*** An individual who receives a faculty appointment (or is treated as faculty for purposes of benefits) shall be given credit for service with UPMC, UPP, or the Foundation; provided that, if there is a period in excess of three hundred sixty-five (365) days during which he is not employed by UPMC, UPP, or the Foundation, he shall not be given credit for any service prior to that 365 day period.

For example, if an individual worked at UPMC, transferred to UPP (within 365 days of leaving UPMC) and then, within 365 days of terminating employment at UPP, became a faculty member at the University, he or she could start employment at the University with credit for service at both UPMC and UPP if the individual met the standards for a Year of Participation while at UPMC and UPP.

For purposes of this section, a 365-day period shall start with the first day after the individual’s actual last day of work for UPP, UPMC, or the Foundation, as applicable, and end 364 days later. However, if the University is not open for business on the 365th day, then a three hundred sixty-five (365) day deadline shall be extended until the close of business of the University’s Office of Human Resources on the first business day following the 365th day.

- (b) ***Staff:***
 - (i) For Plan Years beginning before 2009, staff employees were treated the same as faculty employees.

- (ii) Effective as of January 1, 2009, an individual who becomes a Participant and does not have a faculty appointment (and is not treated as faculty for purposes of benefits) shall be given credit for service with UPMC, UPP, or the Foundation only if his or her position at UPMC, UPP, or the Foundation became a position at the University as a result of an employer-initiated reorganization.

For purposes of this section, a reorganization shall not be treated as an employer-initiated reorganization unless it is determined to be such by the Chancellor, the Executive Vice Chancellor, the Provost, or the Senior Vice Chancellor, Health Sciences, or his or her delegate.

IN WITNESS WHEREOF, we have set our hands and seal on this 22nd day of June,
2016

ATTEST:

**UNIVERSITY OF PITTSBURGH OF THE
COMMONWEALTH SYSTEM OF HIGHER
EDUCATION**

PLAN SPONSOR



By Austin Ramcone