



UNIVERSITY SYSTEM
of MARYLAND

Board of Regents
Committee on Finance

December 12, 2019
University of Maryland, Baltimore
AGENDA FOR PUBLIC SESSION

Call to Order

Chairman Attman

1. Convening Closed Session (action)*
2. The Universities at Shady Grove: 2019 Facilities Master Plan Update (presentation and information)
3. University of Maryland Center for Environmental Science 2018 Facilities Master Plan (action)
4. Bowie State University: Public-Private Partnership Student Housing (action)
5. University of Maryland, Baltimore: School of Nursing Undergraduate Tuition Proposal (action)
6. University of Maryland, Baltimore: Bressler Research Building Exterior Upgrades (action)
7. University of Maryland, College Park: NextGen Energy Systems Program (action)
8. University of Maryland, College Park: Development Agreement and Approval of Condominium Ownership and MEDCO Financing for College Park City Hall Block Redevelopment Project (action)
9. University of Maryland, College Park: Release of 1913 Deed Setback Requirement (action)
10. Proposed Amendment to USM Policy VII – 1.22 – Policy on Separation of Regular Exempt Staff Employees (action)
11. USM Supplemental 403(b) Plan Amended and Restated Effective January 1, 2020 and USM Supplemental 457(b) Plan Amended and Restated Effective January 1, 2020 (action)
12. University of Baltimore: Proposed Voluntary Separation Program (action)
13. Collaborative Planning Activities – End of Year Status Report (information)
14. University System of Maryland: Report on FY 2019 Procurement Contracts (information)

**Please note: the first item action occurs at 10:30 a.m., prior to the start of the closed session.*



BOARD OF REGENTS

SUMMARY OF ITEM FOR ACTION,
INFORMATION OR DISCUSSION

TOPIC: Convening Closed Session

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: The Open Meetings Act permits public bodies to close their meetings to the public in special circumstances outlined in §3-305 of the Act and to carry out administrative functions exempted by §3-103 of the Act. The Board of Regents Finance Committee will now vote to reconvene in closed session. As required by law, the vote on the closing of the session will be recorded. A written statement of the reason(s) for closing the meeting, including a citation of the authority under §3-305 and a listing of the topics to be discussed, is available for public review.

It is possible that an issue could arise during a closed session that the Committee determines should be discussed in open session or added to the closed session agenda for discussion. In that event, the Committee would reconvene in open session to discuss the open session topic or to vote to reconvene in closed session to discuss the additional closed session topic.

ALTERNATIVE(S): No alternative is suggested.

FISCAL IMPACT: There is no fiscal impact.

CHANCELLOR’S RECOMMENDATION: The Chancellor recommends that the Board of Regents Committee on Finance vote to reconvene in closed session.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Ellen Herbst (301) 445-1923



UNIVERSITY SYSTEM
of MARYLAND

STATEMENT REGARDING CLOSING A MEETING
OF THE COMMITTEE ON FINANCE
OF THE USM BOARD OF REGENTS

Date: December 12, 2019
Time: 10:30 a.m.
Location: University of Maryland, Baltimore

STATUTORY AUTHORITY TO CLOSE A SESSION

Md. Code, General Provisions Article §3-305(b):

- (1) To discuss:
 - [] (i) The appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
 - [] (ii) Any other personnel matter that affects one or more specific individuals.
- (2) [] To protect the privacy or reputation of individuals with respect to a matter that is not related to public business.
- (3) [] To consider the acquisition of real property for a public purpose and matters directly related thereto.
- (4) [] To consider a preliminary matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State.
- (5) [] To consider the investment of public funds.
- (6) [] To consider the marketing of public securities.
- (7) [] To consult with counsel to obtain legal advice on a legal matter.
- (8) [] To consult with staff, consultants, or other individuals about pending or potential litigation.
- (9) [] To conduct collective bargaining negotiations or consider matters that relate to the negotiations.

- (10) To discuss public security, if the public body determines that public discussions would constitute a risk to the public or public security, including:
- (i) the deployment of fire and police services and staff; and
 - (ii) the development and implementation of emergency plans.
- (11) To prepare, administer or grade a scholastic, licensing, or qualifying examination.
- (12) To conduct or discuss an investigative proceeding on actual or possible criminal conduct.
- (13) To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.
- (14) Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.
- (15) To discuss cybersecurity, if the public body determines that public discussion would constitute a risk to:
- (i) security assessments or deployments relating to information resources technology;
 - (ii) network security information, including information that is:
 1. related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity;
 2. collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
 3. related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity; or
 - (iii) deployments or implementation of security personnel, critical infrastructure, or security devices.

Md. Code, General Provisions Article §3-103(a)(1)(i):

- Administrative Matters

TOPICS TO BE DISCUSSED:

A university's FY 2021 proposed operating budget.

REASON FOR CLOSING:

To maintain confidentiality (pursuant to executive privilege) of proposed operating budget prior to the Governor's submission to legislature (§3-305(b)(13)).



TOPIC: The Universities at Shady Grove: 2019 Facilities Master Plan Update

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019 (presentation and information)

SUMMARY: The Universities at Shady Grove (USG) requests Board of Regents' approval of this 2019 update to its 2013 Facilities Master Plan (FMP) Update.

The Universities at Shady Grove (USG) is centrally located in Montgomery County in Rockville, Maryland along the I-270 corridor, at the southern edge of the Shady Grove Life Sciences Center. The campus is comprised of 52 acres with four buildings having over 520,000 gross square feet (GSF) of space, as well as two parking structures.

USG is the largest of the State's regional higher education centers with more than 3,200 students enrolled in 80 degree programs from nine different USM universities. Degree programs offered include both undergraduate (upper-level only) and graduate programs for both full-time and part-time students in day, evening and weekend formats. *USG provides access to affordable higher education by bringing high-demand programs from USM institutions throughout the State to one central location in Montgomery County.*

Building from USG 2003 Facilities Master Plan and USG 2013 Facilities Master Plan Update, the USG 2019 Facilities Master Plan Update is based on USG's mission statement. As USG has evolved since 2000, it continues to grow into a vibrant campus with a diverse student population that offers degree programs that meet the needs of the employers in the region. Since the 2013 Facilities Master Plan Update USG completed construction of the 220,000 GSF Biomedical Sciences and Engineering Educational Facility (BSE) built to support high-demand STEM(M) degree programs in healthcare, bioscience, engineering and computational sciences; a new 700-vehicle parking structure; a new campus entrance off of Shady Grove Road and construction of a pedestrian boardwalk.

Dr. Stewart Edelstein, USG's Executive Director, is committed to developing a more sustainable campus. USG 2019 Facilities Master Plan Update builds upon USG's continued growth towards a more sustainable campus. All aspects of the built environment have sustainability recommendations and requirements, including incorporation of a high level of LEED standards for new and major renovation projects, "greening" of the campus; improving and encouraging fuel-efficient and public transportation to reduce greenhouse gases on the commuter campus; certification of Buildings I and II under the LEED-EB program for existing buildings; Certifying of Building IV (BSE) as LEED Platinum; and continual improvement to energy efficiency. The Plan Update outlines the need for dependable and accessible system of transportation to support USG future growth and expansion.

ALTERNATIVE(S): The USG 2019 Facilities Plan presents updated documents USG's long-term planning objectives and is consistent with the center's mission statement and the current enrollment growth projections. There are no alternatives for implementation.

FISCAL IMPACT: The USG 2019 Facilities Master Plan Update will present challenges to the capital and operating budgets to fully implement. Approval of the Plan Update does not imply approval of capital projects or funding. These items will be reviewed through the normal procedures of the capital and operating budget processes.

CHANCELLOR'S RECOMMENDATION: That the Finance Committee consider the USG 2019 Facilities Master Plan Update and materials as presented today for formal action at the Committee's next meeting; subsequently recommending approval to the full Board of Regents, in accordance with the Board's two-step approval process. Approval of the Plan does not imply approval of capital projects or funding. These items will be reviewed through the normal procedures of the capital and operating budget processes.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Ellen Herbst (301) 445-1923



The UNIVERSITIES *at Shady Grove*

Facilities Master Plan (FMP) Update

November 2019



The Universities at Shady Grove 2019 FMP Update Summary

The Universities at Shady Grove (USG) is centrally located in Montgomery County in Rockville, Maryland along the I-270 corridor, at the southern edge of the Shady Grove Life Sciences Center. USG is the largest of the State's regional higher education centers with more than 3,200 students enrolled in 80 degree programs from nine different USM universities. Degree programs offered include both undergraduate (upper-level only) and graduate programs for both full-time and part-time students in day, evening and weekend formats. USG provides access to affordable higher education by bringing high-demand programs from USM institutions throughout the State to one central location in Montgomery County. The campus is comprised of two parcels, totaling 52 acres with four USG buildings having over 520,000 gross square feet (GSF) of space and two parking structures. The site has a distinct natural character, defined by an existing wetland and forest area running north to south through the center of the campus.

Also located on the USG campus, is the Institute for Bioscience & Biotechnology Research (IBBR) a collaboration between UMCP, UMB, and the National Institute of Standards and Technology (NIST) a 210,000 GSF research facility. IBBR brings together expertise at the forefront of biomedical science and engineering, creating collaborative partnerships with industry, government and academia to translate research innovations into practical effective solutions for major technological & medical challenges.

USG's mission is:

"To support and expand pathways to affordable, high-quality public higher education that meet the distinctive needs of the region and are designed to support workforce and economic development in the state; to achieve these goals through partnerships and collaborations with academic, business, public sector and community organizations that promote student success, high academic achievement and professional advancement."

USG has become nationally recognized for its academic/instructional model, one that is predicated on effective partnering among USM institutions, area community colleges, and local employers such as the Montgomery County Public Schools, Marriott International, Adventist Healthcare, AstraZeneca and the federal government. Through its strong relationships with these partners, USG is able to expand access to advanced degrees that meet specific workforce needs and help assure students post-graduation career opportunities within the region.

USG's mission and its future growth are in close alignment with key elements of both the Maryland State Plan for Postsecondary Education and the USM Strategic Plan; providing access to a high quality, affordable education, improving the state's workforce through targeted academic and professional degree programs, and focusing on comprehensive, high quality services that place students at the center of the learning process to insure retention and degree completion.

USG's future growth is intimately tied to the future of Montgomery County and the surrounding region. With the most educated workforce in Maryland, the county houses the largest collection of health, bioscience and information technology companies in the state. This region continues to experience increased need for trained scientists, research support staff and other highly skilled knowledge workers. In addition, growing the number of locally-educated STEM(M) graduates in the region is dependent on increasing the number of teachers who are trained in STEM(M) areas.

Campus expansion since 2013 Update (Attachment 1):

The 2019 Facilities Master Plan Update continues to build upon the 2003 Master and the 2013 FMP update. Since the 2013 FMP Update, USG has continued to grow and develop its campus and implement sustainability features. Several projects have been implemented, including a new 700 vehicle parking garage, a new campus entrance off Shady Grove Road, construction of a pedestrian boardwalk, and the new Biomedical Science & Engineering building have been built.

- Through capital funding by Montgomery County, the 700 car Shady Grove Garage (completed in 2016) was constructed for students, visitors and staff. As part of the garage project, the main campus entry was relocated to allow for an improved traffic light along Shady Grove road, better visibility, and the addition of monumental signage. USG had the distinction of being the first organization in the country to submit an application to the Green Parking Council to become a "Certified Green Garage".
- The campus entrance off Shady Grove Road was relocated as part of the Shady Grove Garage project. The new entrance was enlarged and created an improved public presence along Shady Grove Road. The relocation also allowed for a new traffic light to be installed where there was not one at the old entrance, improving access and safety to the campus. The entry beautification included new monumental signs for both USG and IBBR, accent pavers, improved landscaping, new lighting, and storm water bioswales.
- A new pedestrian boardwalk was constructed to facilitate pedestrian access from the

student parking lot and SG parking garage over to the heart of USG campus. The new boardwalk also helps promote the ecological connectivity and function across the campus without disrupting the natural ecology and wetlands that exist. The boardwalk also helps create a pedestrian environment that is auto-free and is linked to the surrounding community.

- Relocation of Gudelsky Drive – roadway was relocated to perimeter of campus to create a vehicular circulation, service and parking system that will separate pedestrians and vehicles without compromising necessary access to facilities.
- The new Biomedical Sciences and Engineering (BSE) Education Facility opened in the Fall of 2019, with classes being offered in spring 2020. The 220,000 is one of the most sustainably sourced and built laboratory buildings in the region and is on track to be certified as a LEED Platinum building. The BSE includes state-of-the-art teaching laboratories, collaborative learning spaces, clinical training facilities, academic offices and an expanded level of student services necessary to support program and enrollment growth. Co-designed laboratory spaces and equipment will be shared and will serve the needs of multiple academic programs. The BSE will also feature the University of Maryland, Baltimore (UMB) state-of-the-art community dental clinic, with 20 dental chairs and four surgical offices that will be open to the community and is the only such facility in Montgomery County. The unique facilities and programming of the BSE will give all students, from across the campus and inclusive of all of disciplines and degree programs, opportunities to work alongside technology students on projects of their own interest and/or those identified by USG’s regional business and community partners.

Sustainability and Climate Change Mitigation:

USG is committed to creating a total development of buildings, roads and infrastructure on the site that will be commensurate with sustainable design. The 2019 Plan Update continues to build upon USG’s commitment to evolve into a more sustainable campus. All aspects of the past and current built environment have sustainability recommendations and requirements, including the incorporation of a high level of LEED standards for new and major renovation projects, continuing the “greening” of the campus. The following projects have been completed since the 2014 update:

- The BSE facility is expected to receive a LEED platinum rating. Sustainability was integral to the design of the BSE defining the building and strengthening the vitality of the USG campus. The BSE will showcase environmental connectivity, energy efficiency, user health and productivity through the experience of the building itself.

- The Shady Grove Parking garage received a Certified Green Garage by the Green Parking Council. The garage includes many sustainable features such as preferred parking and discounted rates are offered to fuel-efficient vehicle owners, energy efficient LED lights with motion sensors, Photovoltaic panels mounted on the roof generating onsite renewable energy, construction waste was recycled, regional sourced materials, covered bicycle racks and a bicycle self-serve maintenance station and rain gardens surrounding the garage to treat storm water runoff.
- LED lighting upgrades across the campus and in all buildings for interior and exterior lighting
- Electric car charging stations have been installed, which will encourage the use of low-emitting vehicles.
- Completed recommissioning and mechanical upgrades to Buildings I in effort to certify under the LEED-EB program, approx. 20% savings over past 5 years.
- Solicited and signed a Power Purchase agreement for solar panel installations to be placed on two buildings and the two parking garages, completed in the Fall of 2019. With these installations, the solar panels will generate clean, renewable energy (785 kW), which will account for approximately 8% percent of all the energy used by USG on campus from renewable sources.
- Completed assessment of the storm drain and storm water infrastructure to determine USG compliance for controlling runoff and sediment control measures per National Pollutant Discharge Elimination System (NPDES), General Permit for Discharges, from Small Municipal Separate Storm Sewer Systems (MS4s). USG has submitted the year one progress report and although no restoration is required, there are several bioswale structures that are in need of repair and will be a focus to have them restored over the next two years.

Future Campus Expansion and Opportunities:

The 2019 FMP update (Attachment 2) identifies 246,000 GSF future build-out remaining from the original 985,000 GSF Master Land Use Plan approved by Montgomery County Planning Board in 2003 (Attachment 3). The academic priorities, which will guide future development, include professional development initiatives with Montgomery County Public Schools (MCPS), certificates and citations to upgrade skills in the workforce, expanding career and internship

opportunities, expanding regional STEM(M) workforce degrees and infrastructure, supporting Montgomery County Economic development and Technology Commercialization Capabilities at USG.

USG is poised to grow by leveraging opportunities created with the new BSE facility, collaborating with the Institute for Bioscience and Biotechnology Research (IBBR) and the National Cybersecurity Center of Excellence (NCCoE), available build-out for future academic and research facilities, future land acquisitions, and development opportunities on neighboring properties.

- Biomedical Sciences and Engineering Education Facility (BSE): A critical USG/USM focus is expanding the production of workforce-oriented degrees in STEM(M) that will serve as a foundation for economic growth and development in the vital Montgomery County region and across the state of Maryland. The opening of the BSE at USG is a critical component in this effort. It will expand the capacity of the USG/USM in Montgomery County to meet important workforce and regional economic development needs in STEM(M), including those in engineering, computational/data sciences, cybersecurity, healthcare, agriculture and biotechnology. USG plans to expand existing onsite programs and bring new degree programs in STEM(M) fields to reach its projected enrollment capacity of 7,500 with doubling the physical capacity.
- Institute for Bioscience and Biotechnology Research (IBBR). Located on the USG campus, IBBR is a collaboration between UMCP, UMB and the National Institute of Standards and Technology (NIST). Within its state-of-the-art, 230,000 gross square feet research facility, IBBR uses a multi-institutional, cross-disciplinary team approach to advance and leverage scientific discovery focused on translating scientific breakthroughs in biosciences and technology into real-world, market-ready solutions and initiatives. Increasingly, UMCP Biotechnology Research and Education Program (BREP) premier biotechnology, biopharmaceutical and biofuel research center located in IBBR will serve as a training center for undergraduate, graduate and postdoctoral students who will be supported through these research and regional collaborations.
- The county's Biosciences Strategic Plan and the establishment of the Great Seneca Science Corridor, which includes the USG/USM campus, are important components of the focused growth of the county's health and bioscience as a strategic economic development priority. USG/USM has participated actively in these decisions and has planned for the future growth of its campus in Montgomery County to support these strategic interests.

- The Master Land Use Plan includes a parcel of approximately 11 acres on the south side of Shady Grove Road, directly opposite the existing USG campus. This parcel is zoned MXN (Mixed Use Neighborhood) and the use is planned for institutional, rather than commercial. This parcel is the location of a storm water management pond, and the diagrammatic plan proposed part of the western portion of the parcel for dedication as a local park. The parcel will therefore require subdivision review by the County review in future.
- USG is considering opportunities to partner with developers who purchased land northwest of the campus.
- USG is working with the new development taking place on the old Police Academy Training facility located near the campus on Great Seneca Highway. The development is intended to be a mixed use with a portion dedicated to affordable housing. The opportunity for student housing and amenities for students and (perhaps) faculty and staff will minimize commuting and provide for opportunities to serve the growing student population. This development includes opportunities to expand the NCCoE with additional company incubator space, which would be developed in collaboration with USM.

Transportation:

A more dependable and accessible system of transportation is critical for USG's continued growth and expanded impact. USG students, faculty, staff and those from the partner universities travel to the campus from across the region and state and some from adjacent states. Travel time to USG is cited as a constraint for students and in encouraging tenured and tenure track faculty from partner universities to teach onsite courses. Many students, faculty and staff particularly from Baltimore, and from College Park, use the ICC because it cuts travel time to and from the campus.

USG has participated in county and state transportation planning and was successful in securing a stop on campus as part of the Corridor Cities Transitway (CCT) development. The CCT would connect the Shady Grove Metro Station to the Shady Grove Life Sciences Center and up into Clarksburg and would have cut the travel time from the metro to USG to less than 15 minutes. More importantly, the CCT is currently planned to be the primary connector to the Bus Rapid Transit (BRT) system currently under development to other neighborhoods and business centers across the county. USG is participating in the I-270 Corridor Transit planning that will study the viability of all transportation options along the I-270 corridor including the CCT and connections to the county BRT system.

Expanded educational offerings, increasing enrollments and new public services (e.g. clinical health services) which are planned for USG, heightens the concern about the limited transportation options to get to and from the campus. USG is in discussions with partner institutions to learn more about their utilization of various commuting platforms to help users make better use of smarter, more efficient transportation modes. USG has initiated discussions with various partner institutions to determine if there are opportunities to pilot shuttle services between campuses to include various Park and Ride locations and Metro Stations in and around the surrounding Maryland counties.

It is crucial that USG is able to provide a diverse array of transportation options that promote sustainable and cost effective initiatives. By routinely tracking parking trends, bus, train and carpool usage and matching it against the geographic location of USG students, we plan to identify gaps in service and plan for improvement that have the biggest impact for our population.

- Charter Shuttle Service - consider adding a charter bus would provide direct service from USG to a partner institution's main campus, expanding the existing Shuttle-UM service, expanding the inter-campus Montgomery College Shuttle, and other businesses which operate shuttle services to explore the possibility of adding stops at USG.
- Purple line Connection- consider relocating/adding shuttle pickup location to a Purple Line station and expand service to all USG students.
- Shady Grove Metro Shuttle- explore a direct transit route between the USG campus and Shady Grove Metro.
- Ride On Flex – explore Ride on Flex demand transit and advocate for USG to be within a future flex zone.
- Ridesharing & Guaranteed Ride Home- explore clean alternatives to single-occupancy vehicles utilizing commuting platforms to help users make better use of smarter, more efficient transportation modes without creating a need for additional infrastructure.
- Montgomery County Transportation Planning – remain involved in the County's Master Plan update to explore various alternatives along I-270 including the CCT, if funded, and proposed monorail project.

Campus Vision:

The 2019 update will follow the previous framework for guiding the future fiscal development of USG for the next ten years and beyond for academic and research facilities, parking, roads,

utilities, infrastructure and open space. The 2019 updated plan remains consistent with the previous plan envisioned. USG continues to support the four major elements of the vision of the campus:

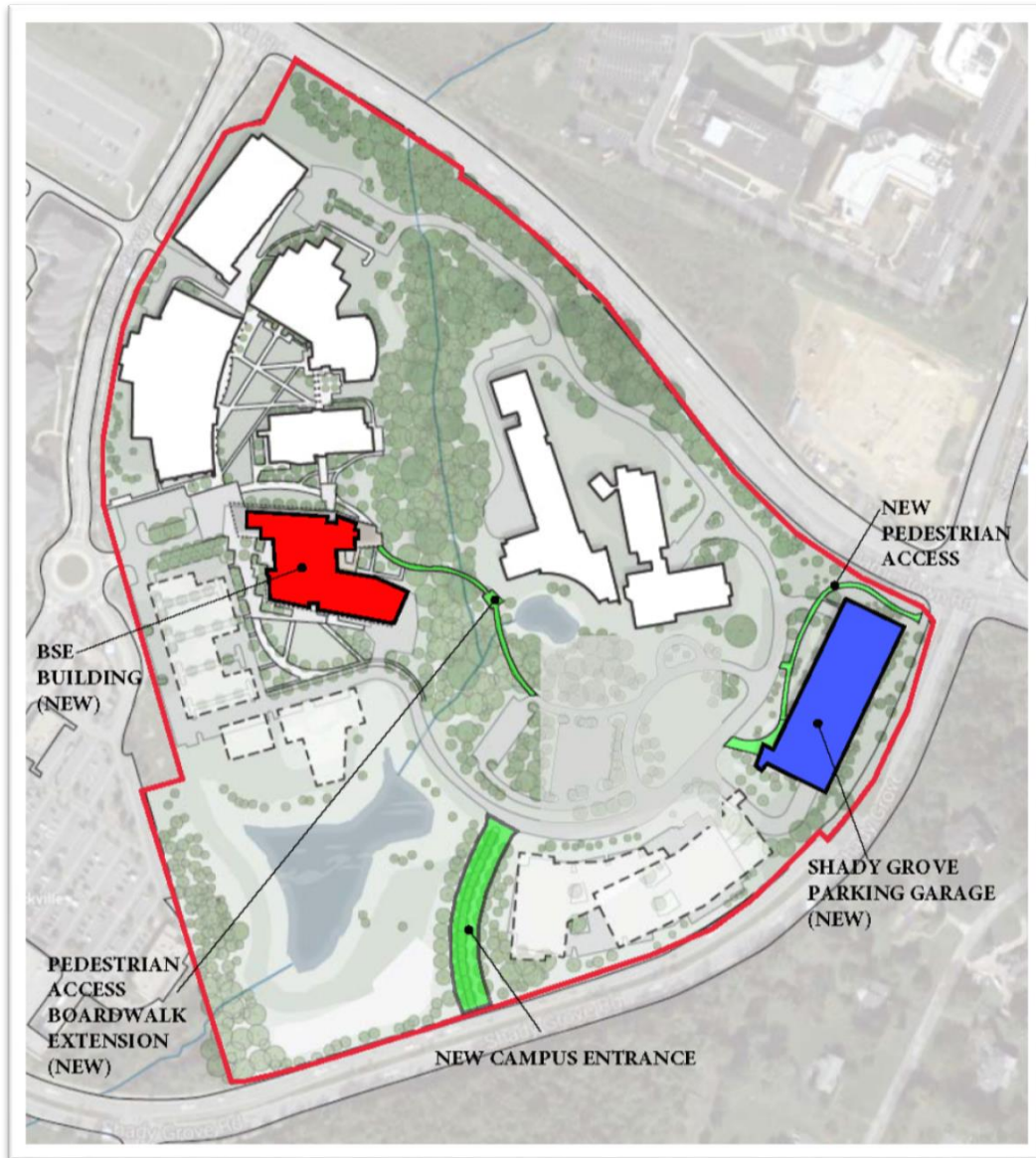
- The University System of Maryland promotes the creation of a 21st Century learning/teaching and research environment.
- The University System of Maryland supports the linkage between Shady Grove Center and the Shady Grove Life Sciences Center.
- The University System of Maryland promotes ecological stewardship.
- The University System of Maryland supports responsible development.

The 2003 Master Plan also provides guidelines as to planning the campus for further growth and expansion. This was done in accordance with seven Design Principles:

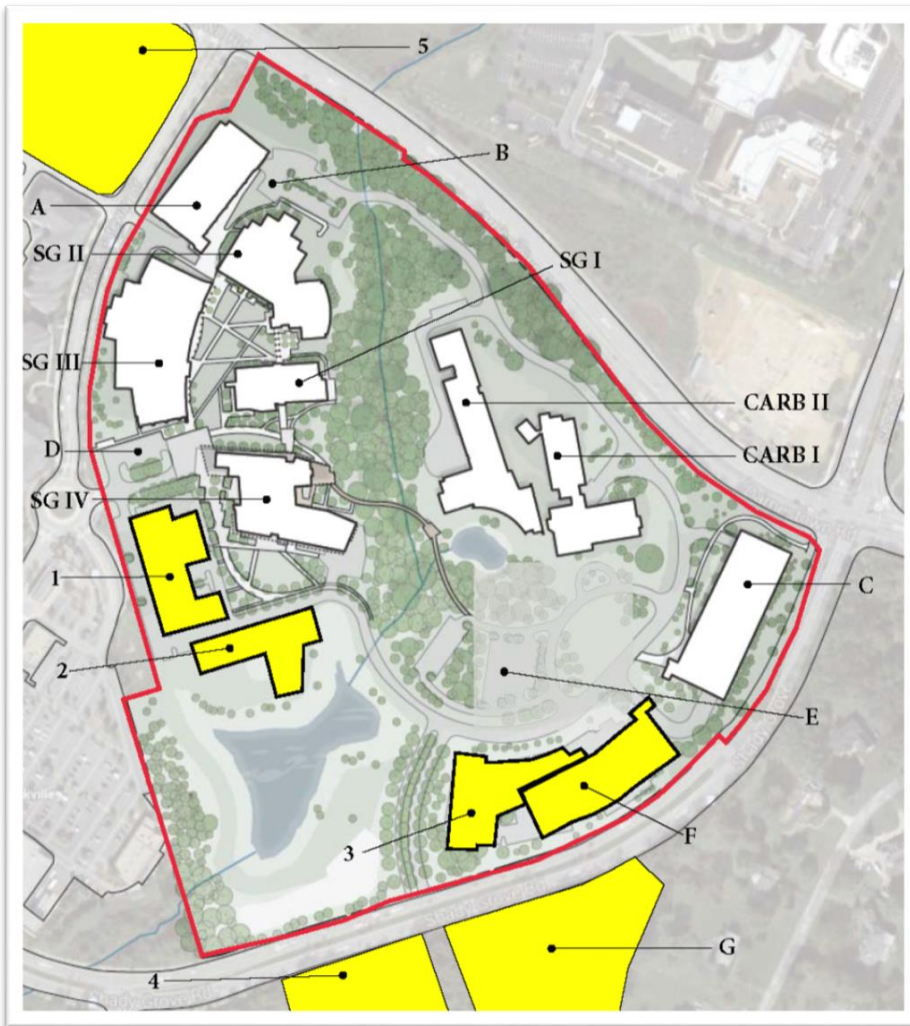
1. To create an open space network that respects, augments and amplifies existing site natural amenities; an open space system that is ordered, park-like and accommodating of passive recreation; and an open space network that is pedestrian oriented, predominantly vehicle free and unifies facilities.
2. To create a pedestrian environment that is auto-free and is linked to the surrounding community.
3. To create a vehicular circulation, service and parking system that will separate pedestrian and vehicles without compromising necessary access to facilities.
4. To create a total development of buildings, roads and infrastructure on the site that will be commensurate with Sustainable Design and Smart Growth objectives
5. To create a development plan that balances density and open space and provides for future flexibility in development of the site.
6. To create a Landscaping Plan that enhances the open space system and provides a gradual transition from the natural areas of the site to the man-made.
7. To create building guidelines that establishes human scaled spaces, consistent massing, and architectural expression with existing development to guide development into the future.

2019 Existing Campus Plan – Land Use Update (Attachment 1)

Below is a current diagram of capital projects completed since the 2013 FMP Update



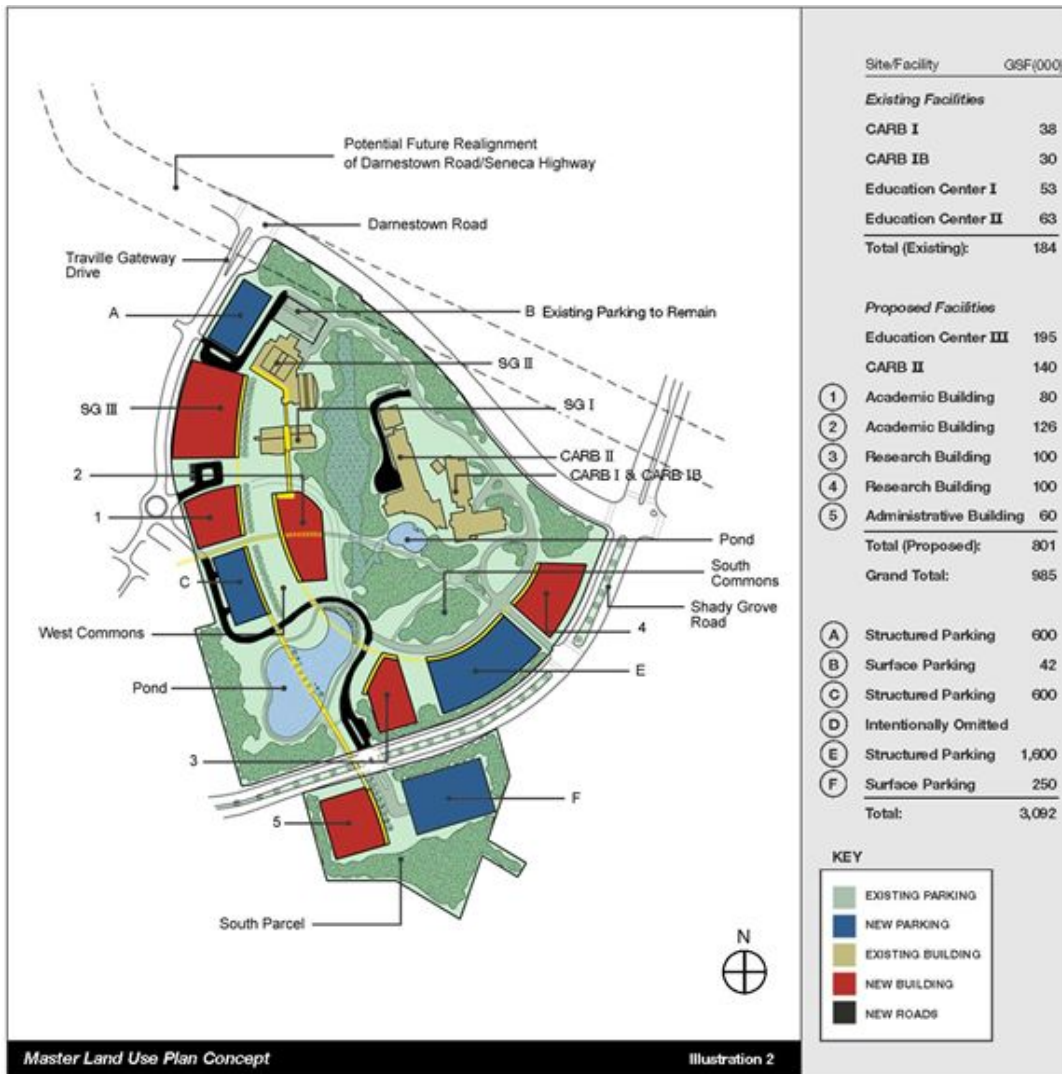
2019 Master Plan - Future Growth (Attachment 2)



Site/Facility	
Existing Facilities	
CARB I	38
CARB IB	30
CARB II	140
SG EDUCATION CENTER I	53
SG EDUCATION CENTER II	63
SG EDUCATION CENTER III	195
BIOMEDICAL SCIENCE	220
TOTAL (EXISTING)	739
Proposed Facilities	
1 ACADEMIC BUILDING	80
2 ACADEMIC BUILDING	60
3 RESEARCH BUILDING	86
4 ADMINISTRATION	20
TOTAL (PROPOSED)	246
GRAND TOTAL	985
5 ACADEMIC (FUTURE LAND PURCHASE)	60
PARKING	
A STRUCTURED PARKING (E)	600
B SURFACE PARKING (E)	42
C STRUCTURED PARKING (E)	700
D SURFACE/ROAD PARKING (E)	44
E SURFACE PARKING (E)	100
F STRUCTURED PARKING	700
G SURFACE PARKING	250
TOTAL (PROPOSED)	2436

*figures shown are thousands

2003 Master Plan - Land Use Map- (Attachment 3)



*figures shown are thousands



TOPIC: University of Maryland Center for Environmental Science 2018 Facilities Master Plan

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019 (action)
November 19, 2019 (presentation and information)

SUMMARY: The University of Maryland Center for Environmental Science requests Board of Regents' approval of its 2018 Facilities Master Plan.

Through its four laboratories and two programs across Maryland, the University of Maryland Center for Environmental Science (UMCES) is a research, education, and service institution of the University System of Maryland (USM) and a world leader in the science of coastal environments and their watersheds. UMCES faculty advances knowledge through scientific discovery, integration, application, and teaching that results in a comprehensive understanding of our environment and natural resources, helping to guide Maryland and the world toward a more sustainable future. Through its role as the responsible institution for administration of the Maryland Sea Grant College and numerous collaborative programs with other institutions, UMCES leads, coordinates, and catalyzes environmental research and graduate education within the USM. The Integration and Application Network inspires, manages, produces, and communicates timely syntheses and assessments on key environmental issues with a special emphasis on Chesapeake Bay.

Established over 90 years ago, UMCES received accreditation from the Middle States Commission on Higher Education in 2016. UMCES faculty members advise, teach, and serve as mentors to many graduate students enrolled in USM institutions, particularly through the System-wide graduate programs in Marine Estuarine Environmental Sciences (MEES), in which UMCES has a leading role. UMCES also delivers its services through environmental science education programs for K-12 students and teachers, pertinent and timely information to the general public and decision-makers, as well as technology transfer to industries.

By managing institutional funds in the most efficient and effective manner, UMCES was able to complete a number of key projects in the first 5 years of the 10-Year Facilities Master Plan (FMP) with great success. These projects include the Truitt Replacement Laboratory, an award winning LEED building; a 10-acre Solar Field and Solar Carport installation at UMES' Horn Point Laboratory in Cambridge, MD; the R.V. Rachel Carson Bulkhead Rehabilitation; and the Morris Marine Laboratory Phased Renovation project also located in Cambridge. This contribution of continuously and tirelessly supporting research activities at all laboratory campuses is one of UMCES' distinctive hallmarks. Building from the framework developed in the 2012 UMCES 10-Year Facilities Master Plan, the 2018 5-Year Update provides up-to-date, relevant project priorities by each UMCES-managed laboratory campus. The recommended three priority projects for each laboratory represent the target development projects most critical to each of UMCES' major campus locations.

The 2018 Facilities Master Plan Update sets a long-term vision and framework formulated from inputs from all in the UMCES community. The Master Plan continues to focus on aiding the UMCES mission-critical research space needs in a multi-faceted approach of renovation, rehabilitation, renewal, and

addition. The Plan is aligned with the UMCES Strategic Plan and is developed in support and advancement of the University's mission.

Dr. Peter Goodwin, UMCES President, is committed to maintaining and developing facilities for convergent research specifically focused on the Chesapeake Bay and its watershed that can assist teams of researchers in analyses, synthesis, and data interpretation into relevant, actionable, and digestible information for decision making. The FMP emphasizes preserving and enhancing historic buildings and infrastructure, developing added environmental research opportunities, and building environmentally friendly facilities that meet programmatic needs. Energy efficiency on campus will continue to be improved with upgrades, renovation, and construction of facilities that will incorporate LEED standards to reduce energy usage.

ALTERNATIVE(S): The 2018 Facilities Master Plan presents a comprehensive, long-term vision for UMCES physical development. The plan is reflective of the university's academic and research mission, its institutional values and its impact on the landscape, the environment, and the surrounding community. There are no alternatives for implementation.

FISCAL IMPACT: The 2018 Facilities Master Plan will present challenges to the capital and operating budgets to fully implement. The University is committed to securing funds to implement the plan. Approval of the FMP does not imply approval of capital projects or funding. These items will be reviewed through the normal procedures of the capital and operating budget processes.

CHANCELLOR'S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve the UMCES 2018 Facilities Master Plan and materials as presented at the Committee's November meeting, in accordance with the Board's two-step approval process. Approval of the Plan does not imply approval of capital projects or funding. These items will be reviewed through the normal procedures of the capital and operating budget processes.

COMMITTEE RECOMMENDATION: _____ DATE: _____

BOARD ACTION: _____ DATE: _____

SUBMITTED BY: Ellen Herbst (301) 445-1923



TOPIC: Bowie State University: Public-Private Partnership Student Housing

COMMITTEE: Finance

DATE OF MEETING: December 12, 2019

SUMMARY: Bowie State University (BSU) seeks approval to pursue a public-private partnership to provide much needed additional student housing to accommodate growth in enrollment with a concomitant demand for student housing. As part of the project, the University will provide funding for the construction and acquisition of ground level retail space, as well as an Entrepreneurial Space.

At present, the shortfall in student housing has compelled BSU to lease more than 100 beds from a privately-owned student housing project in College Park known as the Enclave.

In 2017, the University commissioned a demand survey, which conservatively estimated demand for an additional 737 beds. (A more recent survey indicates a figure closer to 1,200.) After a period of internal deliberation, including consultation with USM and the Maryland Economic Development Corporation (MEDCO), an RFP was issued in January 2019 to select a Developer for the construction of an approximate 550-bed Living Learning Facility that included an Entrepreneurial Center and retail space. Balfour Beatty Campus Solutions was selected to develop the project.

The proposed project includes the development of approximately 550 beds of new student housing to be owned by MEDCO (the "Student Housing") with ground floor retail and a state-of-the-art Entrepreneurship Center that will be owned by BSU (the "University Spaces") on the University's campus.

The Project will be financed through a privatized financing structure where the State of Maryland, on behalf of the System, will enter into a ground and air rights lease ("Ground Lease") with MEDCO for a term extending beyond the 35-year term of the financing, pursuant to which MEDCO will develop the Project. MEDCO will issue tax-exempt bonds (the "Bonds") to fund the costs of developing the Student Housing, while the University will make a capital contribution of no more than \$6,000,000 to pay for the University Spaces. MEDCO will own the Student Housing for the term of the financing, while BSU will own the University Spaces. At the direction of the University, MEDCO will enter into contracts relating to design, development, and construction of the Project, as well as a property management agreement with a to-be-named third-party as the property manager. At the end of the term of the Ground Lease, ownership of the Student Housing will transfer to the University.

The University requests authorization to enter into the Ground Lease with MEDCO as Lessee with a term to expire on approximately March 1, 2065 (10 years beyond the term of the Bonds). MEDCO will contract with an underwriter (RBC Capital Markets, LLC) for the Bonds (subject to USM approval), the proceeds of which will be used for the design and construction of the Student Housing. The University seeks project authorization for MEDCO to issue tax-exempt debt to fund the project in the amount of up to \$50,670,682 which will be the par value of the debt issued, adjusted for any issuance premium or discount. Ground rent will be paid to the University in an amount equal to the annual surplus generated from the operations after payment of debt service, operating expenses and funding of reserves.

An Executive Summary of the transaction, and Project Overview, taken from the credit package, is attached.

The projected cost per bed to students will range from \$755 to \$1,150 per month depending on room configuration.

The facility will be located on the campus edge at the entrance from Maryland Route 197 and is consistent with planned development for the campus edge. A map of the campus, with a star denoting the location of the project, is also attached.

DEVELOPER: Balfour Beatty Campus Solutions
Corporate Office - Philadelphia
1 Country View Road
Malvern, PA 19355

ALTERNATIVES: The alternative would be to elect not to construct additional student housing and continue the present shortfall, which includes shuttling in excess of one hundred students from the Enclave in College Park. Additionally, the no-build option would restrict the recruitment of students from outside the metro area who require housing as a prerequisite for enrolling at the University.

FISCAL IMPACT: The project will require a contribution of up to \$6,000,000 from BSU to fund the University Spaces, but will not require debt to be issued by USM; however, the student housing project and its associated debt will likely be considered by the rating agencies as “on credit,” meaning that the rating agencies take the debt into account in determining the System’s appropriate bond rating.

CHANCELLOR’S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve for Bowie State University, working closely with the Office of the Attorney General and the USM Office and subject to the approval of the Chancellor, to enter into the Ground Lease with MEDCO as Lessee for a term not to extend beyond March 1, 2065 and the issuance of no more than \$50,670,682 of recorded debt (par value adjusted for issuance premium or discount) to construct and operate an approximately 550-bed student housing project. Further, the recommended approval would also allow Bowie State University to contribute up to \$6,000,000 of non-state-supported university funds for the construction of ground level retail and an Entrepreneurial Center as part of the project.

COMMITTEE RECOMMENDATION: _____ DATE: _____

BOARD ACTION: _____ DATE: _____

SUBMITTED BY: Ellen Herbst (301) 445-1923

Executive Summary

Issuer	Maryland Economic Development Corporation (the "Issuer" or "MEDCO")	
University	Bowie State University (the "University" or "BSU"), a constituent institution of the University System of Maryland (the "System") <u>Fall 2019 Enrollment (Headcount):</u> 6,171 Headcount <u>Fall 2019 On-Campus Housing:</u> 1,446 beds / 99.6% Weighted Average Occupancy	
Project	The proposed project (the "Project") includes the development of 557 beds of new student housing to be owned by MEDCO (the "Student Housing") with ground floor retail and a state-of-the-art entrepreneurship center that will be owned by BSU (the "University Spaces") on the University's campus.	
Financing Structure	The Project will be financed through a privatized financing structure where the State of Maryland, on behalf of the System, will enter into a ground and air rights lease ("Air Rights Lease") with MEDCO for a term extending beyond the term of the financing, pursuant to which MEDCO will develop the Project. MEDCO will issue tax-exempt bonds (the "Bonds") to fund the costs of developing the Student Housing, while the University will make a capital contribution to pay for the University Spaces. MEDCO will own the Student Housing for the term of the financing, while BSU will own the University Spaces. At the direction of the University, MEDCO will enter into contracts relating to design, development, and construction of the Project, as well as a property management agreement with a to-be-named third-party as the property manager. At the end of the term of the Air Rights Lease, ownership of the Student Housing will transfer to the University.	
University Support	The Air Rights Lease will contain provisions outlining the University's support for the Student Housing, including the University's active involvement in the development of the student life plan and student marketing plan and the presentation of the Project as available student housing in its marketing materials and on its website. In addition, the University will not to undertake to operate or otherwise support any additional student housing on or off campus unless certain tests are met and the Project will be subject to the jurisdiction of the University's campus security force.	
Developer	Balfour Beatty Campus Solutions (the "Developer" or "BBCS")	
Manager	A to-be-named national property management group with significant experience managing on-campus student housing facilities.	
Bond Structure	Fully amortizing, long-term, tax-exempt, fixed-rate bonds, together with the University Equity, will fund the costs of the Project.	
Estimated Par	\$44,210,000 (<i>preliminary, subject to change</i>)	
Security	Leasehold Mortgage Security Interest in Student Housing Revenues & Assets Fully Funded Debt Service Reserve Fund Capitalized Interest During Construction & Stabilization Operating Reserve Fund	
Coverage Ratio	Projected minimum 1.26x debt service coverage	
Timing	Anticipated bond closing in February 2020	
Contacts	Michael Baird (410) 625-6103 michael.baird@rbccm.com	Sara Russell (410) 625-6119 sara.russell@rbccm.com

Project Overview

In response to the need for additional on-campus housing and a desire to develop more advanced living-learning opportunities for its students, the BSU partnered with MEDCO to issue an RFQ and RFP for a development team to design and construct an entrepreneurship living-learning community on the University's campus. BSU has experienced significant enrollment growth during the past 5 years, with enrollment levels of over 6,100 students in each of the past 3 fall semesters, such that demand for on-campus housing now exceeds its supply. In addition, the University has recommended several aging student housing facilities for demolition and others for renovation which would also permanently or temporarily decrease capacity on campus. As a result of the procurement process, BSU and MEDCO chose to partner with veteran student housing developer Balfour Beatty Campus Solutions to design and construct the Project.



The Project will include a new living-learning residence hall at the gateway to the University's campus along Jericho Park Road. The Student Housing will feature modern units with single and double-occupancy options in suite and semi-suite configurations with private bathrooms. The Student Housing will also have a number of amenities for residents of the community including classrooms, a fitness center, laundry facilities, kitchenettes, study and social lounges and 24-hour security. The Project will house the University Spaces on the ground floor and will include limited surface parking in the rear of the Project.

To encourage greater social interaction and collaboration, the Student Housing will be designed so that smaller groups of units are clustered around common amenities such as lounges, laundry rooms, study spaces, and kitchenettes. The proposed unit mix will have a mix of single and double-occupancy bedroom units both with and without living room space to offer a variety of price points, satisfy multiple segments of student demand, and promote collaboration throughout the Student Housing.

The Project will be surrounded by paved and landscaped areas to invite campus and community interaction. A breezeway will connect the front and rear of the Project for pedestrian traffic and will separate the ground floor Entrepreneurship Center and Retail from the Student Housing. The Project will have attractive glazing on the first floor and vertically at lounges and above the breezeway to create visual interest and a sense of place.

Unit Mix and Rental Rates

Unit Type	Units	Beds	2021-2022 Rent/Bed	
			Semester	Annual
2 Double-Occupancy Bedroom Semi-Suite	20	80	\$3,775	\$7,550
2 Single-Occupancy Bedroom Semi-Suite	97	194	\$4,725	\$9,450
2 Double-Occupancy Bedroom Suite	16	64	\$4,675	\$9,350
2 Single-Occupancy Bedroom Suite	86	172	\$5,425	\$10,850
1 Double-Occupancy Bedroom Semi-Suite	9	18	\$4,650	\$9,300
1 Single-Occupancy Bedroom Semi-Suite	9	9	\$5,550	\$11,100
1 Bed Suite – Single	5	5	\$5,750	\$11,500
1 Single-Occupancy Bedroom Semi-Suite – RA	8	8	\$0	\$0
1 Single-Occupancy Bedroom Suite – RA	5	5	\$0	\$0
2BR/1BA Apartment - RD Unit	1	2	\$0	\$0
Subtotal/Weighted Average	256	557	\$4,692	\$9,384

Campus Map





TOPIC: University of Maryland, Baltimore: School of Nursing Undergraduate Tuition Proposal

COMMITTEE: Finance Committee

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: The University of Maryland, Baltimore seeks to augment its nursing revenue through a phased-in series of tuition increments. These *program cost catch up* increases for the University of Maryland School of Nursing (UMSON) are necessary to offset the high cost of instruction to deliver an upper division traditional nursing program.

UMSON faces many financial challenges due to its uniqueness of being a public upper-division nursing school. It does not have the benefit of the first two years of undergraduate tuition revenues to help offset the higher cost junior and senior years. As an upper-division public nursing program, the tuition generated from the students must cover a greater portion of the high cost incurred to provide a quality educational experience.

A quality program at the upper division is impacted with clinical practicum ratios that have decreased from 8 to 10 students to a faculty member to 4 to 8 students per faculty member. However, the faculty time involved with on-site supervising and teaching the students in the clinical setting remains the same. As a result, more faculty members are needed to supervise the clinical/practicum experiences.

The use of simulation as a pedagogical approach in nursing education continues to expand with some proposing that upwards to 50% of clinical hours can be substituted with well-designed simulation based learning activities. Currently, between 10-15% of UMSON entry-level clinical experiences occur through simulation based learning activities. Simulation provides nursing students with the opportunity to expand their knowledge and skills in a safe environment. Currently 11 manikins are nearing the heavy use to end of use due to the age of the equipment. They need to be replaced. UMSON's operational costs for standardized patients continue to increase. These actors hired to represent patients and their families also help simulate real life experiences from which the nursing students learn.

The attached proposal reflects a comprehensive picture of these high cost items and others currently facing UMSON.

The University is requesting implementation in Fall 2020. If phased-in over a three-year period, full-time undergraduate students would be responsible for paying:

\$250 per semester during the first academic year of implementation,
\$500 per semester during the second academic year of implementation, and
\$750 per semester during the third and first full year of implementation

All current students will be “grandfathered” and thus not subjected to the “program cost catch up” increments. The request and expectation is that the stated tuition increments would accompany any tuition increase approved by the Board of Regents for the respective academic year.

ALTERNATIVE(S): The Board may elect to adjust the recommended tuition schedule.

FISCAL IMPACT: Given the enrollment patterns observed between 2018 to present, the School of Nursing would expect to generate much needed revenue in the range of \$900,000 to \$1,000,000 upon full implementation. The additional revenues collected would be distributed through two primary channels:

- Expansion of financial aid – at least 18.2% (estimated \$180,000 annually when fully implemented); and
- Funding for academic excellence – up to 81.8% (estimated \$818,000 annually when fully implemented)

By implementing this proposal for the BSN degree program, the tuition revenue will more closely align with the costs of the program.

CHANCELLOR’S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve the tuition proposal for the University of Maryland, Baltimore UMSO as described above. Following full implementation, the University shall provide a report to the Board of Regents that reflects the benefits and challenges of implementing the UMSO proposal.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Ellen Herbst (301) 445-1923

University of Maryland, Baltimore – School of Nursing Undergraduate Tuition Proposal

Prepared for the University System of Maryland Board of Regents

November 20, 2019

Executive Summary

The University School of Maryland School of Nursing (UMSON) provides Maryland residents and others with the opportunity to pursue an upper-division baccalaureate degree in nursing on the Baltimore campus and at the Universities at Shady Grove. Upper-division typically represents the junior and senior years of a baccalaureate degree. The business model of an upper division program has unique challenges in comparison to a four- year program. There are significant costs associated with offering a professional degree program based on upper-division cohorts. As an upper-division nursing program the tuition generated from the students must cover a greater portion of the high cost incurred to provide a quality educational experience.

The financial challenges of delivering a high quality upper-division baccalaureate nursing degree support the need for a *program cost catch up*. By implementing a supplemental tuition increment to our BSN degree program, the tuition revenue will more closely align with the costs of the program.

The employment outlook for nursing graduates with bachelor degrees is extremely promising. As the healthcare delivery model continues an emphasis on increased roles of nurses, there is and will be an increasingly greater demand for higher skilled nurses, e.g., those with bachelor degrees vs. RN's. As a result, those nursing graduates with bachelor degrees will have ample employment opportunities with competitive salaries.

Based on our analysis, a total tuition increment of \$3,000 would generate tuition revenue to help offset the costs of our upper-division baccalaureate program. This rate would be applied as a per semester rate of \$750 for full-timed enrolled majors. Students who are pursuing their degrees on a part-time basis would be assessed on a commensurate credit-hour basis of \$50 per hour. Students taking courses full time for more than four semesters, part-time students taking more than 60 eligible credit hours, as well as students pursuing dual majors within two affected departments, would not be charged a supplemental increment exceeding a total of \$3,000. This is consistent with a tuition differential that Towson University's Department of Nursing recently implemented during a student's junior and senior year.

All current students will be "grandfathered" and thus not subjected to the program cost catch up pricing. Beginning Fall 2020 the pricing will be phased-in over a period of three years. A gradual phase-in would better allow for student planning with regard to the increased tuition costs. The request is based on the expectation is that the tuition increment would accompany any tuition increase approved by the Board of Regents for the respective academic year.

If phased in over a three-year period, full-time students would be responsible for paying:

- \$250 per semester during the first academic year of implementation,
- \$500 per semester during the second academic year of implementation, and
- \$750 per semester during the third and first full academic year of implementation.

Based on the figures above, full-time students would pay a total of \$500 during the first year of the phase-in, \$1,000 during the second year, and \$1,500 during the third year and first full year of the program cost catch up. A goal in this proposal is to protect continuing in-state students from a large percentage increase.

Given the enrollment patterns observed between 2018 to present, the School of Nursing would expect to generate annual revenues between \$900,000 and \$1,000,000 upon full implementation. The additional revenues collected would be distributed through two primary channels:

- Expansion of financial aid – at least 18.2% (estimated \$180,000 annually when fully implemented); and
- Funding for academic excellence – up to 81.8% (estimated \$818,000 annually when fully implemented)

Allocation of these funds would ensure that UMSON faculty salaries are competitive with other university or private sector employment opportunities, programs are funded with all necessary resources to maintain maximum educational quality, and that low-income and minority students are not adversely impacted.

Introduction

Universities across the country are using tuition differentials more and more to support high cost programs. “Additional revenues obtained through these differentials allow universities to ensure that program quality is not compromised...”¹ Within the University System of Maryland tuition differentials have been used at University of Maryland College Park and Towson to support quality instruction for high cost programs.

The School of Nursing traditional baccalaureate nursing program is unique in the country in that only the upper division years, junior and senior years, are offered at UMB. This model is more challenging than most due to the lack of subsidy normally generated by the lower division years. There is a large clinical component for our students that generates cost that are described in more detail shortly. There are simulation labs equipped with manikins, advanced technology and specially trained staff to manage the technology. Actors are hired to represent patients and their families to simulate experiences that our nurses can expect to confront in practice. This is referred to as our standardized patient program. In a traditional four-year program the net income generated during the freshman and sophomore years of undergraduate education (e.g., large lecture sections for science course) offsets the high costs of delivering the junior and senior years. UMSON is a top tier school in the country and seeks to continue to offer a quality instructional experience to the students. US News & World Report rank the Master’s Program 12th in the nation and the Doctorate of Nursing Practice was ranked 6th. This is a clear indicator of the quality instruction received by UMSON students.

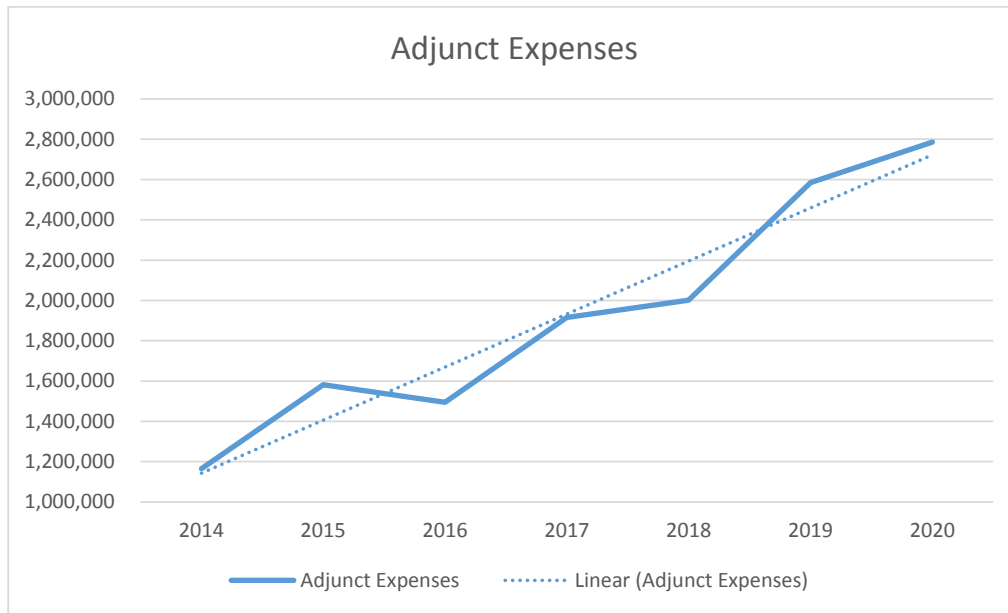
¹ Proposed Tuition Differential for Towson University, May 9, 2019

Need for Program Cost Catch Up at UMSON

Increase in Number of Adjunct Faculty

Increasingly health care employers are limiting the number of entry-level nursing students who can be assigned on a clinical unit for their clinical/practicum experiences. Historically student to faculty ratios were 8 to 10 students to 1 faculty member and now we are at 4 to 8 students per faculty member. However, the faculty time involved with on-site supervising and teaching the students in the clinical setting remains the same. As a result, more faculty members are needed to supervise the clinical/practicum experiences. Much of the adjunct expense is associated with growth in entry-level BSN enrollment (see Table 1). The growth in the BSN entry-level option in recent years was not supported with additional State funds and the additional tuition dollars do not cover the associated expense. Consequently, we have offset the expense through increased graduate tuition rates, including moving toward to single graduate tuition rate (verses a Master’s entry Clinical Nurse Leader (CNL) rate, Master’s non CNL rate, and Doctor of Nursing Practice/PhD rate). We must have the financial resources needed to compete with others for quality adjuncts and to protect the quality of the student experience without unduly burdening our graduate level students.

Table1. Growth in Adjust Faculty Expenses



In addition to the changing landscape for the clinical/practicum experiences, we are actively integrating experiential learning within our didactic courses which requires an investment in faculty development and additional staff with expertise in learning technology, including for our simulation labs. There is a greater reliance on our standardized patient program. Along with our University of Maryland, Baltimore colleagues in dentistry, law, medicine, pharmacy, and social work, we are also expanding opportunities for undergraduate nursing students to learn about team-based care, which requires additional faculty expertise.

Increase in Adjunct Compensation

UMSON is in direct competition with other Schools of Nursing in Maryland and the District of Columbia (for BSN program offered at Universities at Shady Grove) for adjunct faculty. Our current compensation model had been in place until 2019.

As indicated we rely heavily on adjunct faculty to provide clinical instruction and we have recently had to increase their compensation rate. The estimated impact of that market rate adjustment is \$300,000. In addition, to reward those adjuncts whose loyalty has been demonstrated through length of service, we instituted an adjunct tier II compensation model consistent with USM policy. The approximate annual cost to implement this change was \$191,000.

Greater investment in faculty development

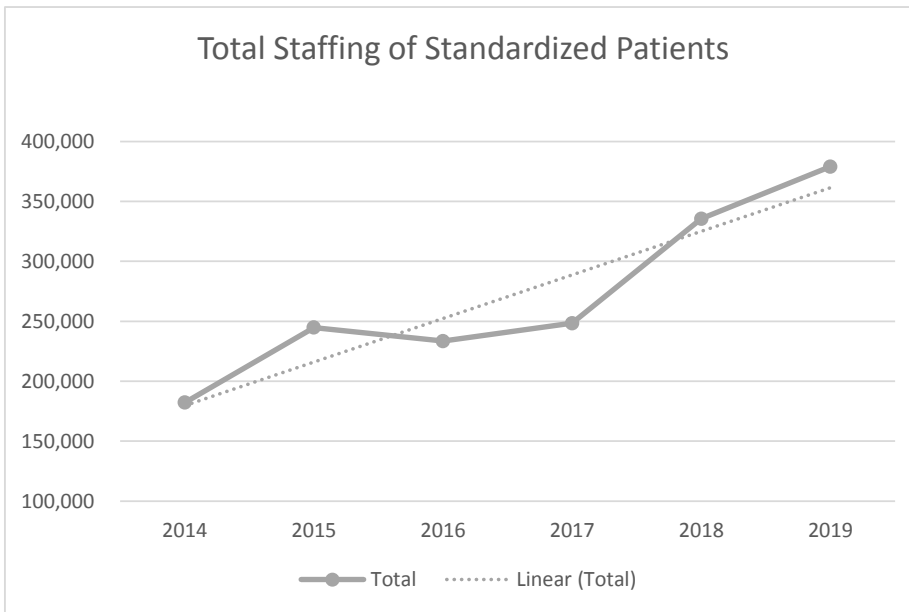
Faculty development is an ongoing need, both in terms of keeping abreast of one's specialty knowledge tied to the current state of clinical care but also in terms of evolving pedagogical approaches. Historically, the School of Nursing has budgeted \$800/year for each full-time faculty member. In 2014, we expended \$149,000 in support of individual faculty development and in 2020 we expect to spend \$266,000 in support of our 148 full-time faculty members. Our target is to double the funds available to support individual faculty development to capture the actual costs that are incurred (would require an additional \$266,000 in funding).

In addition, the School of Nursing is home for the Institute for Educators, whose mission is to prepare nurses for faculty roles in Maryland nursing schools and for educator roles in clinical settings and to provide ongoing professional development for faculty and educators in clinical settings. The Institute's current personnel budget is \$760,000 (salary and benefits), of which 13% is funded through grants and contracts. Consistent with the fact that the nursing workforce is "graying", so is the faculty workforce.

UMSON, and other Schools of Nursing throughout Maryland and the nation, are expecting significant turnover in their faculty due to retirements. In order to address the ongoing needs of new, and continuing, faculty we have expanded the resources available through the Institute of Educators by three faculty FTE (estimated salaries and benefits, \$350,000). This investment will directly benefit UMSON faculty as well as other nursing faculty throughout Maryland and the region.

Additional costs related to Standardized Patient program

UMSON, in collaboration with the University of Maryland School of Medicine, supports the Standardized Patient Program at the University of Maryland, Baltimore. UMSON operational costs for standardized patients is illustrated in the following figure, which reflects a steady increase since 2014. UMSON use of standardized patients is expected to increase.



Additional costs associated with increased use of simulation

The use of simulation as a pedagogical approach in nursing education continues to expand with some proposing that upwards to 50% of clinical hours can be substituted with well-designed simulation based learning activities. Currently, between 10-15% of UMSON entry-level clinical experiences occur through simulation based learning activities. Simulation provides nursing students with the opportunity to expand their knowledge and skills in a safe environment.

Calendar year 2018 saw expansion and opening of UMSON Shady Grove Simulation laboratories, additional staffing was needed. (Pre-workforce development support.) We added 2 FTEs to assist in the operation of the facility, an RN Simulation Coordinator and a Simulation Technician. The salary and fringe expense for these new staff positions added \$186,420 to the budget. This is over and above the faculty and staff costs of \$197,375 already in place for simulation at Shady Grove. The Baltimore Simulation laboratory also added an additional faculty FTE. This position adds an additional \$101,680 in cost for Baltimore Simulation laboratories. This is over and above the faculty and staff costs of \$944,120 already in place for simulation at Baltimore. Simulation also comes with an ongoing expense associated with maintenance and replacement of equipment. Currently 11 manikins are nearing the heavy use to end of use due to the age of the equipment. Replacing the 11 manikins is estimated to cost \$560,000.

Benchmark Comparisons

In preparation for this request, information was pulled from University websites on the tuition charged by the Academic Alliance Big Ten Universities and baccalaureate nursing programs in Maryland and neighboring states. This information is summarized below.

Peer Academic Alliance Big Ten Nursing Programs: The UMSON BSN tuition is \$309 per credit in-state (note we have to use a per credit rate for better comparison). The Big 10 schools BSN in-state tuition range from \$268 per credit (Iowa) to a high of \$937 per credit (Penn State). Out of the Big 10 schools of nursing (13 total), our BSN tuition is the fourth lowest. Only 3 schools Iowa, Minnesota, and Indiana University Bloomington have lower BSN tuition rates than UMSON.

Other local and regional undergraduate nursing programs: We also compiled the tuition rates for other local and regional nursing programs in the neighboring states of Virginia, Delaware and Pennsylvania as well as the DC area. The rates ranged from \$242 per credit hour to a high of \$977 per credit hour. The list is reflected below to give you a sense of the schools in the upper and lower level of the undergraduate tuition rate. As you can see from the below, while we compete for students with all schools, UMSON is one of the top tier schools in the country yet regionally our BSN tuition rate is much lower than lower tier schools due to the continued cap on undergrad tuition increases.

Higher Education Institution (Resident)	State	Type	Credit Hour
James Madison University	VA	Public	\$242
Morgan State University	MD	Public	\$268
Marshall University School of Nursing	WV	Public	\$282
George Mason University	VA	Public	\$302
<i>University of Maryland School of Nursing</i>	<i>MD</i>	<i>Public</i>	<i>\$309</i>
Old Dominion University School of Nursing	VA	Public	\$356
Radford University School of Nursing	VA	Public	\$378
West Virginia University Health Services Center School of Nursing	WV	Public	\$391
Virginia Commonwealth	VA	Public	\$403
University of Delaware	DE	Public	\$424
University of Virginia	VA	Public	\$523
University of Pittsburgh School of Nursing	PA	Public	\$977

Conclusion

UMSON faces many financial challenges due to our uniqueness of being a public upper-division nursing school. We do not have the benefit of the first two years of undergraduate tuition revenues to help offset the higher cost junior and senior years. As an upper-division public nursing program the tuition generated from the students must cover a greater portion of the high cost incurred to provide a quality educational experience. In addition, we should not “cross-subsidize” expenses in our BSN program from revenues in our graduate programs. In an effort to better align our undergraduate and graduate programs tuition revenues with their related costs, it is imperative that we implement a supplemental tuition increment for our traditional BSN program. By implementing our tuition proposal, approximately \$900,000-\$1,000,000 of new tuition revenue would be generated. As noted in our proposal, we plan on making 18.1% available in new scholarship funds. Using an average scholarship award of \$2,000-\$3,000, we would be able to offer financial assistance to 60-90 additional students annually. The remaining \$800,000-\$900,000 would help offset the high costs described above: adjunct expenses, simulation and standardized patient expenses and faculty development. We would be better positioned to align programmatic costs with the revenues generated from that program.

We believe that our request is justified for the UMSON based on our high cost of instruction, high demand by students, high national standing, high placement rate and salary upon graduation, and high economic impact to the state.



BOARD OF REGENTS

SUMMARY OF ITEM FOR ACTION,
INFORMATION OR DISCUSSION

TOPIC: University of Maryland, Baltimore: Bressler Research Building Exterior Upgrades

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: The University is seeking Board approval of a \$6.5 million project to make repairs to the façade of the Bressler Research Building. The building was built in 1972 and its façade has been virtually untouched in the years since. All identified work is on the exterior of the building.

The Board of Regents must approve all cash/self-funded projects that exceed \$5M.

The Work of the Project as defined by the Contract Documents consists of the following two major components:

- Systematic replacement of exterior sealant joints throughout the exterior enclosure, including wall joints, penetrations joints, wall/door/louver perimeter joints, and exterior wet seals for window glazing. Some limited replacement of failed exterior glazing units will be required.
- Masonry veneer modifications & restoration to address structural deficiencies in the masonry veneer as identified within the scope documents. This work will include improvements to the backup wall systems behind the masonry veneer, where deficiencies have been identified.

ALTERNATIVE(S): The nature of the project scope, the height of the building (17-stories to the roof) and the age of the building greatly limit options of remediation. Left as is, the façade will continue to deteriorate to a point where permanent sidewalk protection would need to be installed to protect pedestrians.

FISCAL IMPACT: The budget for this project is \$6.5 million, which will be paid for by institutional funds.

CHANCELLOR’S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve the Bressler Research Building Exterior Upgrades as described above.

COMMITTEE RECOMMENDATION: _____ DATE: _____

BOARD ACTION: _____ DATE: _____

SUBMITTED BY: Ellen Herbst (301) 445-1923

Project Cost Summary

UMB, 16-350 Bressler Research Building Exterior Upgrades

		Original
Date		12/12/2019
Stage of Estimate		Budget
Design/Fees		\$300,000
Construction Cost		\$5,600,000
Contingency	Includes Standard and Hot Market Premium	\$600,000
Project Total		\$6,500,000
Notes:		Cost estimate provided by Forella Group, LLC via Ziger/Snead Architects and UMB Design and Construction



Bressler Research Building, University of Maryland, Baltimore



TOPIC: University of Maryland, College Park: NextGen Energy Systems Program

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY:

Background. In January and December, 2018, the University informed the Board of Regents (Board) about the expiration of the University's 1999 energy program (which occurred on August 31, 2019) and the measures being implemented to assure continuation of heating, cooling, and electric service to the campus during the development and procurement phases of the NextGen Energy Systems Program (NextGen Program), the University's next long-term energy program.

The 1999 energy program was an innovative public-private partnership (P3) that succeeded in making capital improvements to the University's energy infrastructure and meeting its energy requirements for the past 20 years. The onsite electric generation equipment and other portions of the energy generation and distribution systems, however, have reached the end of their useful lives and substantial additional capital investment is required.

NextGen Program Development. Over the past year, the NextGen development team has analyzed current operations, financial and funding options, budgetary considerations, and options for meeting the University's sustainability goals. The team, with the concurrence of the University's administration, has determined that continuing the P3 model is in the University's best interest. The team has prepared a Pre-Solicitation Report (Report) that meets the requirements of both the State's public-private partnership statute (P3 Statute) and the Board's Policy VIII-17.00 – Policy on Public-Private Partnerships (USM P3 Policy).

P3 Designation. The P3 Statute requires that all potential P3's be reviewed by the General Assembly's budget committees, submitted to other legislative officers and the Department of Legislative Services, the State Treasurer, and the Comptroller, and approved by the Board of Public Works (BPW) before beginning formal solicitation of proposals. The USM P3 Policy requires the Board's approval of all P3s undertaken by any of its constituent institutions before submitting information to the committees, state officials, or the BPW.

Requested Action. The University System requests that the Board designate the NextGen Program as being suitable for procurement as a P3 for the reasons set forth in the Pre-Solicitation Report so that the University can move forward with the statutorily required process for securing State review and approval of the NextGen Program's procurement as a P3. Board action is necessary now so that legislative review can occur prior to, and immediately after, the opening of the new legislative session in January.

ALTERNATIVE(S): If the Pre-Solicitation Report is not approved, the University will not be able to move forward procurement of the NextGen program as a P3. The University will be required to fund necessary capital improvements internally and to re-constitute its energy system workforce since all persons managing, operating, and maintaining its energy systems are employees of the third-party operator.

FISCAL IMPACT:

- The University's energy assets are at the end of their useful life and technical analysis estimates that, if substantial capital investment does not take place, the delivery of energy services over the next 33 years would cost \$1.2 billion (in net present value term).
- The Pre-Solicitation Report's preliminary affordability analysis demonstrates that capital investment to upgrade the energy assets will lower the University's energy services cost by \$200 million to approximately \$1.0 billion (in net present value terms) over the 33-year period.

FUTURE STATUS REPORTS: After the BPW's approval, the University will implement the procurement process set forth in the Pre-Solicitation Report. The University anticipates briefing the Board following the selection of short-list service providers and after selection of the preferred provider and the terms of the arrangement are developed. Under the USM P3 Policy, the final NextGen Program agreements must be presented for Board approval before submitting them to the Comptroller, State Treasurer, Budget Committees, and the State Department of Legislative Services for their review and comment. Upon completion of this review period, the final agreements will be submitted to the BPW for its approval.

CHANCELLOR'S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents designate the NextGen Program as being suitable for procurement as a public-private partnership for the reasons set forth in the Pre-Solicitation Report.


COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Ellen Herbst (301) 445-1923



BOR Finance Committee Briefing
NextGen Energy Systems Program
December 12, 2019



Executive Summary

- NextGen Energy Systems Program (NextGen) Objectives
 - Meeting UMD's long term energy requirements while advancing strategic and operational goals
 - Improving energy services' long-term resiliency and seeking opportunities to implement innovative energy systems
 - Maximizing the value of UMD's available funds for energy services

- Public Private Partnership (P3) to deliver NextGen Objectives:
 - Strong performance incentives
 - Risk Transfer
 - Whole life-cycle planning and cost optimization
 - Enhanced Opportunities
 - Financial Benefit
 - Innovative Technology and Best in Class Operations

NextGen Energy System Program

The NextGen Program was established to ensure that the University provides reliable, efficient and affordable energy services over the next 30 years; while also serving as a platform to meet University-wide sustainability goals

- Components of UMD's energy system are aging and approaching their useful life
- Deferred maintenance, particularly with respect to the steam distribution, has reduced the system's overall operating efficiency thus increasing operating costs
- The Central Energy Plant ("CEP") is increasingly experiencing significant technical issues with its two aged combustion turbines, which require frequent servicing, thus contributing to suboptimal plant efficiency
- The existing 1999 third-party operations and maintenance contract for the energy system expired on August 31, 2019 which transfers much of the operating risk back to the University
- There is an ever increasing focus on the importance of ensuring sustainability within the university, and achieving targeted goals for carbon reduction and energy efficiency through 2050

The NextGen Program encompasses the development of a holistic strategy based on a careful evaluation of the operational profile of existing energy assets, commercial mechanisms to improve day-to-day management and operations of these assets, and the structuring of delivery options that account for budget limitations

Lessons from the 1999 Agreement

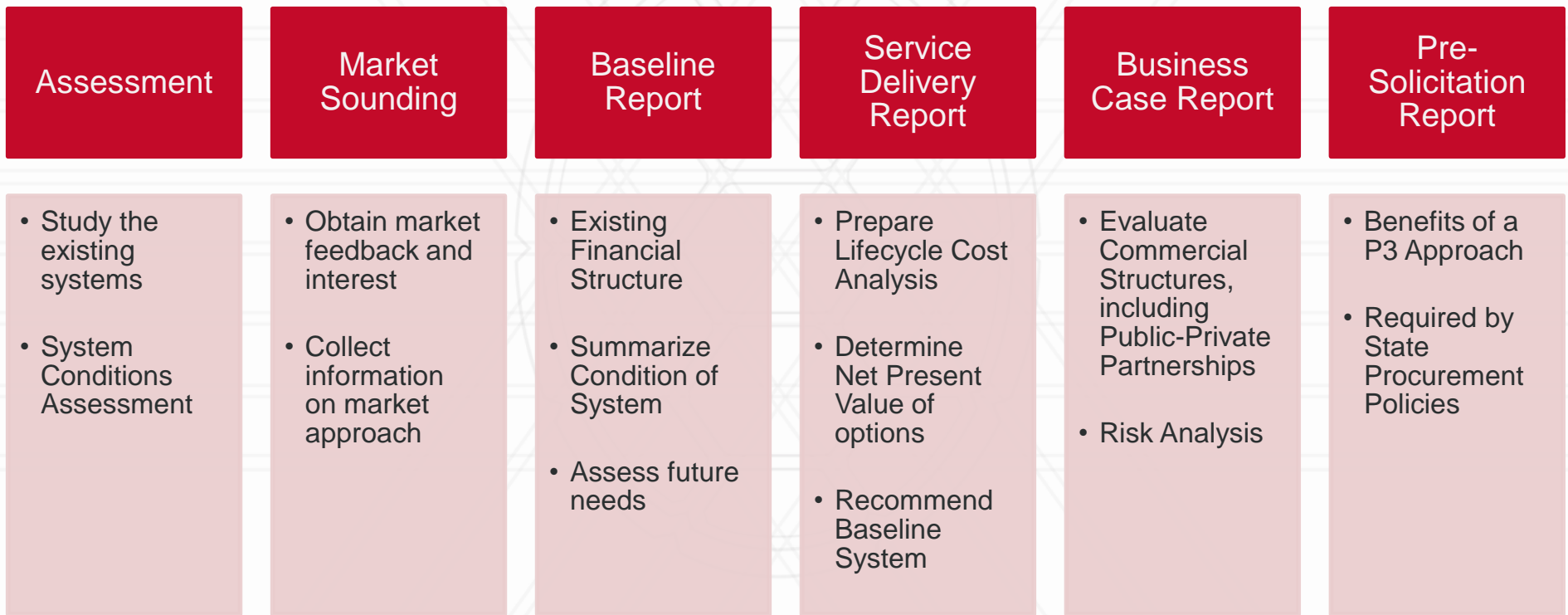
The 1999 Energy Program was an innovative approach to meet UMD's long-term energy requirements within available funding and UMD's experience with the Program offers many lessons

- Monitor performance metrics and energy system condition consistently
- Devote sufficient resources to monitor and enforce contractual performance requirements/standards to maintain service quality and meet NextGen expectations over time
- Review operating data on a real time basis and communicate regularly with operator to coordinate operations and optimize interconnected energy system performance
- Use incentives, quality control, and other measures to build a shared culture of continuing system improvement that adapts the energy systems to technological, legal, and societal changes
- Mitigate risk of outdated, end-of-useful life energy facilities at NextGen's termination by aligning the interests of UMD and operator in making cost-effective improvements throughout the term
- Structure NextGen contracts to weather corporate mergers and restructurings to ensure successors share priorities of original contracting parties (perhaps with more attention to transition periods or approval of assignments)
- Utilize commercially-proven technology for critical equipment, but constantly monitor industry for cost-effective, sustainable alternatives.

Interim Energy Bridging Program (IEBP)

- Purpose
 - Bridge the gap in operation and maintenance of UMD's energy systems while NextGen Energy Systems Program is developed
 - Duration
 - Starts 9/1/2019
 - Expires 6/30/2024
 - Termination for Convenience: 6 Months
 - Contract Type
 - Interim Energy System Services Agreement (IESSA): Inter-Agency Agreement. Between UMD and MEDCO
 - Interim Management Operations & Maintenance Agreement (IMOMA). between MEDCO and College Park Energy
 - Services Provided
 - IESSA: MEDCO continues to deliver energy services to UMD
 - IMOMA: Management, operations, and maintenance services of systems
-

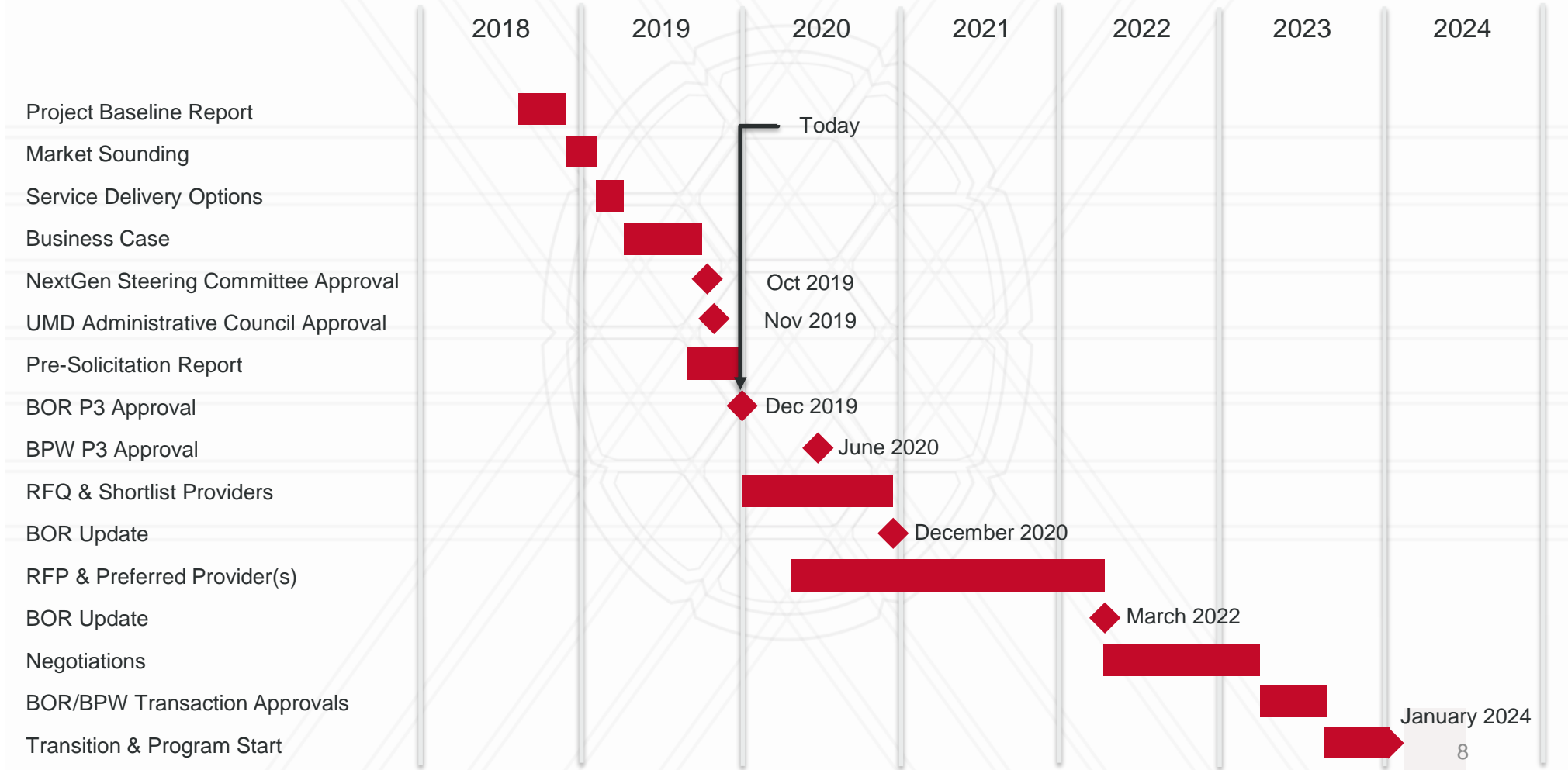
Process To Date



NextGen Scope Discussion

- Five technical options to provide energy and thermal services were examined to ascertain their total capital and cycle costs to UMD over the life of the assets
- This assessment was used to develop a base scope that includes the following:
 - upgrade of the Central Energy Plant,
 - the creation of campus renewable energy districts,
 - replacement of the campus steam distribution system, and
 - upgrades to chiller equipment
- This option provided the lowest lifecycle cost to the University while allowing for the flexibility to incorporate sustainability initiatives such as the introduction of renewable natural gas to power the facility
- Using this baseline option, UMD analyzed two alternative commercial delivery options a 501(c)(3) option, and/or a Concession option to serve as a benchmark to guide the Request for Qualifications and Request for Proposals processes. A final structure determination will be based on the financial and risk profile of competing proposals.

NextGen Energy Systems Program Timeline





UNIVERSITY OF
MARYLAND



UNIVERSITY OF MARYLAND

University of Maryland, College Park
NextGen Energy Systems Program
Pre-Solicitation Report

Prepared in Compliance with
Maryland Code
State Finance and Procurement Article §10A-201

November 22, 2019

1. INTRODUCTION

In accordance with State Finance and Procurement Article §10A-201 and the University System of Maryland's Policy VIII-17.00 – *Policy on Public-Private Partnerships* §IV-C, the University System of Maryland respectfully submits this public-private partnership pre-solicitation report for the NextGen Energy Systems Program (“NextGen Program”) at the University of Maryland, College Park (“UMD”) to the Comptroller, State Treasurer, the Budget Committees (Senate Budget and Taxation Committee, the House Committee on Ways and Means, and the House Appropriations Committee), and the Department of Legislative Services. The NextGen Program continues UMD's 20-year policy initiative for securing high-quality, reliable, and sustainable steam, electric, and chilled water services for its campus through a public-private partnership (“P3”).

UMD's P3 initiative began in 1995, when the University was faced with serious deficiencies in its aging steam generation and electric distribution systems. As the result of a competitive procurement, UMD, in conjunction with the Maryland Economic Development Corporation (“MEDCO”), entered into a P3 with a leading private sector energy provider to make capital improvements to the campus energy systems and to manage, operate, and maintain the systems through August 31, 2019.

Beginning in 2015, UMD assessed the energy systems' condition, examined the campus' long-term energy requirements (including reducing carbon emissions), and assembled a team of engineering, financial, and legal professionals who, working alongside the UMD Facilities Management Department's staff and in consultation with key members of the UMD and University System of Maryland administration, performed the technical, financial, and legal analysis necessary to identify the technical and commercial delivery options available to UMD for the NextGen Program. UMD respectfully presents this report to summarize the team's conclusions, to seek the NextGen Program's designation as a P3, and to request approval of the solicitation process set forth in Section 9 below.

1.1 Executive Summary

UMD envisions the NextGen Program as a means for ensuring that it receives reliable, efficient, and affordable energy services over the next 30 years while also serving as a platform for meeting UMD-wide sustainability goals for energy production and usage. The NextGen Program has three objectives:

- Meeting UMD's long-term energy requirements in a manner that advances UMD's strategic and operational goals
- Improving long-term resiliency of energy services and seeking opportunities to implement innovative energy systems such as micro-grids, hot water districts, and renewable energy systems; and

- Maximizing the value of UMD’s available funds for energy services by pursuing commercial structures that take advantage of time-limited tax incentives and historically low interest rates

UMD has determined that these objectives can best be achieved with a P3 for the following reasons:

- **Strong performance incentives:** A P3 increases UMD’s likelihood of securing long-term high-quality and efficient energy services by selecting a private sector partner with extensive experience that can be held accountable for service deficiencies through performance guarantees and the monitoring of key performance indicators (“KPIs”).
- **Risk transfer:** One of the fundamental purposes of a P3 is the development of an agreement that outlines the optimal risk allocation between the public and private entities based on the principle of transferring risk to the entity that is best able to cost-effectively manage that risk.
- **Whole life-cycle planning and cost optimization:** A P3 enables UMD to realize the best value for its energy expenditure through a holistic approach to energy system planning that seeks the optimal balance of energy generation and consumption, thereby “right-sizing” energy facilities and avoiding overbuilding and wasting capacity.
- **Enhanced opportunities for innovative technologies and best in class operations:** A P3 with an experienced district energy provider provides UMD access to field-tested new technologies, particularly in relation to renewable energy and energy efficiency, as well as global, high-quality operating practices.
- **Potential financial benefit:** Going back to in-house operations of the plant would be costly for the UMD, as there would be significant costs to hiring and training a UMD-employed facility workforce. In addition, through employing private capital, financing risks could be shifted to the private sector.

Program Structure. The University, in consultation with stakeholders, has undertaken a thorough analysis and careful consideration of the commercial solutions available for the continued delivery of thermal and electric loads in a sustainable manner. After a careful review of project delivery risks, as well as alignment with UMD stakeholder goals, UMD recommends that the NextGen Program to be structured as a P3 using either a 501(c)(3) Model or a Concession (Availability Payment) Model. Under the 501(c)(3) Model, UMD would finance energy system capital improvements through a tax-exempt entity (such as MEDCO) and contract with a private sector entity to design, engineer, and install those improvements and manage, operate, and maintain UMD’s energy systems. Under the Concession Model, a private sector concessionaire would finance capital improvements using a mixture of equity and taxable debt, design and build those improvements, and manage, operate, and maintain the energy systems.

Market Sounding. UMD has conducted market soundings with recognized leaders in the district energy industry and has concluded that either model is commercially viable. Preliminary results under the Base Case assumptions indicate that the 501(c)(3) option and Concession

agreement structure have relatively similar economic cost for UMD over an assumed 33 years contractual term (30 years of operations plus 3 years of construction) should the private partner be able to fully utilize currently available tax benefits. The University is prepared to commence a transparent and fair competitive solicitation process for the selection of delivery of the NextGen Program once the required approvals are obtained.

2. BACKGROUND

The NextGen Program represents the second phase of a policy initiative by the State to partner with the private sector to meet UMD's long-term requirements for heating and cooling service. This section describes the origin and structure of this initiative, which became known as UMD's Energy and Utility Infrastructure Program ("1999 Program"), identifies the initiative's achievements, and discusses its lessons for the NextGen Program.

2.1 The 1999 Program

Origins

UMD's P3 initiative began in 1995 when the University faced serious deficiencies in its aging steam generation and electric distribution systems. At that time, the estimated cost of the capital improvements necessary to assure the long-term availability and reliability of heating and cooling services exceeded \$50 million. The University applied to the Maryland Department of Budget and Management ("DBM") for a commitment of capital funds, but DBM rejected the request and encouraged UMD to explore alternatives, including a P3.

In June 1997, UMD issued a Request for Proposals seeking comprehensive private sector proposals for capital improvements to its steam, chilled water, and electric systems and for managing, operating, and maintaining these systems. Three entities submitted technical and financial proposals. The initial evaluation, which was conducted in early 1998, concluded that the three proposals should be further clarified through discussions with each offeror. Following those discussions and the submission of final proposals in February 1999, UMD's Procurement Officer recommended award of the program to College Park Energy LLC ("CPE") (now a subsidiary of Engie North America, N.A.), which was approved by the University System's Board of Regents on April 9, 1999 and by the State's Board of Public Works on April 21, 1999. Final contracts were signed on August 31, 1999.

Scope

The 1999 Program's scope was unprecedented at the time. Other institutions of higher education had utilized P3's to modernize and operate their central energy plants, but the 1999 Program's partnership also extended to UMD's steam, electric, and chilled water distribution systems, its electric and natural gas supply procurements, and incorporated building energy conservation measures. This broad scope offered the possibility of meeting UMD's energy requirements holistically, taking advantage of the private sector's skills in energy planning and procurement to deliver reliable energy services at the lowest reasonable overall cost.

Structure

To achieve its objective of financing capital improvements with tax-exempt, off-balance sheet debt, UMD leased its existing steam and electric systems to the Maryland Economic Development Corporation ("MEDCO"). MEDCO in turn entered into management and construction agreements with CPE. Concurrently, UMD entered into an energy services agreement with MEDCO, as well as agreements with CPE that (i) governed the transition of its central plant employees to CPE, (ii) retained CPE as its agent for fuel and electric supply

procurement, and (iii) provided for CPE to design and implement a demand side management/energy conservation measures for UMD's buildings.

CPE assumed responsibility for UMD's steam and electric systems in September 1999. In June 2001, MEDCO issued over \$72 million in tax-exempt bonds to finance the capital improvements. CPE completed construction of the capital improvements in late 2006.

Accomplishments

The 1999 Program set a benchmark for higher education energy infrastructure renewal projects by demonstrating that:

- A P3 can successfully and reliably deliver steam, electricity, and chilled water over the long term to support an institution's educational and research mission even during periods of rapid growth in energy demand. The 1999 Program provided steam, electricity, and chilled water to UMD for 20 years, even as campus demand for those services increased by 38%, 35%, and 35%, respectively.
- Performance guarantees, backed by substantial liquidated damages for failure to meet the required performance levels, can provide effective incentives and accountability measures.
- Significant environmental benefits and operational efficiencies can be achieved by relying on "trigeneration" technology to recover useful heat for the generation of steam, electricity, and chilled water. Upon the completion of UMD's Central Energy Plant ("CEP") capital improvements, the U.S. Department of Energy and the EPA determined that the plant's efficiency had increased to 68% (more than double that of a traditional steam generation plant) and had reduced UMD's carbon emissions by an estimated 53,000 tons per year from pre-1999 levels. As a result, they recognized UMD with the 2005 Energy Star CHP Award.
- Onsite electric generation can produce significant financial benefits for an institution, not only in reducing the cost of electric supply by displacing electricity purchased from the grid, but also in generating electricity to lower peak electric consumption and thereby decreasing transmission and distribution costs.

Lessons Learned

The 1999 Program also taught UMD lessons for the NextGen Program:

- Reliable operation of an energy system requires constant improvement, not just at the program's beginning, and the private sector system operator should have a stake in the energy systems' condition throughout its term. The 1999 Program was based on a "once and done" approach to capital improvements. The NextGen Program should incentivize the operator to identify capital improvements proactively to anticipate problems, enhance the systems' reliability and sustainability, and take advantage of new energy conservation, distribution, and generation technologies.
- Performance guarantees help ensure service reliability at the delivery points, but do not guarantee that the operator will implement preventative maintenance and quality

control programs. In addition to securing performance guarantees, the NextGen Program should require such programs and establish KPIs to hold the operator accountable for the energy systems' condition throughout the Program's term.

- Monthly and annual reports are insufficient for UMD's monitoring of the private operator's performance and the energy systems' condition. The NextGen Program should authorize UMD to monitor the KPIs in real time by accessing the operator's operating data and metering systems and its computerized maintenance and management system.

2.2 Energy Service Changes Since 1999

Since 1999, the energy industry as a whole and UMD specifically have experienced numerous major changes that directly affect the NextGen Program. Among these changes are:

- **UMD Energy System Personnel:** A key aspect of the 1999 Program was the transfer of responsibility for UMD's energy system staff to CPE. As those staff members retired or otherwise left UMD employment, CPE replaced them with its own employees. Consequently, UMD no longer possesses either the staff or institutional knowledge to manage, operate, and maintain the energy systems effectively.
- **Climate Change:** Reducing carbon emissions has become a major focus of global energy policy. Both the State and UMD have committed to achieving carbon neutrality no later than 2050.
- **Technological Change:** Energy generation, transmission, lighting, motor, and control technology has made revolutionary advances since 1999. Electricity generated by renewable resources has become commonplace, conventional generation has become more efficient, and large baseload power plants that cannot follow electric loads are being replaced by highly efficient, load-following facilities.
- **Financing Change:** UMD's only avenue for financing the 1999 Program's capital improvements while retaining ownership of the energy systems was the issuance of debt by the University System, MEDCO, or another State entity. Now, large district energy companies (often working with private equity firms) have access to capital sufficient to finance all or a substantial portion of capital improvements themselves and to recover their investment (plus a return) through payment mechanisms such as availability payments. Additionally, federal tax law and accounting changes make off-balance sheet financing of public sector infrastructure projects more difficult than in the past.
- **Availability of Tax Incentives:** Federal law has created time-limited tax incentives for certain capital projects. These incentives (such as the Cogeneration Investment Tax Credit and Bonus Depreciation) are only available for entities with taxable income but can substantially reduce costs for public sector capital improvements undertaken by P3's.

2.3 The Interim Energy Bridging Program

The MEDCO bonds that financed the 1999 Program's capital improvements were retired in July 2019 and the contracts that governed the program expired on August 31, 2019. To ensure that UMD's energy services continue uninterrupted, UMD, MEDCO, and CPE negotiated service agreements to preserve the status quo during the NextGen Program's development and procurement phases. These agreements differ from their predecessors in the following ways:

- **Term:** The Interim Program's primary term expires on June 30, 2024 but can be terminated with six-months' notice
- **No Performance Guarantees:** The 1999 Program's capital improvements are nearly twenty years old, which precludes meaningful performance guarantees to assure energy system reliability
- **Financial Risk:** Unlike the 1999 Program's contracts, the Interim Program's contracts shift virtually all operational and financial risk for the energy systems to MEDCO and ultimately, UMD

2.4 Summary

The 1999 Program showed that a P3 works to supply reliable steam, chilled water, and electric service to support UMD's educational and research mission. The NextGen Program Team proposes to continue and improve upon that model, relying on lessons learned and taking advantage of new technology, maturing energy markets, and financing opportunities. The next section of this report explores in depth the reasons why the P3 model continues to be the best vehicle for delivering long-term energy services to UMD.

3. REASONS FOR USING P3S TO DELIVER ENERGY SERVICES

3.1 Policy Reasons and Core Mission Focus

The strategic goal of UMD's energy infrastructure procurement is to ensure that it obtains reliable, efficient and affordable energy services over the next 30 years, while also serving as a platform to meet its sustainability goals. The key policy drivers are described below:

- **Assets at end of useful life:** Components of UMD's energy system are aging and approaching their useful life. The CEP is increasingly experiencing significant technical issues with its two aged combustion turbines, which require frequent servicing, thus contributing to suboptimal plant efficiency.
- **Deferred maintenance:** Deferred maintenance, particularly with respect to the steam distribution, has reduced the system's overall operating efficiency, thus increasing operating costs. The Steam distribution and condensate return system has a 29% system loss rate compared to peer benchmark losses of 10% to 15%.
- **Sustainability focus:** There is an ever-increasing focus on the importance of ensuring sustainability within UMD and achieving targeted goals for carbon reduction and energy efficiency through 2050.
- **Ensure world-class operations and maintenance services:** The 1999 Program's operations and maintenance contract expired on August 31, 2019 and a new interim agreement provides for continued third party management of the campus energy infrastructure over the next five years. UMD, however, is taking on a higher amount of risk, and there is an opportunity to reconsider the optimal commercial structure to address its strategic priorities, particularly in regard to operations and maintenance services.

Ultimately, the modernization of campus energy assets is well aligned with UMD's policy objectives, and encompasses the development of a holistic strategy based on a careful evaluation of the operational profile of existing energy assets, commercial mechanisms to improve day-to-day management and operations of these assets, and the structuring of delivery options that account for budget limitations.

In addition to the policy goals, UMD's objectives align with the core values and building blocks described in its 2016 strategic plan, thus facilitating its aim to provide a world-class education while extending preeminence in research and scholarship.

Building Blocks	Core Values	Energy Infrastructure Goals
<p>Infrastructure and Academic Support: “We will build an infrastructure and academic support system essential to a world-class university”</p>	<p>Act with Entrepreneurial Spirit: “Tackle big issues, seize opportunities and adapt quickly to changing circumstances; [including] partnering with others, locally and globally”</p>	<p>Address University’s Energy Requirements</p> <ul style="list-style-type: none"> • Select optimal technology that meets strategic and operational goals
<p>Resources and administrative efficiency: “We will be disciplined in allocating existing resources in support of our priorities, generating additional revenue, and relentlessly seeking greater efficiency in everything we do”</p>	<p>Embrace Technology: “We will embrace the power of technology to advance our teaching, research, and service missions”</p>	<p>Improve resiliency and implement renewable energy systems</p> <ul style="list-style-type: none"> • Consider micro grid technology, hot water districts and renewable energy systems • Strengthen energy performance data collection to improve operations and preventive maintenance
<p>Implement a better budget model Continuing state budget shortfalls have heightened awareness of the need for a better budget model</p>	<p>Take Responsibility for the Future: “Enhancing the quality of life of all people, sustaining the natural environment and reinforcing the capacity of Maryland’s citizens to thrive and prosper in a diverse, ever-changing, globally competitive environment.</p>	<p>Account for Affordability Limitations Develop/Scope for commercial structure options that maximize value for money</p>

By addressing these goals through a P3 structure, the University will be able to focus less on the reliability issues and asset failures associated with the current system, and more on fulfilling the mission of providing excellent teaching, research, and service and educating students while advancing knowledge in areas of importance to the State, the nation, and the world.

3.2 Operational and Financial Considerations

Operational and financial performance are directly related. Key objectives to help facilitate operational improvement, which will translate into real cost savings, are as follows:

- Optimize Satellite Central Utility Buildings (“SCUB”) and Chiller Plant Operations
- Develop KPIs
- Strengthen energy performance data collection to improve operations and preventive maintenance
- Renew thermal distribution system
- Optimize plant controls to achieve energy savings
- Focus on maintaining the value of assets beyond the end of the commercial arrangement through targeted life-cycle investment and preventive maintenance

To better understand the economic losses associated with some of these operational inefficiencies, the University commissioned a utility condition assessment, starting in 2015 and updated in 2018. This analysis was supplemented with further operational and financial analysis in 2019. The table below presents the range of estimated costs that may be avoided through modernization of the campus energy infrastructure and addressing related deferred maintenance.

Opportunity	Costs Avoided Through Modernization	
	2018 Condition Assessment Report	2019 Business Case Analysis
Repower Central Energy Plant	Up to \$4-6m reduction in purchased energy (primarily electricity) per year ¹	Up to a \$11m reduction in purchased energy (primarily electricity) per year ¹
Renew Steam Distribution System	Up to \$4m reduction in water purchasing costs per year, based on current losses of approximately 700 million gallons of water per year, due to leaks ² Up \$1.5m in additional fuel cost as a result of system losses of 29% compared to 10%-15% seen at peer universities	Up to \$2m ³ p.a. reduction of water and chemical purchasing costs Up \$1.5m p.a. reduction in additional fuel costs
Cost Avoided⁴	Up to \$9.5 m - \$11.5m per annum	Up to \$14.5m per annum

3.3 Market Attractiveness for Private Sector Partners

Robust market interest and competition from the private sector during a P3 bidding process is important for achieving value to UMD. In early 2019, market sounding interviews with industry were undertaken to assist the University in evaluating industry perspectives on options for the modernization of its campus energy infrastructure. The University specifically sought to a) gauge market interest in participating in a procurement process related to the project; (b) understand participants’ views on the optimal procurement, commercial and financial structure to meet the needs of the campus; and (c) obtain feedback to further inform the evaluation of alternatives and the structure of a potential procurement process. After conversations with 11 firms, it was confirmed that the UMD energy infrastructure project is one in which the private

¹ “Utility Condition Assessment- Final Submission”. 2018 Jan. Page 9 of 158. *Note, this report indicates \$10m/year in energy costs, however this figure was revised downward to \$4-6m range due to lower commodity prices”

¹ Business Case Analysis. 2019.

² Interview with engineering consultants on 9/4/18

³ Business Case Analysis- 2031 figures when the distribution upgrade is fully complete

⁴ Note that these figures are preliminary in nature and represent an estimate of potential cost avoidance

sector has significant interest in potentially partnering. Additional themes which emerged out of the market sounding are as follows:

- Participants recommended a 25-30+ year term, and many were comfortable with up to 50 years, to secure beneficial pricing to the university
- Either a 501(c) (3) or Concession agreement structure would be acceptable to participants, with a few interested in an asset purchase agreement
- Private sector capital was readily available to finance capital investment, and other UMD requirements, if requested

Within the broader higher education energy market, there are several comparable P3s in the market which have sparked renewed interest in this asset class. These include completed and contemplated projects at The Ohio State University, the University of North Dakota, Iowa State University, Dartmouth University and Fresno State University.

4. DECISION TO RE-AUTHORIZE A P3 MODEL AT UMD

4.1 UMD Campus Infrastructure, the 1999 Agreement and 2019 Interim Agreement

UMD's energy infrastructure systems consists primarily of the CEP, steam and electric distribution systems, and multiple district chilled water systems with the chillers located in Satellite Central Utility Buildings ("SCUBs"). The CEP includes a cogeneration system that generates electric power and utilizes the waste heat to produce steam which is distributed to campus. The CEP, the campus high pressure steam distribution system, the electric distribution system, and the SCUB IV chilled water system were operated by a third party under an agreement with MEDCO, which expired at the end of August 2019 and was replaced with an interim agreement that will expire in 2024, subject to a six-month termination provision.

4.2 Analysis Undertaken by UMD

UMD has taken a series of steps over the past several years to prepare for potential re-authorization of the P3 model to operate, manage, and maintain its energy infrastructure. Key steps in the process are outlined below:

- **Asset condition assessment and report:** In preparation for the 1999 agreement expiration, UMD commissioned a condition assessment of the CEP and steam distribution system as well as a review of the electrical and chilled water systems. The condition assessment included a survey and inspection of the major equipment within the CEP to identify short term repairs and estimate remaining life. The assessment of the distribution systems was based upon pipe age, installation type, historical repairs, thermal aerial survey, multiple test pits, inspection of the steam manholes and a review of metered energy use. A sampling of electrical manholes and transformers were surveyed as well. The cooling load and energy use for each of the SCUBs were evaluated from the available meter data. A chiller capital renewal and improvement plan was developed based upon unit age and service.
- **Energy systems operational and financial due diligence:** UMD undertook financial and operational due diligence of the campus energy system which summarized information in relation to asset condition, sustainability and environmental considerations, historical consumption and utility related energy spend, forecasted load, forecasted pricing for key commodities, and affordability considerations. Using this data, UMD developed a base scope to serve as the baseline for financial evaluation of alternative commercial options.
- **Commercial Delivery Options Analysis:** Two P3 commercial structures were considered by UMD and evaluated based on their compatibility with UMD's strategic objectives. One is the 501(c)(3) structure, which is similar to the original 1999 P3 arrangement with MEDCO. The second structure analyzed was the Concession Structure which involves a P3 concessionaire managing UMD's energy and utility systems under a Design-Build-Finance-Operate-Maintain ("DBFOM") structure.

Further discussion on the commercial structures analyzed is presented in Section 6. Throughout this process, UMD worked closely with stakeholders to keep them informed of the project and to solicit additional feedback for consideration. This outreach included student groups, the UMD Sustainability Council, and the UMD Steering Committee, among others. Their feedback has been instrumental in shaping UMD 's analysis and will continue to play an important role in the procurement process.

5. BENEFITS TO UMD OF CONTINUING THE P3 DELIVERY MODEL FOR ENERGY SERVICE DELIVERY

5.1 Key Benefits

Continuing with a P3 model offers UMD significant benefits, including the integration of the design, construction, and operations phases of the project thus reducing the risk of cost and schedule overruns. A renewed P3 program will also allow for multiple facets of the project to be coordinated and managed under a single entity. Finally, financial penalties and scrupulous oversight on behalf of UMD by project lenders and/or bond holders can help to ensure that the private developer is incentivized to comply with standards and specifications.

The key benefits of continuing the use of a P3 structure for UMD energy infrastructure are as follows:

- **Operations with strong performance incentives:** A P3 structure can provide for contractual incentives and disincentives, as payments to the private entity are subject to operator performance and KPIs. A performance-based agreement is used to help ensure the long-term operational integrity of the asset.
- **Whole life-cycle planning and cost optimization:** Developing resilient and reliable campus energy infrastructure requires considerably planning that incorporates not only the initial design, build and associated financing, but also significant diligence on the long-term operations and maintenance lifecycle and the mitigating the inherent risks associated with each development and operational phase. Under a P3 structure, the private sector will be required to develop pricing that considers the costs needed to operate and maintain the asset over its entire lifecycle, thus promoting better build quality to ensure the integrity of the asset through the contract period through to hand-back.
- **Risk transfer:** One of the fundamental tenets of a P3 is the development of an agreement that outlines the optimal risk allocation between the public and private entities, based on the principle of transferring risk to the entity that is best able to cost-effectively manage and mitigate that risk. Key risks that would be transferred to the private entity in the context of UMD's energy infrastructure are providing improved funding certainty for future required capital expenditures and reducing the risk of suboptimal technology selection and poor-quality materials that adversely impact performance.
- **Enhanced opportunities for innovative technologies and best in class operations:** Better preventive maintenance over the life of the project will reduce system losses for both the steam distribution system (affecting both water and fuel purchases) and the steam generation system (as cogeneration equipment downtime necessitates the use of less efficient boilers). A P3 entity could also be more incentivized to take advantage of emerging technologies to address UMD's energy needs through

leveraging international best practices related to energy efficiency and capitalizing on newer trends, particularly in the renewable energy space.

- **Financial benefit:** Going back to self-financed and operated energy infrastructure would be costly for UMD, as it would be required to hire and train a UMD-employed workforce. By continuing to use a P3 approach, UMD has the option of utilizing private sector equity. The financing risks are shifted to the private sector, allowing for additional flexibility with the use of project financing, including capital markets solutions, private placements, and bank solutions, as well as the possible use of the various financial incentives such as the Investment Tax Credit (“ITC”) and bonus depreciation in the Concessionaire case which would limit the cost of capital differential between tax exempt and private sector financing.

5.2 P3 Risk Mitigation

A central P3 concept is that risks are allocated to the party best able to manage them in a cost-effective way. Since risk transfer to the private sector is priced by the market, certain risk transfers may not offer value if the private sector cannot price them effectively. To better inform the magnitude of potential project risks, possible risk mitigation, and possible transfer of risks inherent in UMD’s energy infrastructure renewal under different commercial options, a risk workshop was held in May of 2019. The risk analysis included an evaluation of the following:

- Perceived risks relevant to the project for the 501(c)(3) and Concession structures
- Categorization based on the following project risk elements: Design, Construction, Demand, Operational, Commercial, Capacity, Financial, and Governance Risks
- Responsibility for each risk to either the asset owner or the third-party contractor/operator under both the 501(c)(3) and Concession structures
- The estimated probability of each risk occurring under the 501(c)(3) and Concession structures
- An allocation of the cost associated with each risk under the 501(c)(3) and Concession structures

UMD developed a risk adjusted contingency, comprised of the product of the probability of the risk occurrence and the likely cost impact of the risk. The 501(c)(3) scenario had slightly less risk transfer to the private sector than the Concession scenario, but both cases had much less risk exposure to UMD than the current interim agreement, under which UMD retained risk particularly with respect to capital expenditures and major maintenance during operations. Additional risk mitigation benefits under the P3 arrangements included:

- **Reliability of service:** Because of the more stringent performance requirements inherent in the P3 structures and the greater penalties for nonperformance throughout the project term, there is a greater emphasis on reliability of service. This could help mitigate the risk of unplanned outages, and other unexpected costs that the University has been exposed to over the past several years.

- **Financing risks:** The financing and funding risks are shifted to the private sector, thus allowing for additional financing structures, while mitigating the life-cycle investment risk to the University, particularly in later years.
- **Environmental Risks:** The NextGen Program incorporates the implementation of renewable energy districts and cogeneration technology that allows for the flexibility of using renewable natural gas to power the facility. Some of the future environmental risks will be mitigated by a potential P3 arrangement through the shared goals of deploying newer and more sustainability focused technologies throughout the term. UMD expects to benefit from obtaining the perspective of a private entity that has successfully implemented these emerging technologies at a variety of locations.

5.3 Potential P3 Implications

Continuation of the P3 model at UMD avoids adverse implications often associated with P3s while providing positive implications, including the following:

- **Workforce Implications:** None of the jobs in managing, operating, and maintaining UMD's energy systems are held by public sector employees. Therefore, there will be no State jobs lost as the result of continuing the P3 model.
- **Economic Development:** Renewal of the campus energy infrastructure will create construction jobs not only over the 3-year construction period, but also over the program term as capital improvements are made to create new renewable energy districts and maintain and enhance the efficiency of the energy systems. Furthermore, UMD expects current district energy internships to continue into the NextGen Program, which will train engineers and managers in renewable technologies and energy efficiencies, thereby supporting UMD's education mission and developing personnel for the new global energy industry.
- **Environmental Implications:** UMD expects that the NextGen Program will be an integral part of achieving UMD's sustainability objectives, not only through its installation of advanced energy technology, but also through gaining access via the P3 partner to best-in-class environmental operation and management practices.

6. PROPOSED P3 COMMERCIAL DELIVERY OPTIONS

Two P3 commercial structures are being considered by UMD for the NextGen Program's procurement based on their compatibility with UMD's strategic objectives. The first is the 501(c)(3) Structure, in which UMD would utilize tax-exempt financing through a tax-exempt entity (such as MEDCO) to finance capital improvements to its energy systems, and would enter into an agreement with a private sector provider to design, engineer, construct, and install capital improvements to the energy systems and to manage, maintain, and operate those systems for the program term. Substandard performance by the provider would result in reduction of its operation and maintenance compensation.

The second commercial structure is a Concession Structure, in which a P3 concessionaire would manage UMD's energy systems as a Design-Build-Finance-Operate-Maintain project. The Concessionaire (i.e. Developer/Investor) would finance capital improvements using a mixture of taxable debt and its own (or an equity partner's) equity. Deductions for substandard performance would reduce the Concessionaire's recovery of its equity investment as well as its expected return.

6.1 Initial Observations

UMD's analysis identified similar benefits to be obtained from each P3 approach compared to retaining full control in a "self-invest and operate" scenario:

6.1.1 Pros:

- Transfer of risk (additional funding/financing for future capital expenditures, technology selection and risk of poor-quality materials adversely impacting performance particularly for the Concession Structure)
- Investor/Developer potentially incentivized to innovate
- Payments subject to operator performance and KPIs
- No significant increase in operational costs compared to the status quo option
- Meets goal for efficiency, resiliency and growth

6.1.2 Cons:

- For the 501(c)(3) Structure, there are higher interface risks because it is somewhat more difficult to coordinate contract management to ensure UMD receives expected benefits

6.2 Results

Analysis indicates that the lifecycle costs of entering into a renewed P3 for its campus energy infrastructure would be comparable under either a 501(c)(3) Structure or Concession Structure, assuming that the full benefit of tax incentives available to the private sector are considered

(i.e. the investment tax credit, and bonus depreciation). There are several qualitative differences that favor a Concession P3 structure, including:

- Greater performance incentives as a result of equity commitments;
- The ability to improve security for the asset handback at end of life;
- Major maintenance funding availability of the contract term;
- More incentives and funding for campus wide improvements over time; and
- The potential for third party customers that could be leveraged to lower the cost to the University

Since the financial impact of these structures was similar, UMD intends to allow for flexibility in its procurement that would allow it to evaluate the value of each structure as part of the selection process. Further, if there is flexibility around these P3 options, it could be possible to structure the NextGen Program as a hybrid approach that would incorporate some elements of a 501(c)(3) Structure with a Concession Structure, thus allowing for the utilization of a more creative financial approach (i.e. tax-exempt debt for the distribution network and taxable for the generation renewal).

7. PRELIMINARY CONTRACT CONCEPTS/WORKING ASSUMPTIONS

7.1 Term Length

UMD currently envisions the NextGen Program having a 30-year operations term, with 3 years of construction. This term may be increased up to 50 years, the statutory maximum for P3s, or decreased to 20 years depending on offeror proposals and discussions throughout the solicitation process.

7.2 MEDCO Ground Lease

MEDCO's Ground and Equipment Lease of UMD's central plant and other pre-1999 energy infrastructure expires on June 29, 2029 but its termination can be accelerated by UMD and MEDCO's agreement.

7.3 Program Structure

UMD anticipates that the successful offeror will manage, operate, maintain, and improve all campus energy generation and distribution systems. For financing purposes, UMD may pursue a hybrid program structure in which the successful offeror finances capital improvements to, and assumes full responsibility for, only the steam, electricity, and chilled water production facilities. MEDCO (or other 501(c)(3) entity) would issue tax-exempt bonds for capital improvements to the distribution systems and retain the offeror as the systems' operator and construction manager.

7.4 Asset Ownership

UMD expects that following termination of MEDCO's Ground and Equipment Lease, the State would retain ownership of all portions of the energy systems existing prior to the NextGen Program's effective date. For financing purposes, UMD may lease those systems to the successful offeror. The offeror would finance and own all capital improvements, which would become State property at the end of the lease's term.

If UMD follows the hybrid program structure, the State would lease the steam, electric, and chilled water production facilities to the successful offeror, which would finance and own all capital improvements. Concurrently, UMD would amend the existing, or enter into a new, Ground and Equipment Lease with MEDCO (or other 501(c)(3) entity) for the steam, electric, and chilled water distribution systems. The tax-exempt entity would finance and own all capital improvements to those systems. At the end of both leases' term, all capital improvements would become State property.

7.5 Performance Guarantees

UMD intends to solicit proposals that include performance guarantees of energy service quality, efficiency, and reliability. UMD expects that all performance guarantees will be backed by

substantial liquidated damages/ performance deductions, or other consequences if the guarantees are not met.

UMD may also seek proposals for the installation of energy conservation measures and building improvements to reduce its energy requirements and decrease its carbon footprint. UMD expects that offerors will guarantee the efficacy of such measures and back that guarantee with liquidated damages/performance deductions.

7.6 Performance Metrics

UMD expects that offerors will propose a detailed set of KPIs as a means for evaluating the energy systems' operation and maintenance and the quality of the operator's performance. Specific KPIs will be developed during the solicitation process. UMD anticipates that at a minimum, such KPIs will fall within the following general categories:

- Repair and maintenance activities
- Service call response and service restoration times
- Safety (trainings, accidents)
- Service reductions or outages
- Condensate returned to central plant
- Temperature differential between chilled water delivery and return points
- Electric distribution system feeder loading
- Steam pressure at point farthest from central plant
- Delivery pressures and temperatures
- Fuel conversion
- Fuel and electric supply hedging and management
- Reductions of Greenhouse Gas emissions

UMD expects to have the capability to monitor KPIs in real time by accessing the operator's operating data and metering systems and its computerized maintenance and management system.

7.7 Sustainability

The NextGen Program is essential to meeting UMD's commitment to carbon neutrality no later than 2050. UMD expects that offerors will articulate a clear pathway to energy system sustainability through utilization of highly efficient equipment and continuing evaluation and deployment (as feasible) of new technologies throughout the term. UMD also expects offerors to propose a plan to implement one or more renewable resource hot water demonstration districts during the NextGen Program's initial phase.

7.8 Technical Approach

UMD anticipates that the NextGen RFP will describe a base technical case upon which offerors will submit proposals. UMD may also provide offerors the opportunity to propose an alternative technical approach that can meet UMD's reliability, affordability, and sustainability requirements.

7.9 Additional Scope

Under the 1999 Program, UMD retained ownership, maintenance, and operating responsibility for all except one of the 13 SCUBS. UMD may add all SCUBs to the NextGen Program's scope.

7.10 Mandatory Contract Provisions

UMD intends for the NextGen Program contracts to contain terms and conditions that require compliance with the following provisions of the Maryland State Finance and Procurement Code:

- Section 3-602.1 (High Performance Buildings)
- Section 11-205 (Collusion)
- Section 11-205.1 (Falsification, Concealment of Material Facts)
- Section 13-219 (Required clauses – Nondiscrimination clause)
- Section 13-225 (Retainage)
- Sections 14-301 – 14-309 (Minority Business Enterprises)
- Sections 15-101 – 15-112 (Procurement Contract Administration)
- Section 15-226 (Payments to Subcontractors)
- Sections 16-101 – 10-312 (Suspension and Debarment of Contractors)
- Sections 17-101 - 17-111 (Security for Construction Contracts)
- Sections 17-201 – 17-226 (Prevailing Wage Rates – Public Works Contracts)
- Sections 18-101 – 18-109 (Living Wage)

Contracts will also contain terms and conditions to require compliance with the Maryland State Environmental Code.

Examples of standard provisions utilized in UMD contracts to comply with several of these statutes are set forth in the University System of Maryland Procurement Policies and Procedures ("USM Policies") (available at <https://www.usmd.edu/regents/bylaws/SectionVIII/VIII300.pdf>).

In addition, the P3 agreement will contain the provisions required by Section 10A-401 (a) of the Maryland State Finance and Procurement Code:

- The method and terms for approval of any assignment, reassignment, or other transfer of interest related to the public-private partnership agreement;

- The methods and terms for setting and adjusting charges related to the public infrastructure asset;
- The method and terms for revenue-sharing or other sharing in fees or charges, in which the public participates in the financial upside of asset performance of the public infrastructure asset;
- Minimum quality standards, performance criteria, incentives, and disincentives;
- Operations and maintenance standards;
- Rights for inspection by the State;
- Terms and conditions under which USM/UMD may provide services for a fee sufficient to cover both direct and indirect costs;
- Provisions for oversight and remedies and penalties for default;
- Terms and conditions under which the USM/UMD will be responsible for oversight;
- Terms and conditions for audits by the State, including the Office of Legislative Audits, related to the agreement's financial records and performance;
- Terms and conditions under which the public infrastructure assets shall be returned to the State at the expiration or termination of the agreement;
- Requirements for the private entity to provide performance security and payment security in a form and in an amount determined according to statute.

8. PRELIMINARY DEBT AFFORDABILITY ANALYSIS

UMD under either P3 structure would not directly be issuing debt. The 501(c)(3) structure would involve the issuance of tax-exempt debt while the private entity under the Concession Structure would source taxable debt via a sale of securities such as a private placement. The University would pay the private entity through the use of availability payments.

The Governmental Accounting Standards Board is current developing implementation guidelines for GASB 87, while also engaged in a project that could change recognition and measurement for various commercial structures under GASB 60.

It is expected that both commercial options will be considered on credit to the University.

9. PROPOSED SOLICITATION PROCESS

Please see below the preliminary procurement schedule, including key steps and anticipated dates.

Preliminary Procurement Schedule	
Procurement Step	Milestone Dates
Board Regents Approval	December 2019
Board of Public Works Approval	April 2020
Request for Qualifications	September 2020
Shortlist Service Providers	January 2021
Draft Request for Proposal	March 2021
Industry Feedback	May 2021
Final Request for Proposal	June 2021
Select Service Provider	October 2021
Negotiations	December 2021
Commercial Close	December 2022
Financial Close	June 2023

10. STATEMENT OF INTENT TO RELY ON SECTION 11-203 EXEMPTION FROM THE UNIVERSITY SYSTEM'S PROCUREMENT POLICIES AND PROCEDURES

Pursuant to the University System's Policy VIII-17.00 – *Policy on Public-Private Partnerships* and Section 11-203(h) of the State Finance and Procurement Article, UMD intends to rely on the exemption from the University System's Procurement Policies and Procedures for the solicitation and award of State-supported public/private partnerships for academic facilities. UMD will comply with all legal requirements set forth in Section 11-203(h)(2) of that Article, as well as all other applicable legal requirements.



BOARD OF REGENTS

SUMMARY OF ITEM FOR ACTION,
INFORMATION OR DISCUSSION

TOPIC: University of Maryland, College Park: Development Agreement and Approval of Condominium Ownership and MEDCO Financing for College Park City Hall Block Redevelopment Project

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: On March 27, 2019, the Board of Regents was presented with an informational item on a proposed joint development between the City of College Park (“City”) and the University of the “City Hall Block” in College Park. This item follows up that presentation and seeks formal approval of key elements of this important project. The City and the University propose to raze an entire block in downtown College Park (the site of the existing City Hall) and to jointly develop an approximately 95,000 square foot office and retail building.

In that building,

- UMD would own (as a condominium unit) approximately 54,000 GSF of office space;
- the City would own an approximately 34,000 GSF condominium unit to be used as its new City Hall; and,
- UMD would initially own an approximately 7,000 GSF street level retail condominium.

The parties will also jointly develop an outdoor public plaza. Attached exhibits show or outline the site location, existing conditions, a project site plan and, finally, a rendering of the new building.

This is a complex real estate transaction and the University today seeks Board approval of several components. First, UMD seeks approval of a development agreement between the University and the City of College Park. The Development Agreement has two key elements. The first involves an equitable adjustment related to use of City real property. At the outset of the transaction, the City owns approximately 82% of the City Hall block real property. UMD use of the new building (ownership of its condominiums blended with an agreed upon 50/50 share of the outdoor public space) will make the University the majority (measured by square footage) user of the real property. In consideration for UMD’s use of the City’s real property, as a component part of the condominium regime, UMD will pay the City approximately \$2.38 million.

The second key Development Agreement component is construction cost sharing. The Development Agreement obliges each party to pay its proportionate share of the building’s construction cost (as determined by square footage) and to equally share the cost of outdoor public space. UMD’s hard construction costs for the office condominium, the retail condominium and its 50% share of public space is approximately \$26,600,000 (approximately \$3.5 million for sitework/public space; \$18.6 million for the University office condominium, \$1.9 million for the retail condominium and a construction contingency of approximately \$2.5 million). Project soft costs (permits, design and professional fees and moving expenses) are projected at just under \$2.7 million. Adding in the real property payment of \$2.38 million to the City, total project costs are approximately \$31.6 million.

The University seeks approval of the Development Agreement and both its payment to the City for use of City real property as well as its construction cost and the cost-sharing approach described above.

The University likewise seeks Board approval of the financing of some or all of its share of project costs through bonds (or other borrowing) issued by (or borrowed through) the Maryland Economic Development Corporation (MEDCO). (The City will be financing the City's share of project costs through the issuance of City general obligation bonds.) That financing is likely to be in the form of a lease/leaseback (or similar) transaction, all to be subject to the review and approval of the Office of Attorney General. The retail portion of the project is likely not qualified for tax exempt financing. Once approved by the Board or Regents, the University will thereafter seek all required approvals of the real property transfers, financing and the proposed borrowing from the Board of Public Works, as advised, at all times, by the Office of Attorney General.

As an informational matter, the University will return to the Board of Regents, likely at its next meeting, for approval of a third component of this transaction. That portion of the city block not owned by the City is currently owned by Terrapin Development Company ("TDC"). The entire block must be under public ownership both to take advantage of the County's Mandatory Referral project approval process as well as to make the public components of the projects not taxable (the retail condominium will be taxable). Therefore, the University will soon seek approval to acquire the TDC property which consists of approximately 0.251 acres located at 7403 Baltimore Avenue, 7405 Baltimore Avenue, and 7413 Baltimore Avenue ("TDC Property"). It is anticipated that this acquisition will be structured as an exchange under which TDC conveys its existing property for ownership (either sale or lease) and control of the retail condominium. At this time, the parties continue to negotiate details of that transaction, although it is anticipated this real property acquisition will not add to the project costs (which already include the value of the retail condominium proposed to be exchanged for TDC's property). A separate item at a near future meeting will be presented to the Board for acquisition of the TDC property.

ALTERNATIVE(S): The Board of Regents could reject this request, which would either preclude the University from participating in this joint development project with the City of College Park or require another approach to financing.

FISCAL IMPACT: The City and the University have jointly hired a project manager, design team, and construction manager. The building has been value-engineered to lower project cost as much as possible and still meet the parties' space needs. The total projected cost for UMD of \$31.6 million includes hard and soft project design and construction costs, the initial equitable contribution to the City for its real property and costs for furniture, fixtures, and equipment.

CHANCELLOR'S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve for University of Maryland, College Park a Development Agreement between the University and the City that provides for the construction (and cost allocations) described above and the acquisition and ownership of the described office and retail condominium units and the financing by MEDCO as described above. The approval will authorize the Chancellor to execute, after appropriate due diligence and legal review, all documentation required for creation of the condominium, the real property adjustment with the City, project construction and the MEDCO borrowing (all consistent with the University System of Maryland Procedures for the Acquisition and Disposition of Real Property).

COMMITTEE RECOMMENDATION:	DATE:
<hr/>	
BOARD ACTION:	DATE:
<hr/>	
SUBMITTED BY: Ellen Herbst (301) 445-1923	
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Exhibit A - Location

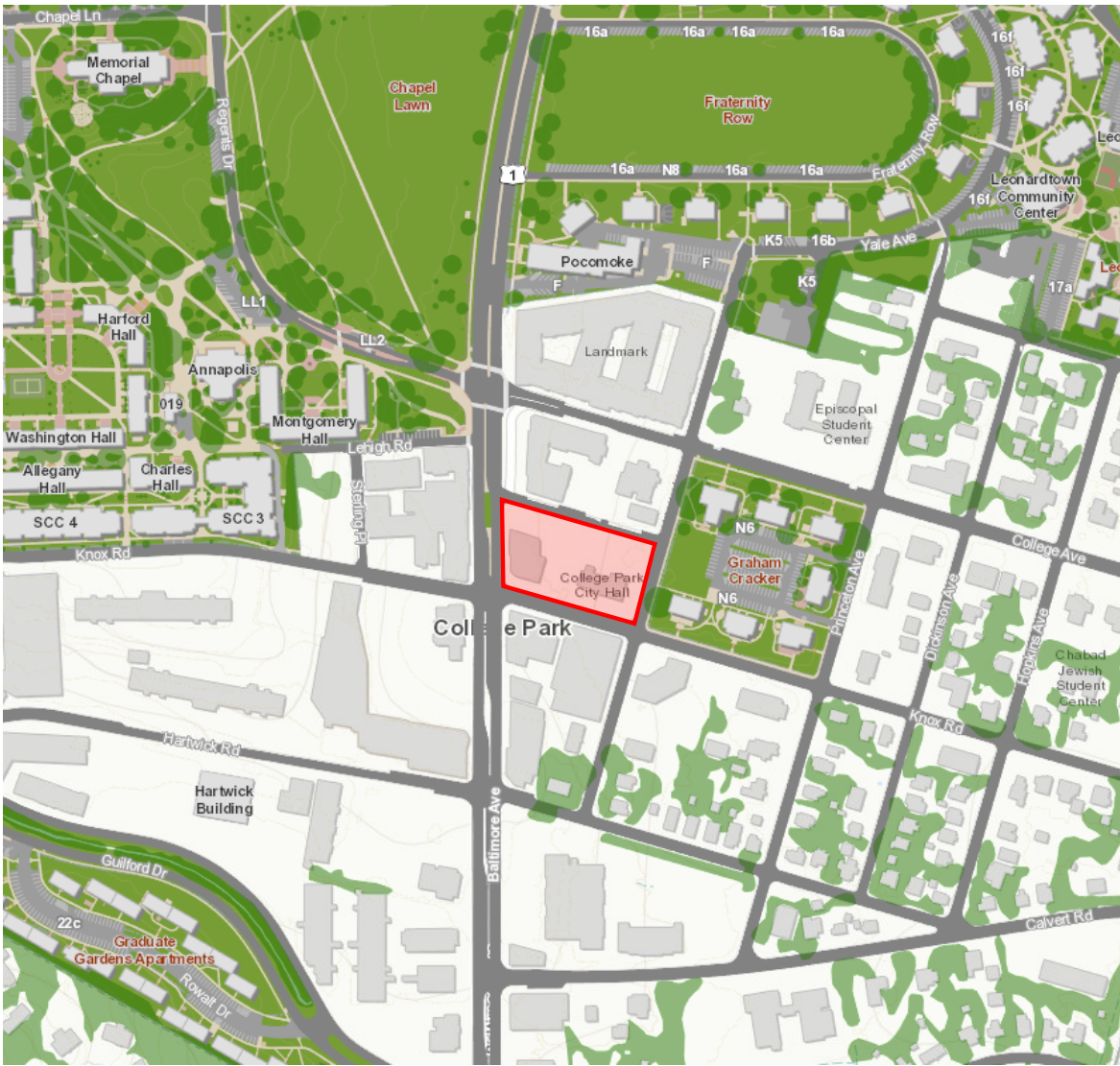


Exhibit B - City Hall Block Existing Conditions



Exhibit C - Site Plan

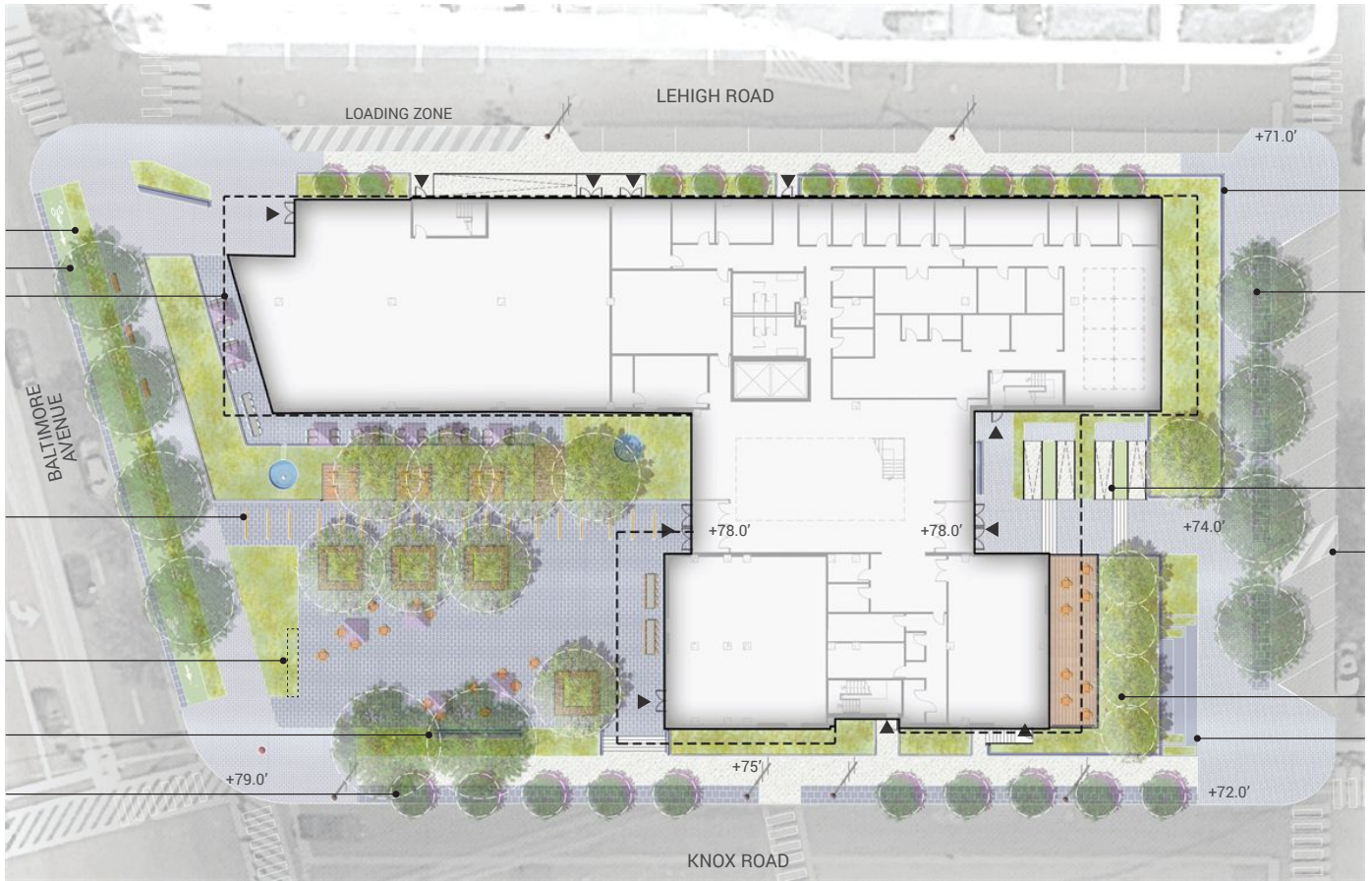


Exhibit D - Proposed City Hall/UMD Office/Retail Building



EXHIBIT E--BUDGET	
Hard Construction Costs	
Sitework and Share of Public Plaza	\$ 3,477,199.00
University Office Condo including interiors and FF&E	\$ 18,805,719.00
Retail Condo	\$ 2,242,754.00
Contingency	\$ 1,066,919.00
Escalation Contingency	\$ 1,000,000.00
Soft Project Costs	\$ 2,652,053.00
Real Property Costs	
Payment for Equitable Use of City Land	\$ 2,380,000.00
TOTAL	\$ 31,624,644.00



TOPIC: University of Maryland, College Park: Release of 1913 Deed Setback Requirement

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: On May 24, 1913, Mr. and Mrs. Buckley sold Robert Ruffner just over one-half acre of land in College Park, Maryland. The deed of conveyance, recorded at Liber 88, folio 406 (the “1913 Deed”), also provided that “no building shall be constructed on said property nor on the other property of the grantors, nearer than twenty feet from the north line of the roadway running between the property of the grantor, the present grantee and the property of F.P. Veitch...” This deed restriction is the “Twenty Foot Setback” that the University is requesting approval to release. The location of the Twenty Foot Setback is shown on Exhibit A, attached.

One hundred and six years later, the property conveyed by the 1913 Deed, as well as the other property of Mr. and Mrs. Buckley have, over time, been sold to other parties, one of which is the University. Another owner are two affiliates of the Terrapin Development Company, LLC (“TDC”), a limited liability company created by prior authorization of this board whose two members are the University and its Foundation.

TDC desires to develop its parcels with a privately financed undergraduate student housing project with street level retail and attractive off-site improvements on neighboring UMD land. The Twenty Foot Setback impairs the developable footprint of the TDC parcels.

In support of TDC’s development efforts, the University seeks board approval to release the Twenty Foot Setback.

ALTERNATIVE(S): The Board of Regents could reject this request, which would diminish the developable footprint of the TDC land.

FISCAL IMPACT: There is no direct fiscal impact to the University. UMD, as noted, is one of the members of TDC and, indirectly, if TDC’s use of its property is less valuable because of the Twenty Foot Setback, then UMD is indirectly affected. The University derives no fiscal benefit from the Twenty Foot Setback or its release. There is no impact to System credit.

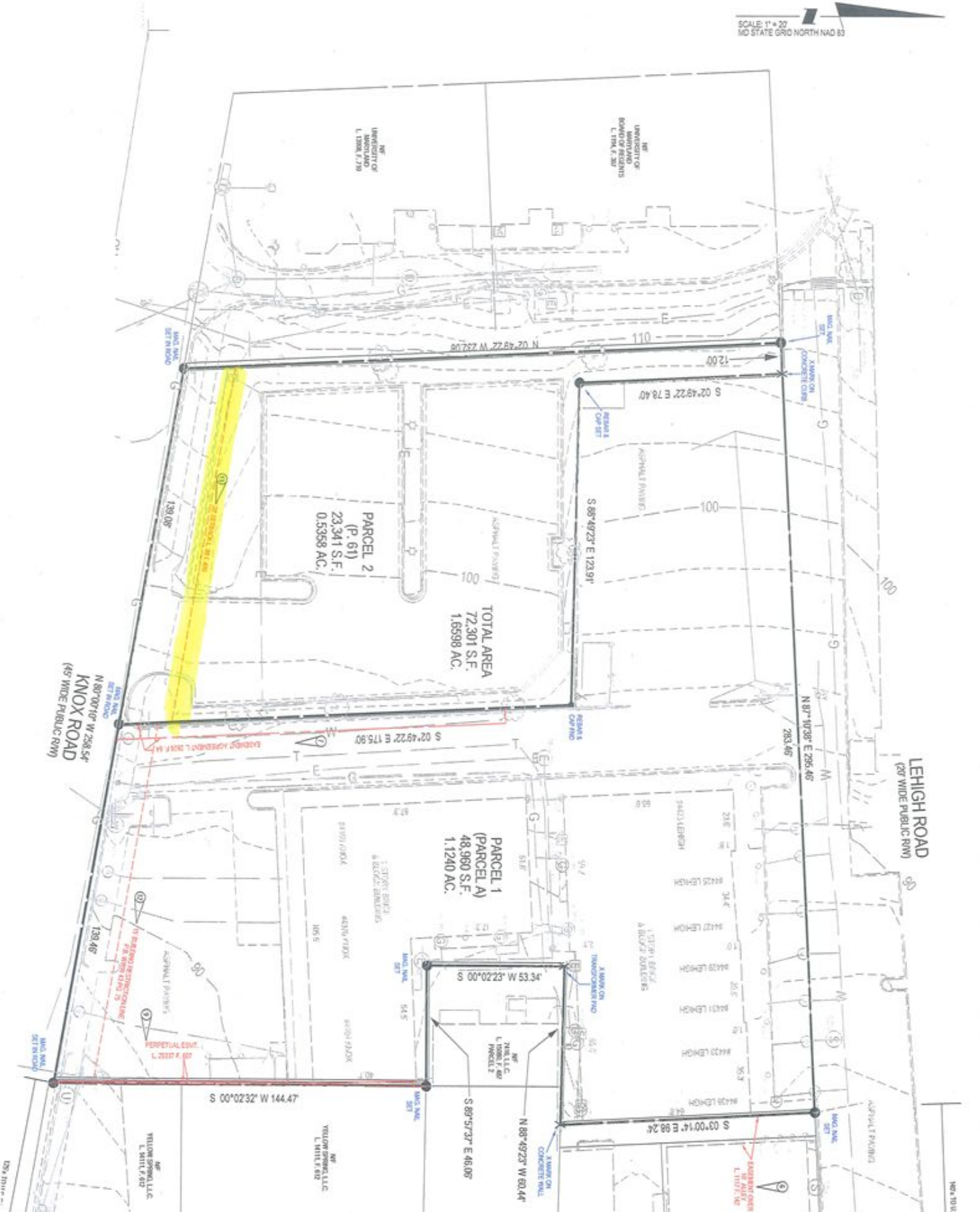
CHANCELLOR’S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve that University of Maryland, College Park enter into a Mutual Release Agreement between the University and the TDC affiliates that releases the Twenty Foot Setback. The approval will authorize the Chancellor to execute, after appropriate due diligence and legal review, all documentation required for release of the Twenty Foot Setback.

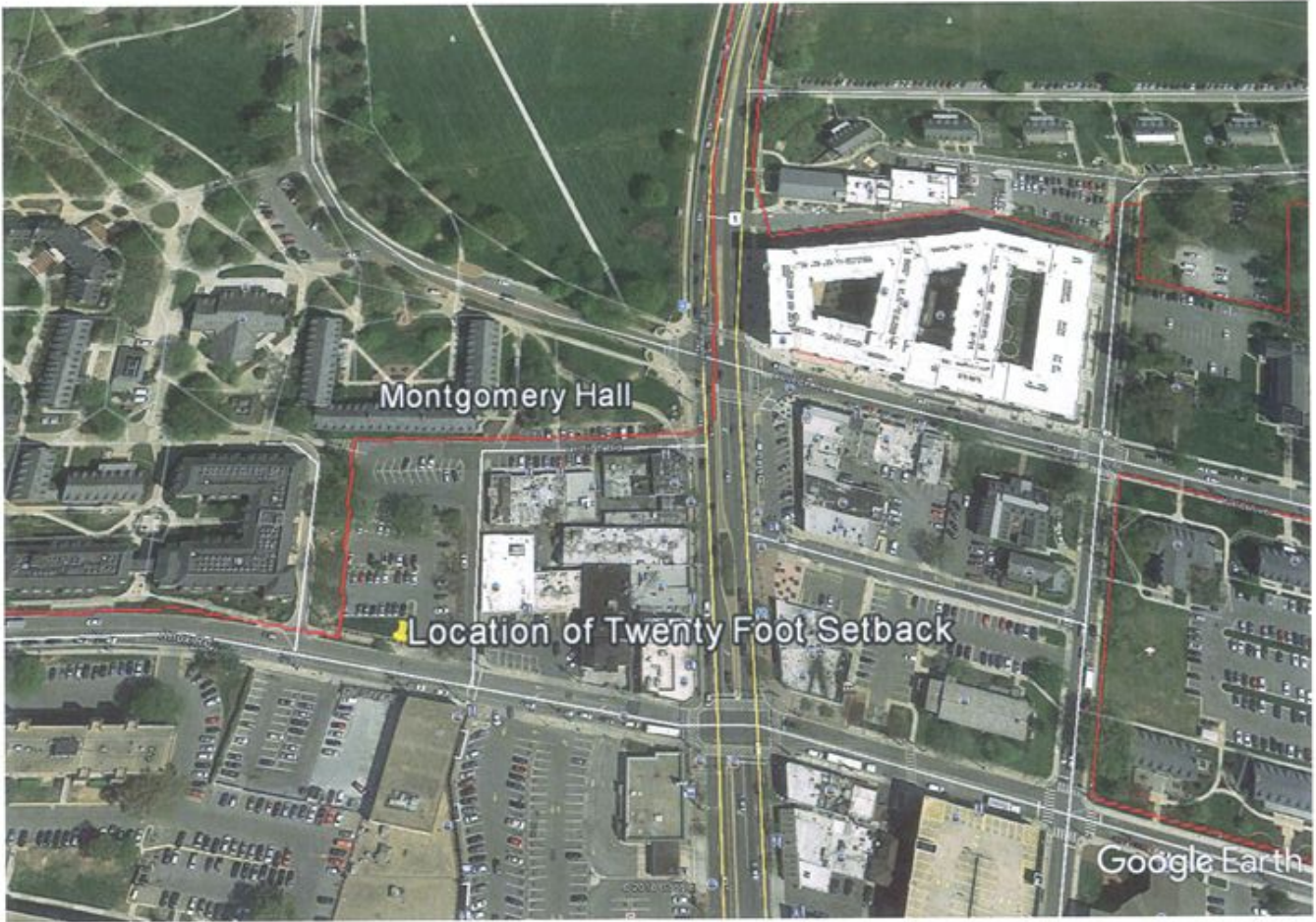
COMMITTEE RECOMMENDATION: _____ DATE: _____

BOARD ACTION: _____ DATE: _____

SUBMITTED BY: Ellen Herbst (301) 445-1923

SCALE: 1" = 20'
MD STATE GRID NORTH NAD 83





Google Earth





TOPIC: Proposed Amendment to USM Policy VII – 1.22 – Policy on Separation of Regular Exempt Staff Employees

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: The significant proposed changes to current USM policy include the following:

- Clarification of an institution president’s discretion to permit any exempt staff employee to resign in lieu of involuntary separation and to determine an appropriate period of notice to be provided to the employee
- Restatement of the provision regarding providing alternative compensation to employees in lieu of a full period of notice as compensation for the loss of salary and benefits that otherwise would have been paid during the notice period
- Revision of the “Termination for Cause” section, including additional bases for which an employee may be terminated
- A footnote stating that, under Maryland law, the “Termination by a Period of Notice” section of the policy does not apply to exempt employees who are represented in collective bargaining by an exclusive representative

A red-lined copy of USM policy VII – 1.22 – Policy on Separation of Regular Exempt Staff Employees is attached. This proposed policy amendment has been reviewed by the institution Chief Human Resources Officers, the Vice Presidents for Administration and Finance, and the Chancellor’s Council. The Attorney General’s Office has reviewed and approved it.

ALTERNATIVE(S): The Committee could choose to recommend that the Board not approve the proposed policy amendment or could recommend alternatives to the proposed amendment.

FISCAL IMPACT: The fiscal impact is estimated to be slight; the amendment’s provisions regarding compensation in lieu of notice are not expected to significantly change current practice regarding how exempt staff separations are handled.

CHANCELLOR’S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve the proposed policy amendment as presented.

COMMITTEE RECOMMENDATION: _____ DATE: _____

BOARD ACTION: _____ DATE: _____

SUBMITTED BY: Ellen Herbst (301) 445-1923

USM Bylaws, Policies and Procedures of the Board of Regents

VII-1.22 - POLICY ON SEPARATION FOR REGULAR EXEMPT STAFF EMPLOYEES

Approved by the Board of Regents on December 3, 1999, EFFECTIVE January 2 and January 12, 2000; Amended, June 27, 2014; Amended October 9, 2015; Amended xxxx)

I. PURPOSE AND APPLICABILITY

- A. The purpose of this policy is to establish a separation process for regular Exempt Staff employees in the University System of Maryland (USM).¹
- B. ~~EXCEPTION:~~ Regular USM employees in the following Exempt positions are excluded specifically from sections III and IV of this policy:
 - 1. Officers: Vice Chancellors, Vice Presidents, Provosts and Academic Deans.
 - 2. Associate and Assistant Vice Chancellors, Associate and Assistant Vice Presidents, Associate and Assistant Provosts, Associate and Assistant Academic Deans.
 - 3. Subject to approval of the Chancellor, the President -may designate other key executive positions for this exemption. Appointees to such positions shall be notified of such designation at the time of appointment. Current appointees notified of such designation prior to April 1, 2000, were not required to be notified at the time of appointment. ~~(Refer to implementation policy of the Exempt Pay Program for treatment of current incumbents.)~~

II. GENERAL

- A. Employment for regular USM employees in Exempt positions is on an at-will basis. This means that, subject to applicable laws and policies, the employment relationship may be terminated at any time by either the employee or the Institution-, consistent with Section III of this policy.
- B. All actions taken under this policy and institutional procedures shall be reviewed by the institution's Chief Human Resources Officer in advance of the action being taken.

¹Sections II.A., II.D.2., II.E., and III of this policy do not apply to exempt employees who are represented by an exclusive representative under the collective bargaining law, Title 3 of the State Personnel & Pensions Article of the Maryland Code. Those employees may be terminated only for cause.

USM Bylaws, Policies and Procedures of the Board of Regents

C. An employee who wishes to end ~~their~~~~his or her~~ employment with the Institution should give at least 14 calendar days written notice.

D. Resignation in Lieu of Termination

1. The President or designee has the discretion to permit, but not require, any employee to resign in lieu of involuntary separation. The institution shall maintain records documenting that the resignation was in lieu of involuntary separation, and the employee generally should be required to execute an appropriate release of legal claims.
2. The President or designee may determine an appropriate period of notice to be provided that serves the best interests of the institution. The length of the period of notice provided is not required to conform to the schedule contained in III.B. below.

E. Compensation in Lieu of Notice

In lieu of providing a full period of notice to an employee who is being involuntarily separated, including those permitted to resign in lieu of involuntary separation under section II.D. above, the President or designee may determine that the employee should be separated prior to the end of the notice period. In that case, the employee shall receive alternative compensation to compensate for the loss of salary and benefits that the employee otherwise would have received during the notice period. In consultation with the Office of the Attorney General, the institution will develop an appropriate compensation arrangement for such an employee that complies with applicable laws.

III. TERMINATION BY PERIOD OF NOTICE

A. Determination of Period of Notice

An employee covered by this section III who is~~may be~~ involuntarily separated ~~and~~ shall be provided with a defined period of notice~~;~~.

1. Service for determining length of notice period is based on institutional service rather than USM service~~;~~ and shall include prior institutional service~~;~~ provided there were no breaks in service longer than three years.
2. An Exempt employee at one USM institution who is offered an Exempt position at another USM institution may, at the discretion of the offering institution, be credited with prior USM service for purposes of calculating the required period of notice upon separation. Any such decision to credit prior service at another USM institution shall be noted in the employee's

USM Bylaws, Policies and Procedures of the Board of Regents

personnel file at the time of appointment and shall be effective after satisfactory completion of the probation period.

B. Length of Period of Notice. The period of notice shall be as follows:

~~The period of notice shall be as follows:~~

Years of Institutional Service	Period of Notice
Less than one year	One month
One year but less than four years	Three months
Four years but less than seven years	Six months
Seven years but less than ten years	Nine months
Ten years or more	Twelve months

C. Employee Work Assignments~~Status~~ During Period of Notice

~~1.~~ During the period of notice, ~~t~~The President or designee may:

~~1.~~ Continue the employee in his or her regular position; or

~~1.2.~~ Assign the employee alternate duties and responsibilities at a level of service of at least 25% of their existing average workload over the past thirty-six months. to an employee who has been notified of a period of notice separation for any part or all of the period of notice or at a level of part time service of at least 25%; or

~~2.~~ Continue the employee in his or her regular position during the period of notice separation. At the option of the institution President or designee, an employee who has been notified of a period of notice separation, may be placed in an administrative leave with pay status for any part or all of the period of notice.

~~a.~~ In this case, consistent with federal tax law requirements, the employee can no longer be deemed an employee of the institution, effective as of the beginning of the administrative leave period, and shall not be eligible for employee benefits (such as health and retirement benefits) or earn other paid leave (annual, sick, holiday, personal) during the period of administrative leave.

~~b.~~ Under such circumstances, the institution will provide appropriate alternative compensation to the employee to compensate for the loss of salary or benefits that the employee would otherwise have been eligible during the notice termination period. The institution will

USM Bylaws, Policies and Procedures of the Board of Regents

~~develop an appropriate compensation arrangement for the employee to be terminated that meets the goals of this Section, in consultation with the employee and the Office of the Attorney General.~~

- D. ~~An employee covered by this section III may grieve the institution's failure to comply with section III, except in situations where the employee has resigned in lieu of termination. provide notice as set forth in this section may be grieved.~~

IV. TERMINATION FOR CAUSE

With the approval of the President or designee, the period of notice or alternative compensation as set forth in section ~~defined in III.B.~~ above is not required if the employee is to be ~~terminated~~ terminated for cause, including without limitation any of the following ~~reasons~~ reasons:

- A. Moral Turpitude
- B. Incompetency or Inefficiency in the Performance of the Employee's Duties, including Failure to Meet Performance Expectations as Documented in a Performance Evaluation and/or Disciplinary Action
- C. Willful Neglect of Duty or Abandonment of Job
- D. Illegal Actions, including Violation of the State Ethics Law
- E. Gross Misconduct or Wantonly Offensive Behavior Toward Fellow Employees, Students, Patients, Clients, Users of University Facilities, or the General Public
- F. Insubordination or Serious Breach of Discipline
- G. Serious Breach of Professional Behavior that Reasonably may be Expected to Result in Lower Morale in the Organization or Loss or Injury to the University or Public
- ~~E.~~ H. Professional or Scholarly Misconduct
- ~~F.~~ I. Severe Safety Violations or Actions that Cause Significant Damage to Public Property or Waste of Public Resources
- ~~G.~~ J. Failure to Accept Reassignment
- ~~H.~~ K. Medical Condition Causing Inability to Perform Essential Job Duties ~~with Reasonable~~ with Reasonable Accommodations Required by Law

USM Bylaws, Policies and Procedures of the Board of Regents

IMPLEMENTATION PROCEDURES:

Each President shall identify ~~their~~his/her designee(s) as appropriate for this policy, develop procedures as necessary to implement this policy, communicate this policy and applicable procedures to ~~their~~his/her institutional community, and post it on its institutional website.

USM Bylaws, Policies and Procedures of the Board of Regents

VII-1.22 - POLICY ON SEPARATION FOR REGULAR EXEMPT STAFF EMPLOYEES

Approved by the Board of Regents on December 3, 1999, EFFECTIVE January 2 and January 12, 2000; Amended, June 27, 2014; Amended October 9, 2015; Amended xxxx)

I. PURPOSE AND APPLICABILITY

- A. The purpose of this policy is to establish a separation process for regular Exempt Staff employees in the University System of Maryland (USM).¹
- B. Regular USM employees in the following Exempt positions are excluded specifically from sections III and IV of this policy:
 1. Officers: Vice Chancellors, Vice Presidents, Provosts and Academic Deans.
 2. Associate and Assistant Vice Chancellors, Associate and Assistant Vice Presidents, Associate and Assistant Provosts, Associate and Assistant Academic Deans.
 3. Subject to approval of the Chancellor, the President may designate other key executive positions for this exemption. Appointees to such positions shall be notified of such designation at the time of appointment. Current appointees notified of such designation prior to April 1, 2000, were not required to be notified at the time of appointment.

II. GENERAL

- A. Employment for regular USM employees in Exempt positions is on an at-will basis. This means that, subject to applicable laws and policies, the employment relationship may be terminated at any time by either the employee or the Institution, consistent with Section III of this policy.
- B. All actions taken under this policy and institutional procedures shall be reviewed by the institution's Chief Human Resources Officer in advance of the action being taken.
- C. An employee who wishes to end their employment with the Institution should give at least 14 calendar days written notice.

¹Sections II.A., II.D.2., II.E., and III of this policy do not apply to exempt employees who are represented by an exclusive representative under the collective bargaining law, Title 3 of the State Personnel & Pensions Article of the Maryland Code. Those employees may be terminated only for cause.

USM Bylaws, Policies and Procedures of the Board of Regents

D. Resignation in Lieu of Termination

1. The President or designee has the discretion to permit, but not require, any employee to resign in lieu of involuntary separation. The institution shall maintain records documenting that the resignation was in lieu of involuntary separation, and the employee generally should be required to execute an appropriate release of legal claims.
2. The President or designee may determine an appropriate period of notice to be provided that serves the best interests of the institution. The length of the period of notice provided is not required to conform to the schedule contained in III.B. below.

E. Compensation in Lieu of Notice

In lieu of providing a full period of notice to an employee who is being involuntarily separated, including those permitted to resign in lieu of involuntary separation under section II.D. above, the President or designee may determine that the employee should be separated prior to the end of the notice period. In that case, the employee shall receive alternative compensation to compensate for the loss of salary and benefits that the employee otherwise would have received during the notice period. In consultation with the Office of the Attorney General, the institution will develop an appropriate compensation arrangement for such an employee that complies with applicable laws.

III. TERMINATION BY PERIOD OF NOTICE

A. Determination of Period of Notice

An employee covered by this section III who is involuntarily separated shall be provided with a defined period of notice.

1. Service for determining length of notice period is based on institutional service rather than USM service and shall include prior institutional service, provided there were no breaks in service longer than three years.
2. An Exempt employee at one USM institution who is offered an Exempt position at another USM institution may, at the discretion of the offering institution, be credited with prior USM service for purposes of calculating the required period of notice upon separation. Any such decision to credit prior service at another USM institution shall be noted in the employee's personnel file at the time of appointment and shall be effective after satisfactory completion of the probation period.

USM Bylaws, Policies and Procedures of the Board of Regents

B. Length of Period of Notice. The period of notice shall be as follows:

Years of Institutional Service	Period of Notice
Less than one year	One month
One year but less than four years	Three months
Four years but less than seven years	Six months
Seven years but less than ten years	Nine months
Ten years or more	Twelve months

C. Employee Work Assignments During Period of Notice

During the period of notice, the President or designee may:

1. Continue the employee in his or her regular position; or
2. Assign the employee alternate duties and responsibilities at a level of service of at least 25% of their existing average workload over the past thirty-six months.

D. An employee covered by this section III may grieve the institution’s failure to comply with section III, except in situations where the employee has resigned in lieu of termination.

IV. TERMINATION FOR CAUSE

With the approval of the President or designee, the period of notice or alternative compensation as set forth in section III above is not required if the employee is to be terminated for cause, including without limitation any of the following reasons:

- A. Moral Turpitude
- B. Incompetency or Inefficiency in the Performance of the Employee’s Duties, including Failure to Meet Performance Expectations as Documented in a Performance Evaluation and/or Disciplinary Action
- C. Willful Neglect of Duty or Abandonment of Job
- D. Illegal Actions, including Violation of the State Ethics Law
- E. Gross Misconduct or Wantonly Offensive Behavior Toward Fellow Employees, Students, Patients, Clients, Users of University Facilities, or the General Public
- F. Insubordination or Serious Breach of Discipline

USM Bylaws, Policies and Procedures of the Board of Regents

- G. Serious Breach of Professional Behavior that Reasonably may be Expected to Result in Lower Morale in the Organization or Loss or Injury to the University or Public
- H. Professional or Scholarly Misconduct
- I. Severe Safety Violations or Actions that Cause Significant Damage to Public Property or Waste of Public Resources
- J. Failure to Accept Reassignment
- K. Medical Condition Causing Inability to Perform Essential Job Duties with Reasonable Accommodations Required by Law

IMPLEMENTATION PROCEDURES:

Each President shall identify their designee(s) as appropriate for this policy, develop procedures as necessary to implement this policy, communicate this policy and applicable procedures to their institutional community, and post it on its institutional website.



BOARD OF REGENTS

SUMMARY OF ITEM FOR ACTION,
INFORMATION OR DISCUSSION

TOPIC: USM Supplemental 403(b) Plan Amended and Restated Effective January 1, 2020 and
USM Supplemental 457(b) Plan Amended and Restated Effective January 1, 2020

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: Board approval is requested to amend the USM’s two supplemental retirement plans to (1) comply with new legal requirements under the Internal Revenue Code and (2) add a “Roth” investment option for participants in both plans. A summary of the major changes to the revised plan documents is attached.

The amended plan documents are available online at <https://www.usmd.edu/regents/agendas/>

The amended plan documents were prepared by outside legal counsel, reviewed and approved by the USM Retirement Committees, and approved for form and legal sufficiency by the Office of the Attorney General.

ALTERNATIVE(S): The Board could choose not to approve the amended plan documents.

FISCAL IMPACT: There is no fiscal impact.

CHANCELLOR’S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve USM Supplemental 403(b) Plan Amended and Restated Effective January 1, 2020 and the USM Supplemental 457(b) Plan Amended and Restated Effective January 1, 2020.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Ellen Herbst (301) 445-1923

BOARD SUMMARY JANUARY 1, 2020 RETIREMENT PLAN RESTATEMENTS

The University System of Maryland ("USM") sponsors the University System of Maryland Supplemental 403(b) Plan ("403(b) Plan"), most recently amended and restated effective January 1, 2009, to which eligible employees can voluntarily make pre-tax elective deferrals. USM also sponsors the University System of Maryland Deferred Compensation 457(b) Plan ("457(b) Plan"), most recently amended and restated effective January 1, 2006, to which eligible employees can voluntarily make pre-tax elective deferrals.

The 403(b) Plan and 457(b) Plan (collectively, "Plans") are both currently stated on individually designed plan documents that use IRS pre-approved model language. The Plans are each being amended effective January 1, 2020, to make the following changes:

1. **Permit Roth Contributions.** The Plans are being amended to permit participants to make Roth Contributions. Roth Contributions are salary reduction contributions that are made on an after-tax basis. If the participant satisfies a five year holding period and meets certain other distribution restrictions, the earnings on Roth Contributions will not be taxed on distribution.
2. **Permit in-Plan Roth Rollovers.** The Plans are being amended to permit participants to convert part or all of their pre-tax elective deferrals to Roth contributions without taking a distribution from the Plan. This is a taxable transaction that is referred to as an "in-plan Roth rollover."
3. **Update Hardship Distribution Provisions.** The Bipartisan Budget Relief Act of 2018 amended the hardship distribution provisions for 403(b) plans. The 403(b) Plan is being amended to eliminate the 6 month suspension of elective deferrals following a hardship distribution and to require participant certification that he or she has insufficient cash or other liquid assets to reasonably satisfy the financial need, both of which are required amendments effective January 1, 2020. The 403(b) Plan is also being amended to allow an additional category of hardship distribution for losses on account of a federally declared disaster effective January 1, 2020, which is a voluntary amendment.
4. **Delegation of Administrative Responsibilities.** The Plans are being amended to delegate fiduciary responsibilities under the Plan to the Administrative Committee. This delegation is currently set forth in Board resolutions.
5. **IRS Model Language.** The 403(b) Plan is being restated onto a plan document template that uses the most recent IRS model language.

In addition, existing amendments were incorporated into each Plan, the terms of each Plan were harmonized for consistency, clean-up changes were made to each Plan, and the applicable Plan limits were updated for 2020.

DRAFT

November 25, 2019

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

Amended and Restated Effective as of January 1, 2020

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

**ARTICLE I
ESTABLISHMENT AND RESTATEMENT OF PLAN**

Section 1.01. Plan Establishment and History.

(a) The University System of Maryland is a public university system established under Maryland law and an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The Board of Regents of the University System of Maryland ("Board") established the University System of Maryland Supplemental 403(b) Retirement Plan ("Plan") pursuant to Code Section 403(b) and Sections 30-210 et seq. of the State Personnel and Pensions Article of the Annotated Code of Maryland (1978, 2004 Repl. Vol.), to provide eligible employees the opportunity to supplement their retirement benefits through voluntary contributions.

(b) The Plan is, and is intended to remain, a defined contribution plan under Code Section 403(b). The Plan is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(c) The Plan was most recently amended and restated effective June 17, 2011.

Section 1.02. Plan Restatement.

(a) The Plan is now being amended and restated effective January 1, 2020, except as otherwise specifically provided herein, to incorporate the prior amendments to the Plan and to make certain discretionary changes.

(b) Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2020, and to transactions under the Plan on and after January 1, 2020. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2020, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

Section 1.03. Plan Funding. The Plan is funded exclusively through the purchase of Investment Arrangements in accordance with the requirements of the Code. The terms and conditions of the Investment Arrangements shall be incorporated into this Plan; provided, however, that to the extent that there is any conflict between the terms of the Investment Arrangements and the terms of the Plan, the terms of the Plan shall govern, except as otherwise specifically provided herein.

ARTICLE II.
RULES OF CONSTRUCTION AND DEFINITIONS

Section 2.01. Rules of Construction and Governing Law.

(a) This Plan shall be interpreted, enforced, and administered in accordance with the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Maryland without regard to conflict of law principles.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and *vice versa*, and words used herein in the singular or plural shall be construed as being in the plural or singular, where appropriate, and *vice versa*.

(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute a defined contribution plan under the provisions of Code Section 403(b), (ii) be a governmental plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with all applicable requirements of the Code, shall prevail over any different interpretation.

Section 2.02. Definitions. When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "Account" means the separate accounts maintained for each Participant and Beneficiary under the Plan. The following Accounts shall be established for a Participant or Beneficiary, if applicable:

(1) A Pre-Tax Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Pre-Tax Contributions pursuant to Section 4.01. Such Account may be further divided into a Pre-1987 Pre-Tax Contribution Account reflecting Pre-Tax Contributions made to the Plan prior to 1987 and a Post-1986 Pre-Tax Contribution Account reflecting Pre-Tax Contributions made to the Plan after 1986, including any earnings on the Pre-1987 Pre-Tax Contributions.

(2) A Roth Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Roth Contributions pursuant to Section 4.01.

(3) "Post-Severance Employer Contribution Account" means the account maintained to reflect the Participant's or Beneficiary's interest under the Plan attributable to his or her Post-Severance Employer Contributions, if any, pursuant to Section 4.02.

(4) A Rollover Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Rollover Contributions pursuant to Section 4.03.

(b) "Administrator" means the Administrative Committee as designated by the Board, or such other person, persons, or entity designated by the Board, to perform the administrative duties and functions under the Plan.

(c) "Allocable Income" means the sum of the allocable gain or loss for the year or partial year determined in accordance with Code Section 402(g) and the regulations promulgated thereunder.

(d) "Annual Addition" means annual addition as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines annual addition as the sum of the following amounts credited to a Participant's Account for the Limitation Year under this Plan and to a Participant's account under any other Code Section 401(a) defined contribution plan maintained by the Employer (or, if required by Code Section 415 and the regulations thereunder, to any other defined contribution plan):

(1) employee contributions;

(2) employer contributions;

(3) forfeitures;

(4) allocations under a simplified employee pension;

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

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

Annual Additions shall not include (i) elective deferrals made by a Participant who is age 50 or older in accordance with Code Section 414(v), (ii) excess elective deferrals distributed in accordance with Treasury Regulation Section 1.402(g)-1(e)(2), (iii) rollover contributions, or (iv) transfer contributions.

(e) "Annuity Contract" means a nontransferable contract as defined in Code Sections 403(b)(1) and 401(g), established for Participants by the Employer, or by each Participant individually, that is issued by a Vendor who is an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity.

(f) "Applicable Form" means the appropriate form as designated and furnished by the Administrator or Vendor to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically required by the Code, the Administrator or Vendor

may prescribe a verbal, electronic, or telephonic instruction in lieu of or in addition to a written form.

(g) "Beneficiary" means the person, company, trustee, or estate designated by the Participant on the Applicable Form to receive any benefits payable under the Plan in the event of the Participant's death. A designation of an individual as a Beneficiary shall remain in effect until affirmatively revoked by the Participant on a subsequent Applicable Form. Unless otherwise provided in the Investment Arrangement, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's Spouse shall be the Beneficiary or, if none, the Participant's estate shall be the Beneficiary. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

(h) "Board" means the Board of Regents of the University System of Maryland.

(i) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(j) "Compensation" means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, which is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including an election to reduce compensation in order to make Elective Deferrals under the Plan). Compensation does not include amounts "picked up" by the Employer within the meaning of Code Section 414(h). Compensation includes any compensation described in paragraphs (1) or (2), provided it is paid by the later of 2½ months after the Employee's Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer:

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

(2) a payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the Employee's Severance from Employment, and only if the Employee separately elects for such payment to be reduced on his or her Salary Reduction Agreement pursuant to Section 4.01.

Notwithstanding the above, to the extent applicable, Compensation shall not exceed the limits under Code Section 401(a)(17), as increased for the Cost of Living Adjustment for the Plan Year.

(k) "Contributions" mean Pre-Tax Contributions, Roth Contributions, Post-Severance Employer Contributions, and Rollover Contributions.

(l) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17), 402(g), 414(v), or 415(d) for any applicable year.

(m) "Custodial Account" means the group or individual custodial account or accounts, as defined in Code Section 403(b)(7), established by the Administrator, or by each Participant individually, with a Vendor to hold assets of the Plan.

(n) "Disabled" or "Disability" means disability within the meaning of Code Section 72(m)(7).

(o) "Elective Deferral" means Pre-Tax Contributions, Roth Contributions, and any other elective deferral as defined by Code Section 402(g)(3).

(p) "Employee" means a common law employee of the Employer, other than non-resident aliens with no U.S. source income or students performing services described in Code Section 3121(b)(10). Employee shall not include an employee unless his or her Compensation for performing services is paid by the Employer.

(q) "Employer" means one of the following Public Schools:

- (1) the University System of Maryland Office;
- (2) Bowie State University;
- (3) Coppin State University;
- (4) Frostburg State University;
- (5) Salisbury University;
- (6) Towson University;
- (7) University of Baltimore;
- (8) University of Maryland, Baltimore;
- (9) University of Maryland, Baltimore County;
- (10) University of Maryland, College Park;
- (11) University of Maryland, Eastern Shore;
- (12) University of Maryland University College;
- (13) University of Maryland Biotechnology Institute;
- (14) University System of Maryland Center for Environmental Science; and

(15) any other center, component, or institute established and operated by the University System of Maryland in accordance with its mission pursuant to Section 12-101 of the Annotated Code of Maryland (1978, 2006 Repl. Vol.).

(r) "Excess Annual Additions" mean, except as provided in Code Section 414(v), that portion of a Participant's Contributions to the Plan and contributions to another qualified defined contribution plan sponsored by the Employer (or, if required by Code Section 415 and the regulations thereunder, to any other defined contribution plan) for a Limitation Year which exceeds the limits of Code Section 415.

(s) "Excess Elective Deferrals" mean, except as provided in Code Section 414(v), that portion of a Participant's Pre-Tax Contributions and/or Roth Contributions to the Plan and Elective Deferrals to any other 403(b) or 401(k) plan maintained by the Employer or a Related Employer for a Plan Year which exceeds the limits of Code Section 402(g).

(t) "Former Vendor" means a service provider that was an approved Vendor under the Plan, but that ceases to be an approved Vendor under the Plan, that continues to hold Plan assets. Notwithstanding the preceding, a Former Vendor shall not include a service provider that ceased to be eligible to receive contributions under the Plan prior to January 1, 2005.

(u) "HEART" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

(v) "Includible Compensation" means all compensation received by an Employee from the Employer that is includible in his or her gross income for federal income tax purposes (computed without regard to Code Section 911) for the most recent period that is a Year of Service which precedes the taxable year by no more than five years within the meaning of Code Section 403(b)(3). Includible Compensation also includes any amounts excludable from taxable income because of an election (including Elective Deferrals under the Plan) under Code Sections 403(b), 457(b), 125, 401(k), or 132(f). Includible Compensation includes compensation paid by 2½ months after the later of an Employee's Severance from Employment or the end of the Plan Year that includes the date of the Employee's Severance from Employment, if:

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

(2) the payment is for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if the Employee had continued in employment.

Includible Compensation does not include any amounts "picked up" by the Employer within the meaning of Code Section 414(h). Includible Compensation is determined without regard to any community property laws. To the extent applicable, Includible Compensation shall not exceed

the limits under Code Section 401(a)(17), as increased for the Cost of Living Adjustment for the Plan Year.

(w) "Investment Arrangement" means an Annuity Contract or Custodial Account that satisfies the requirements of Treasury Regulation Section 1.403(b)-3 and that is issued or established for funding amounts held under the Plan and specifically approved by the Administrator for use under the Plan.

(x) "Investment Options" mean the investment funds available under the Investment Arrangements provided by the Vendor(s) and specifically approved by the Administrator, in its sole and absolute discretion, for use under this Plan.

(y) "Limitation Year" means the Plan Year; provided, however, that if the Participant is in control of an employer within the meaning of Treasury Regulation Section 1.415(a)-1(f), the Limitation Year is the limitation year of that employer.

(z) "Participant" means any Employee who is or may become eligible to receive a benefit of any type under the Plan. A Participant shall also mean, when appropriate to the context, a former Employee who is eligible to receive a benefit of any type under the Plan.

(aa) "Plan" means the University System of Maryland Supplemental 403(b) Retirement Plan, as amended from time to time.

(bb) "Plan Year" means the calendar year.

(cc) "Post-Severance Employer Contribution" means Employer contributions made to the Plan on behalf of a Participant in connection with the Participant's Severance from Employment as determined in the sole and absolute discretion of the Board or its delegate pursuant to Section 4.02.

(dd) "Pre-Tax Contribution" means a contribution made to the Plan by the Employer at the election of a Participant pursuant to a Salary Reduction Agreement in accordance with Section 4.01.

(ee) "Public School" means a state sponsored educational organization described in Code Section 170(b)(1)(A)(ii).

(ff) "Qualified Distribution" means a distribution from a Roth Contribution Account after the Participant has satisfied a five year tax holding period and has attained age 59½, died, or become Disabled, in accordance with Code Section 402A(d). The five year tax holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Contribution under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed.

(gg) "Related Employer" means any entity which is under common control with the Employer under Code Section 414(b), (c), (m), or (o). The Employer shall determine which

entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under IRS Notice 89-23, 1989-1 C.B. 654.

(hh) "Rollover Contribution" means an amount contributed to the Plan pursuant to Section 4.03.

(ii) "Roth Contribution" means a contribution made to the Plan by the Employer at the election of a Participant pursuant to a Salary Reduction Agreement in accordance with Section 4.01, where the contribution has been (i) designated irrevocably by the Participant as a Roth Contribution being made in lieu of all or a portion of the Pre-Tax Contribution the Participant is otherwise eligible to make under the Plan, and (ii) treated by the Employer as includible in the Participant's gross income at the time the Participant would have received that amount in cash if the Participant had not made such an election. Roth Contributions shall be available under the Plan as soon as administratively practicable on or after January 1, 2020.

(jj) "Salary Reduction Agreement" means an agreement entered into between an Employee and the Employer pursuant to Section 4.01. Such agreement shall not be effective with respect to Compensation made available prior to the effective date of such agreement and shall be binding on the parties and irrevocable with respect to Compensation earned while it is in effect.

(kk) "Section" means, when not preceded by the word Code or ERISA, a section of the Plan.

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

(mm) "Spouse" means the person to whom an Eligible Employee is legally married under the law of any state.

(nn) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(oo) "Vendor" means the service provider that has been approved by the Administrator to serve as third party administrator and/or recordkeeper for the Plan and/or to offer Investment Options to Participants under the Plan. The Vendor(s) are listed in Appendix A, as modified from time to time in the Administrator's sole and absolute discretion. A modification of Appendix A is not an amendment of the Plan.

(pp) "Vest" or "Vested" means the interest of the Participant or Beneficiary in his or her Account that is unconditional, legally enforceable, and nonforfeitable.

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

ARTICLE III.
PARTICIPATION

Section 3.01. **Participation.** An Employee may become a Participant in the Plan for purposes of Elective Deferrals or Rollover Contributions immediately after commencement of employment with the Employer. Participation in the Plan is voluntary.

Section 3.02. **Notice and Enrollment.**

(a) The Employer shall notify an Employee when he or she is eligible to participate in the Plan for purposes of Elective Deferrals.

(b) An Employee must complete the enrollment process and make investment elections with the Vendor on the Applicable Form, including a Salary Reduction Agreement for purposes of Elective Deferrals, to become a Participant in the Plan. An Employee who fails to complete the enrollment process and make investment elections with the Vendor on the Applicable Form shall be deemed to have waived all of his or her rights under the Plan, provided that such Employee may become a Participant in the Plan at any time thereafter by completing the enrollment process and making investment elections with the Vendor on the Applicable Form.

Section 3.03. **Cessation of Contributions.** A Participant shall cease to be eligible for Elective Deferrals under the Plan when he or she is no longer an Employee.

Section 3.04. **Cessation of Participation.** A Participant shall cease to be a Participant on the distribution of his or her entire interest in the Plan.

Section 3.05. **Reemployment.** A former Participant who is reemployed by the Employer shall immediately become a Participant in this Plan as of his or her date of rehire as an Employee.

ARTICLE IV.
CONTRIBUTIONS

Section 4.01. **Elective Deferrals.**

(a) Subject to the limitations under Article V, an Employee who has satisfied the participation requirements under Section 3.01 may enter into a written Salary Reduction Agreement with the Employer agreeing to contribute each pay period Pre-Tax Contributions and/or Roth Contributions to the Plan in any flat dollar amount.

(b) Pre-Tax Contributions and Roth Contributions shall begin as soon as administratively practicable following the date specified in the Salary Reduction Agreement, or,

if later or if no date is specified, as soon as administratively practicable after the Salary Reduction Agreement is filed with the Administrator or the Vendor, as applicable.

(c) Pre-Tax Contributions and/or Roth Contributions shall reduce the Compensation otherwise payable to a Participant and shall be paid in cash to the Vendor by the Employer, on a basis consistent with its payroll practices, as soon as administratively feasible after being withheld from the Compensation of a Participant, but no later than 15 business days following the end of the month in which such amount is withheld from the Compensation of the Participant.

(d) If the Participant fails to designate whether Elective Deferrals are Pre-Tax Contributions or Roth Contributions, the Participant will be deemed to have designated his or her Elective Deferrals as Pre-Tax Contributions. Pre-Tax Contributions shall be allocated to the Pre-Tax Contribution Account of the Participant as of the date of contribution. Roth Contributions shall be allocated to the Roth Contribution Account of the Participant as of the date of contribution.

(e) A Salary Reduction Agreement shall remain in effect until superseded by another election or until the Administrator requires a Participant to complete a new Salary Reduction Agreement on a uniform and nondiscriminatory basis.

(1) A Participant may change his or her election to make Pre-Tax Contributions and/or Roth Contributions at any time by filing a new Salary Reduction Agreement with the Administrator or the Vendor, as applicable. Any such changes shall be effective as soon as administratively practicable following the date specified in the new Salary Reduction Agreement, or, if later, as soon as administratively practicable after the Salary Reduction Agreement is filed.

(2) A Participant may terminate his or her election to make Pre-Tax Contributions and/or Roth Contributions at any time by filing the Applicable Form with the Administrator or the Vendor, as applicable, which shall be effective as soon as administratively practicable after the Applicable Form is filed.

(f) An election to make Pre-Tax Contributions and/or Roth Contributions shall not be valid with respect to any period during which the Participant is not an Employee. No election to make, change, or discontinue Pre-Tax Contributions and/or Roth Contributions shall be given retroactive effect.

(g) The Administrator may establish additional nondiscriminatory rules and procedures governing the manner and timing of elections by Participants to make, change, or discontinue Pre-Tax Contributions and/or Roth Contributions.

Section 4.02. Post-Severance Employer Contributions. The Employer may make Post-Severance Employer Contributions to the Plan in an amount and for such Employee or Employees as determined by the Board or its delegate in its sole and absolute discretion each Plan Year. Post-Severance Employer Contributions shall be allocated to the Post-Severance Employer Contribution Account of the Participant as of the date of the contribution, and shall be made in accordance with Code Section 403(b)(3) and Treasury Regulation Section 1.403(b)-4(d).

Section 4.03. Rollover Contributions to the Plan.

(a) Subject to the Investment Arrangements, Participants who are Employees may transfer to the Plan as a Rollover Contribution a distribution from a Code Section 401(a) (including 401(k)) or 403(a) qualified plan (excluding after-tax contributions), a Code Section 403(b) plan (excluding after-tax contributions), a Code Section 408 individual retirement account or annuity, or a Code Section 457(b) eligible deferred compensation plan which is maintained by an eligible employer described in Code Section 457(e)(1)(A). Any Rollover Contribution (i) shall be subject to the Vendor's determination, in its discretion, that the Rollover Contribution satisfies all applicable requirements of the Code and (ii) shall be made directly from such prior plan, or if such amount was distributed to the Participant, such Rollover Contribution shall be made within 60 days after the Participant receives the rollover amount.

(b) The Plan shall accept a Rollover Contribution to a Roth Contribution Account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(c) A Rollover Contribution shall be allocated to the Rollover Contribution Account of the Participant as of the date of the contribution. Before a Rollover Contribution is made, the Participant shall designate on the Applicable Form the Investment Options in which the Vendor should invest the Participant's Rollover Contribution.

Section 4.04. In-Plan Roth Rollovers.

(a) Any portion or all of a Participant's Vested Account (other than a Roth Contribution Account) is eligible for direct rollover to the Participant's Roth Contribution Account under the Plan, even if the Vested Account is not otherwise distributable (pursuant to Code Section 402A(c)(4)(E)) under Article VIII of the Plan, and the transfer shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)) to the Participant's Roth Contribution Account.

(b) A Participant's election under this Section 4.04 shall be subject to the reasonable administrative procedures established by the Administrator, Code Section 402A(c)(4) and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(c) The taxable portion of the Participant's Account directly rolled over to a Roth Contribution Account under this Section 4.04 shall be included in the Participant's gross income in the tax year in which the transfer occurs.

(d) To the extent required by Code Section 402(f), the Administrator shall provide written information regarding in-Plan Roth rollovers under this Section 4.04, for amounts that are otherwise distributable under Article VIII.

Section 4.05. Leave of Absence. During a paid leave of absence, Pre-Tax Contributions and/or Roth Contributions shall continue to be made for a Participant on the basis of Compensation paid by the Employer during the leave. No Contributions shall be made during an unpaid leave of absence.

Section 4.06. Expenses of Plan. All reasonable expenses of administering the Plan shall be charged against and paid from the Participant's Accounts, subject to the terms of the applicable Investment Arrangements, unless paid by the Employer. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with rules promulgated by the Internal Revenue Service.

ARTICLE V.
LIMITATIONS ON CONTRIBUTIONS

Section 5.01. Elective Deferral Limits.

(a) The maximum amount of Elective Deferrals to the Plan for any calendar year shall be limited to the applicable dollar amount as provided in Code Section 402(g)(B)(1). The applicable dollar amount is \$19,500 for 2020, increased thereafter by the Cost of Living Adjustment.

(b) A Participant who attains age 50 or more by the end of the calendar year, and who is contributing up to the applicable dollar amount under paragraph (a), may make additional Elective Deferrals under Code Section 414(v) of up to \$6,500 for 2020, increased thereafter by the Cost of Living Adjustment.

(c) The special catch-up under Code Section 402(g)(7) shall not apply.

Section 5.02. Excess Elective Deferrals. Excess Elective Deferrals resulting from Elective Deferrals made on behalf of the Participant to this Plan and to any other 403(b) or 401(k) plan maintained by the Employer or a Related Employer (or, to the extent timely requested by the Participant, to any other 403(b) or 401(k) plan maintained by any other employer) shall be distributed along with Allocable Income to the Participant no later than the April 15th following the calendar year in which the Excess Elective Deferral was made. Such distributions shall be made in accordance with the rules under Code Section 402(g) and the regulations thereunder.

Section 5.03. Code Section 415 Limits.

(a) Notwithstanding any provision of the Plan to the contrary, Annual Additions to the Plan and any other Code Section 403(b) plan maintained by the Employer or a Related Employer (or, if required by Code Section 415 and the regulations thereunder, to any other defined contribution plan) for a Participant in a Limitation Year shall not exceed the limitations set forth in Code Section 415(c), except to the extent permitted under Code Section 414(v).

(b) The Code Section 415(c) limit for any Limitation Year is the lesser of:

(1) \$57,000 for 2020, increased thereafter by the Cost of Living Adjustment;

or

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

Section 5.04. Excess Annual Additions.

(a) If as of the end of the Plan Year, the Annual Additions allocated to any Participant's Account exceed the limitations of this Article V, the Excess Annual Additions will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar Internal Revenue Service correction program).

(b) In any Plan Year, in the event Contributions would exceed the Code Section 415(c) limitations, an adjustment to comply with this Article shall be made as soon as administratively practicable, but no later than the time permitted under Internal Revenue Service to any plan maintained by the Participant or another employer that is required to be aggregated under Code Section 415(c) with the Plan.

ARTICLE VI.
ACCOUNTING

Section 6.01. Participant Accounts. The Vendor(s) shall establish and maintain adequate records to reflect the Accounts of each Participant and Beneficiary. Credits and charges shall be made to such Accounts to reflect additions, distributions, and withdrawals, and to reflect gains or losses pursuant to the terms of each Investment Arrangement. The maintenance of individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

Section 6.02. Participant Statements. The Vendor(s) shall provide to each Participant a quarterly statement reflecting the value of the Participant's Account as of the end of each quarter, and shall provide similar information to the Administrator upon its request.

Section 6.03. Value of Account. The value of the Account of a Participant as of any valuation date is the value of the Account balance as determined by the Vendor. The valuation date shall be the last day of the Plan Year and each other date designated by the Administrator or Vendor in a uniform and nondiscriminatory manner. All transactions and Account records shall be based on fair market value.

ARTICLE VII.
INVESTMENT OF CONTRIBUTIONS

Section 7.01. Vendors and Investment Options.

(a) All Contributions under the Plan shall be transferred to the Vendor(s) to be held, managed, invested and distributed in accordance with the provisions of the Plan and the Investment Arrangements as applicable. All benefits under the Plan shall be distributed solely from the Investment Arrangements, and the Employer shall have no liability for any such benefits other than the obligation to make Contributions as provided in the Plan.

(b) Participants' Accounts shall be invested in one or more of the Investment Options available to Participants from a Vendor(s) approved under this Plan, as selected by the Administrator and communicated to Participants. The current Vendor(s) are listed in Appendix

A. The Administrator's current selection of Vendor(s) and Investment Options is not intended to limit future additions or deletions of Vendor(s) or Investment Options.

(c) A Participant shall have the right to direct the investment of his or her Accounts by filing the Applicable Form with the Vendor(s). A Participant may change his or her investment election as often as determined by the Vendor(s). A Participant may elect to transfer all or any portion of his or her Accounts invested in any one Investment Option to another Investment Option, regardless of whether offered by the same or a different Vendor, subject to the limitations of the Investment Arrangements, by filing a request on the Applicable Form with the Vendor(s) or by such other means that may be provided for by the Vendor(s). A Participant may also elect to transfer all or any portion of his or her Accounts invested with a Former Vendor to an Investment Option with a Vendor, subject to the terms of the Investment Arrangements. In no event, however, may a Participant transfer any portion of his or her Accounts invested in an Investment Option with a Vendor to an investment with a Former Vendor or any other vendor that is not eligible to receive Contributions under the Plan.

Section 7.02. **Exclusive Benefit.** Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries.

Section 7.03. **Default Investments.** If a Participant does not have a valid and complete investment direction on file with the Vendor on the Applicable Form, Contributions will be invested in a default Investment Option selected by the Administrator in its sole and absolute discretion, until the Participant makes an affirmative election regarding the investment of his or her Account.

ARTICLE VIII. **DISTRIBUTIONS**

Section 8.01. **Commencement of Distributions.**

(a) A Participant or, if applicable, a Beneficiary, shall be eligible to receive a distribution of his or her Vested Account under the Plan upon the Participant's:

- (1) Severance from Employment;
- (2) death;
- (3) Disability;
- (4) attainment of age 59½; or
- (5) financial hardship, as described in Section 8.03.

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

(c) Subject to the terms of the Investment Arrangements, Participants may elect to have either Pre-Tax Contributions or Roth Contributions distributed from the Plan first. Unless provided otherwise under the terms of the applicable Investment Arrangement, if the Participant fails to make an election, Pre-Tax Contributions will be distributed from the Plan first.

(d) Subject to the terms of the Investment Arrangements, a Rollover Contribution Account may be distributed to a Participant at any time, to the extent that Rollover Contributions have been separately accounted for by the Vendor.

(e) A Participant or Beneficiary may submit a request for a distribution to the Vendor on the Applicable Form. The Employer shall certify that the Participant has had a Severance from Employment or is Disabled.

Section 8.02. Form of Distribution.

(a) A Participant may elect to receive his or her Vested Account under any payment option available under the Investment Arrangement. Subject to the terms of the Investment Arrangement, these may include, but are not necessarily limited to, a single lump sum, annuity payments, and installment payments. All forms of payment shall be subject to the limitations of the Investment Arrangement.

(b) To the extent permitted by the Investment Arrangement, a lump sum payment of a Vested Account may be made without the consent of the Participant or Beneficiary if his or her Account balance does not exceed \$1,000 (determined without regard to his or her Rollover Contribution Account), unless the Participant elects to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in a lump sum.

Section 8.03. Hardship Distributions.

(a) To the extent (i) a Vendor has been approved by the Administrator to allow hardship withdrawals under the Plan and (ii) a hardship withdrawal is permitted by the terms governing the applicable Investment Arrangement, distribution of Elective Deferrals (excluding any earnings on such Elective Deferrals after December 31, 1988) may be made to a Participant who is an Employee in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Participants may be charged a reasonable processing fee per hardship withdrawal.

(b) The following are the only financial needs considered immediate and heavy:

(1) expenses incurred or necessary for medical care described in Code Section 213(d) (without regard to whether the expenses exceed 7.5% of adjusted gross income) of the Participant, the Participant's Spouse or dependents (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(2) the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) payment of tuition and related educational fees and room and board expenses for the next 12 months of post-secondary education for the Participant, the Participant's Spouse or dependents (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(4) payments necessary to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;

(5) payments for funeral or burial expenses for the Participant's deceased parent, Spouse, any dependent (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(6) expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income);

(7) expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; and

(8) such other circumstances as the Commissioner of Internal Revenue determines constitute financial hardship under Code Section 401(k) or the Treasury Regulations thereunder.

(c) A distribution will be considered necessary to satisfy an immediate and heavy financial need of the Participant only if:

(1) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);

(2) The Participant has obtained all distributions currently available under the Plan or any other plans maintained by the Employer, other than hardship distributions and non-taxable loans;

(3) For distributions on or before December 31, 2019, all plans maintained by the Employer provide that the Participant's Elective Deferrals will be suspended until the earlier of (i) six months after the receipt of the hardship distribution or (ii) January 1, 2020;

(4) For distributions made on or after January 1, 2020, the Participant represents that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and

(5) The Participant has met any such additional or alternative requirements as may be prescribed in Treasury Regulation Section 1.401(k)-1(d)(3)(iv)(E) or subsequent promulgations.

(d) A Participant must provide substantiation of the reason for and the amount of the immediate and heavy financial need to the Vendor. The Vendor shall approve all hardship distributions under this Section 8.03.

(e) The Administrator shall take such steps as appropriate to coordinate the hardship distribution rules, including collection of information from Vendors, and transmission of information requested by any Vendor. The Administrator may delegate this responsibility to a Vendor or to another service provider pursuant to Article XII of the Plan.

Section 8.04. Reemployment. If a Participant who is a former Employee subsequently becomes an Employee again, the Participant cannot request a distribution of his or her Vested Accounts until he or she is again entitled to a distribution under Section 8.01.

Section 8.05. Death Benefits. If a Participant dies before the distribution of his or her entire Account, his or her remaining Account shall be distributed to his or her Beneficiary(ies) as soon as administratively practicable after the Participant's death, unless the Beneficiary elects a later payment date on the Applicable Form, subject to Code Section 401(a)(9). A Beneficiary may elect to receive the Participant's Account under any distribution option available under the Section 8.02, subject to Code Section 401(a)(9).

Section 8.06. Required Distribution Rules. The provisions of this Section 8.06 take precedence over any inconsistent provisions of the Plan or of any Investment Arrangement. All distributions under this Plan shall be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G), and shall comply with the following rules.

(a) Distributions may only be made over one of the following periods (or a combination thereof):

- (1) The life of the Participant;
- (2) The life of the Participant and a designated Beneficiary;
- (3) A period certain not extending beyond the life expectancy of the Participant; or
- (4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary.

(b) A Participant's Accounts shall be distributed to the Participant beginning no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or, if later, April 1 of the calendar year following the calendar year that the Participant has a Severance from Employment.

(c) Notwithstanding anything to the contrary in this Section 8.06, if the Vendor(s) separately accounts for Contributions made prior to January 1, 1987, then distribution of such Contributions (but not any interest accumulated with respect thereto) need not commence until April 1 of the calendar year following the calendar year in which the Participant attains age 75.

(d) Upon the death of the Participant, the following distribution provisions shall take effect:

(1) If the Participant dies after distribution of his or her Account(s) begins, any remaining portion of the Account(s) shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(2) If the Participant dies before distributions of his or her Account(s) begins and the Participant has no designated Beneficiary(ies), the Participant's Account(s) under the Plan shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) If the Participant dies before distributions of his or her Account(s) begins and any portion of his or her Account(s) are payable to a designated Beneficiary, the designated Beneficiary may elect for the Participant's Account(s) to be distributed (i) by December 31 of the calendar year containing the fifth anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. If the designated Beneficiary is the surviving Spouse, the Beneficiary may elect to delay payment under item (ii) until December 31 of the calendar year in which the Participant would have attained age 70½. If the designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (i).

(4) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this Section 8.06(d).

(e) Each Vendor shall be separately and solely responsible for complying with the provisions of this Section 8.06 with respect to its Investment Arrangements under the Plan. The Vendor(s) shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions at least 60 days prior to the date distributions must begin.

Section 8.07. Transfer to Defined Benefit Governmental Plan.

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account transferred to the defined benefit governmental plan, subject to the terms of the Investment Arrangement. A transfer under this Section may be made before the Participant has had a Severance from Employment.

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

Section 8.08. Additional Tax on Early Withdrawals.

(a) Generally, and except as described in paragraph (b), if a Participant receives any amount under the Plan, his or her tax for the taxable year in which such amount is received is increased by an amount equal to 10% of the portion of such amount which is includible in gross income. Such amount shall be included in gross income to the extent allocable to income on the Investment Arrangement and shall not be included in gross income to the extent allocable to the investment in the Investment Arrangement as provided in Code Section 72(e)(2)(b).

(b) The penalty described in paragraph (a) generally does not apply to any distribution (i) made on or after the date on which the Participant attains age 59½, (ii) made on or after the death of the Participant, (iii) attributable to the Participant becoming Disabled, (iv) which is part of a series of substantially equal periodic payments made (not less frequently than annually) for the life or life expectancy of the Participant or the joint lives (or joint life expectancies) of such Participant and his or her designated Beneficiary, (v) made to a Participant after Severance from Employment following the attainment of age 55, (vi) which is a qualified reservist distribution within the meaning of Code Section 72(t)(2)(G)(iii), or (vii) any other circumstance permitted by the Code or the Internal Revenue Service.

ARTICLE IX.
LOANS

Section 9.01. Loans Generally.

(a) To the extent (i) a Vendor has been approved by the Administrator to allow loans under the Plan and (ii) loans are permitted by the terms governing the applicable Investment Arrangement, loans shall be available to a Participant who is an Employee from his or her Vested Account. No loans shall be permitted from Investment Arrangements held by Former Vendors.

(b) Loans shall be subject to all applicable requirements and restrictions of the Code, including the provisions of Code Section 72(p) and the regulations thereunder. A Participant who has defaulted on a loan shall not be entitled to a future loan under the Plan until it has been fully repaid to the Plan.

(c) All loans shall be subject to the approval of the Vendor. The Vendor may charge a reasonable processing fee with respect to any loan.

Section 9.02. Loan Procedures. The Vendor shall establish written procedures to govern Participant loans under the Plan, which may be amended from time to time. All loans shall comply with such procedures, and shall be administered subject to the terms of the applicable Investment Arrangement.

Section 9.03. Loan Limits.

(a) No loan to a Participant under the Plan may exceed the lesser of:

(1) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Vendor (not taking into account any payments made during such one-year period); or

(2) One-half of the value of the Participant's Vested Account (as of the valuation date immediately preceding the date on which such loan is approved by the Vendor).

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

(c) The Administrator shall take such steps as appropriate to coordinate the limitations on loans, including collection of information from Vendors, and transmission of information requested by any Vendor. The Administrator may delegate this responsibility to a Vendor or to another service provider pursuant to Article XII of the Plan.

ARTICLE X.
VESTING

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

ARTICLE XI.
ROLLOVERS FROM THIS PLAN

Section 11.01. Definitions for this Article. For purposes of this Article, the following definitions shall apply.

(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.

(b) "Distributee" means a Participant, the Spouse of the Participant, the Participant's former Spouse who is an alternate payee within the meaning of Code Section 414(p)(8), and, effective January 1, 2008, a Participant's non-Spouse Beneficiary, any of whom is eligible to receive a distribution from the Plan.

(c) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means:

- (1) an individual retirement account described in Code Section 408(a);
- (2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);
- (3) a simple retirement account described in Code Section 408(p)(1) following the two year period described in Code Section 72(t)(6);
- (4) any annuity plan described in Code Section 403(a);
- (5) a plan described in Code Section 403(b);
- (6) a qualified plan described in Code Section 401(a);
- (7) a Code Section 457(b) eligible deferred compensation plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and
- (8) effective January 1, 2008, a Roth individual retirement account described in Code Section 408A(e), provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs.

Effective January 1, 2008, in the case of a distribution to a Participant's non-Spouse Beneficiary, an Eligible Retirement Plan shall mean the plans described in subparagraphs (1) and (2) only, to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(d) "Eligible Rollover Distribution," as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under this Plan, except that an Eligible Rollover Distribution does not include:

- (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a period of ten years or more;
- (2) any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (3) the portion of any distribution that is not includible in gross income; provided, however, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:
 - (i) to an individual retirement account or annuity described in Code Section 408(a) or 408(b), respectively, or to a qualified defined contribution plan described in Code Section 401(a) that agrees to separately account for amounts so

transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of such distribution which is not so includible;

(ii) to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(iii) to a Roth IRA described in Code Section 408A;

(4) any distribution which is made upon the financial hardship of the Participant; and

(5) other items designated by regulations, or by the Commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

Section 11.02. Direct Transfer of Eligible Rollover Distribution. A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Vendor. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 403, or 408.

Section 11.03. Mandatory Withholding of Eligible Rollover Distributions.

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory 20% federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e), and only to the extent such amount would otherwise be includible in the Distributee's taxable gross income.

(b) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the 60th day following the day on which the Distributee received the distribution.

(c) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

Section 11.04. Explanation of Plan Distribution and Withholding Requirements.

Not fewer than 30 days nor more than 180 days before an Eligible Rollover Distribution, the Vendor shall provide each Distributee a written explanation as required under Code Section 402(f), which explains the rules:

(a) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

(b) that require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan;

(c) that provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within 60 days after the date the Distributee receives the distribution; and

(d) if applicable, certain special rules regarding taxation of the distribution as described in Code Sections 402(d) and (e).

Notwithstanding the above, a distribution may begin fewer than 30 days after the notice discussed in the preceding sentence is given, provided that the Vendor clearly informs the Participant that he or she has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution and the Participant, after receiving a notice, affirmatively elects a distribution.

ARTICLE XII.
PLAN ADMINISTRATION

Section 12.01. Authority of the Administrator. The Administrator shall have the authority to control and manage the operation and administration of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. The Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan.

Section 12.02. Powers of the Administrator. The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claim procedures, the Administrator shall be the sole and final judge of such expediency. Benefits are payable under the Plan only if the Administrator, in its sole and absolute discretion, determines the benefits are payable under the provisions the Plan.

Section 12.03. Delegation by Administrator.

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

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

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

Section 12.04. Fiduciary Insurance. Subject to State law, the Board may require the purchase of fiduciary liability insurance for any Plan fiduciary or fiduciaries to cover liability or losses occurring by reason of the act or omission of a fiduciary.

Section 12.05. Employment of Consultants. The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

ARTICLE XIII.
CLAIMS PROCEDURES

Section 13.01. Requests for Information Concerning Eligibility, Participation and Contributions. Requests for information concerning eligibility, participation, contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the Administrator of the Plan. If a written request is denied, the Administrator shall, within a reasonable period of time, provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Administrator and may submit issues and comments in writing to the Administrator. The Administrator shall provide to the Participant a written decision upon such request for review of a denied claim.

Section 13.02. Requests for Information Concerning Investment Arrangements. Requests for information concerning the Annuity Contracts and Custodial Accounts and their terms, conditions, and interpretations thereof, claims thereunder, any requests for review of such claims, and service of legal process, should be in writing and directed to the Vendor. If a written request is denied, the Vendor shall, within a reasonable period of time, provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Vendor

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

ARTICLE XIV.
AMENDMENT AND TERMINATION

Section 14.01. Amendment and Termination of Plan. The Board shall have the right, in its sole and final discretion, to amend or terminate the Plan at any time and from time to time to any extent which it may deem advisable.

Section 14.02. Restrictions on Amendments. The Plan may not be amended in a manner that violates any provision of the Code.

Section 14.03. Distribution Upon Termination of the Plan. The Board may provide that, in connection with a termination of the Plan, all Accounts shall be distributed, provided that the Employer and any Related Employer on the date of the termination does not make contributions to an alternative Code Section 403(b) plan that is not part of the Plan during the period beginning on the date of Plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the regulations. For purposes of distributing all accumulated benefits under the Plan in the event of Plan termination, delivery of a fully paid individual insurance annuity contract shall be treated as a distribution.

ARTICLE XV.
MISCELLANEOUS

Section 15.01. Non-Alienation.

(a) A Participant's Account under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.

(b) Notwithstanding paragraph (a), the Plan shall comply with any judgment, decree or order ("domestic relations order") which establishes the right of an alternate payee within the meaning of Code Section 414(p)(8) to all or a portion of a Participant's benefit under the Plan to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p). The Vendor shall establish reasonable written procedures to determine whether a domestic relations order is a QDRO and to administer the distribution of benefits with respect to such orders, which procedures may be amended from time to time, and which shall be provided to Participants upon request. Notwithstanding any other provisions in the Plan, the Plan may make an immediate distribution to the alternate payee pursuant to a QDRO.

(c) Notwithstanding paragraph (a), the Plan shall offset from the benefit otherwise payable to a Participant or his or her Beneficiary such amounts as are permitted to be offset under a court order, civil judgment, or settlement agreement in accordance with Code Section 401(a)(13)(C).

Section 15.02. Military Service.

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with USERRA, HEART, Code Section 414(u), and Code Section 401(a)(37). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(b) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service may elect to make Elective Deferrals upon resumption of employment with the Employer up to the maximum Elective Deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Participant during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for the lesser of (i) five years following the resumption of employment or (ii) a period equal to three times the period of the interruption or leave. Such Elective Deferrals by the Participant may only be made during such period and while the Participant is reemployed by the Employer.

(c) Effective January 1, 2007, to the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

(d) Effective January 1, 2009, differential wage payments within the meaning of Code Section 414(u)(12)(D) shall be treated as Compensation and Includible Compensation under the Plan.

Section 15.03. Limitation of Rights and Obligations. Neither the establishment nor maintenance of the Plan nor any amendment thereof nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) as conferring upon any Participant, Beneficiary, or any other person a right or claim against the Administrator or Employer, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Board, the Employer or the Administrator for the validity or effect of the Plan;

(c) as a contract or agreement between the Board, the Employer, or the Administrator and any Participant or other person;

(d) as an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the Employer or any

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

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

Section 15.04. Federal and State Taxes. It is intended that Contributions other than Roth Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries, and that Roth Contributions and earnings thereunder are excludable from gross income for federal and state income tax purposes when paid to Participants or Beneficiaries to the extent that they are Qualified Distributions. However, the Administrator does not guarantee that any particular federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

Section 15.05. Erroneous Payments. If the Administrator or Vendor makes any payment that, according to the terms of the Plan and the benefits provided hereunder, should not have been made, the Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or Vendor may deduct it when making any future payments directly to that Participant.

Section 15.06. Benefit Payment Issue Resolution. The Administrator, or its designee, if in doubt regarding the correctness of its action with respect to a benefit payment, may direct suspension of payment until satisfied as to the correctness of the payment or the person to receive the payment. Alternatively, the Administrator, or its designee, may file, in any state court of competent jurisdiction, a suit, in the form it deems appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator, or its designee, may also bring a suit, or take other action as it deems appropriate, to resolve questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and Participants and the Administrator shall be bound by such an order, insofar as it affects the benefits payable under this Plan, or the method or manner of payment.

Section 15.07. Release. Any payments to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Administrator.

Section 15.08. Liability. The Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram, or other paper or document or electronic transmission believed by the Administrator to be genuine or to be executed or sent by an authorized person.

Section 15.09. Information Provided by the Participant. Each Participant should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan.

Section 15.10. Family Medical Leave Act. Notwithstanding any provisions of this Plan to the contrary, Contributions and benefits with respect to qualified leave will be provided in accordance with the Family Medical Leave Act of 1993, 29 U.S.C. Section 2601 et. seq.

Section 15.11. Payments to Minors or Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is determined to be legally incapable of giving valid receipt and discharge for such benefits by a court or by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to the Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

Section 15.12. Missing or Lost Participants. In the event that the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary under the Plan, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. A reasonable attempt to locate a missing or lost Participant or Beneficiary shall include (i) providing notice to the Participant at the Participant's last known address via certified mail; (ii) determining whether the Employer's records or the records of another plan maintained by the Employer has a more current address for the Participant; (iii) attempting to contact any named Beneficiary of the Participant; and (iv) searching for the missing Participant via free electronic search tools, such as Internet search engines, public record databases, obituaries, and social media. If such search methods are unsuccessful, based on the facts and circumstances, the Administrator may use other search methods, including using Internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases, and analogous services that may involve charges. The Administrator may charge missing Participants and Beneficiaries reasonable expenses for efforts to find them.

Section 15.13. Indemnification. The Employer shall satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Administrator is delegated pursuant to Section 12.03, except a Vendor or other service provider. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the regulations or by-laws of the Employer, under any provision of law, or under any other agreement; provided, however, that the Employer will not satisfy any such liability to the extent that the person did not act in good faith.

Section 15.14. No Reversion. Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the Employer, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, if

Contributions are made by the Employer by a good faith mistake of fact, such amount may be returned to the Employer within one year of the date that they were made to the Plan.

Section 15.15. Finality of Determination. All determinations with respect to crediting of service under the Plan are made on the basis of the records of the Employer, and all determinations made are final and conclusive upon Employees, former Employees, Eligible Employees, former Eligible Employees, and all other persons claiming a benefit under the Plan.

Section 15.16. Counterparts. The Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be evidenced by any one counterpart.

IN WITNESS WHEREOF, the Board has caused this amended and restated Plan to be executed by its duly authorized representative as of the date written below, but effective as of January 1, 2020.

**UNIVERSITY SYSTEM OF MARYLAND
BOARD OF REGENTS**

Signature

Printed

Title

Date

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

APPENDIX A

APPROVED VENDORS

The current selection of Vendor(s) is not intended to limit future additions or deletions of Vendor(s). The Administrator from time to time may add or delete Vendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in a revised Appendix A.

1.1 Approved Vendors

As of January 1, 2020, the Board has approved the following Vendors under the Plan:

- TIAA
- Fidelity Investments

1.2 Former Vendors

As of January 1, 2008, the Former Vendor under the Plan is AIG VALIC.

DRAFT

December 2, 2019

**UNIVERSITY SYSTEM OF MARYLAND
DEFERRED COMPENSATION PLAN AND TRUST**

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**UNIVERSITY SYSTEM OF MARYLAND
DEFERRED COMPENSATION PLAN AND TRUST**

**ARTICLE I.
ESTABLISHMENT AND RESTATEMENT OF PLAN**

Section 1.01. Plan Establishment and History.

(a) The University System of Maryland is a public university system established under Maryland law and an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The Board of Regents of the University System of Maryland ("Board") established the University System of Maryland Deferred Compensation Plan and Trust ("Plan") pursuant to Code Section 457(b) and Sections 30-210 et seq. of the State Personnel and Pensions Article of the Annotated Code of Maryland (1978, 2004 Repl. Vol.), to provide eligible employees the opportunity to supplement their retirement benefits through voluntary contributions.

(b) The Plan is, and is intended to remain, a defined contribution plan under Code Section 457(b). The Plan is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(c) The Plan was most recently amended and restated effective January 1, 2006, and has been amended from time to time thereafter.

Section 1.02. Plan Restatement.

(a) The Plan is now being amended and restated effective January 1, 2020, except as otherwise specifically provided herein, to incorporate the prior amendments to the Plan and to make certain discretionary changes.

(b) Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2020, and to transactions under the Plan on and after January 1, 2020. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2020, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

Section 1.03. Plan Funding. The Plan is funded through one or more Trusts in accordance with the qualification requirements of the Code.

**ARTICLE II.
RULES OF CONSTRUCTION AND DEFINITIONS**

Section 2.01. Rules of Construction and Governing Law.

(a) This Plan shall be interpreted, enforced, and administered in accordance with the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Maryland without regard to conflict of law principles.

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(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and *vice versa*, and words used herein in the singular or plural shall be construed as being in the plural or singular, where appropriate, and *vice versa*.

(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute an eligible plan under the provisions of Code Section 457 and the Trust to be exempt from tax under Code Section 457, (ii) be a governmental plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with all applicable requirements of the Code, shall prevail over any different interpretation.

Section 2.02. Definitions. When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "Account Balance" means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Article XI for Rollover Contributions and Article XII for plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Code Section 414(p)(8)).

(b) "Account" means the separate accounts maintained for each Participant and Beneficiary under the Plan. The following Accounts shall be established for a Participant or Beneficiary, if applicable:

(1) A Pre-Tax Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Pre-Tax Contributions pursuant to Article III.

(2) A Roth Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Roth Contributions pursuant to Article III.

(3) A Rollover Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Rollover Contributions pursuant to Article XI.

(4) A Transfer Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to transfers pursuant to Article XII.

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(c) "Administrator" means the Administrative Committee as designated by the Board, or such other person, persons, or entity designated by the Board, to perform the administrative duties and functions under the Plan.

(d) "Annual Deferrals" mean Pre-Tax Contributions and/or Roth Contributions.

(e) "Applicable Form" means the appropriate form as designated and furnished by the Administrator or Vendor to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically required by the Code, the Administrator or Vendor may prescribe a verbal, electronic, or telephonic instruction in lieu of or in addition to a written form.

(f) "Beneficiary" means the person, company, trustee, or estate designated by the Participant on the Applicable Form to receive any benefits payable under the Plan in the event of the Participant's death. A designation of an individual as a Beneficiary shall remain in effect until affirmatively revoked by the Participant on a subsequent Applicable Form. Unless otherwise provided in the Trust, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's Spouse shall be the Beneficiary or, if none, the Participant's estate shall be the Beneficiary. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

(g) "Board" means the Board of Regents of the University System of Maryland.

(h) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(i) "Compensation" means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, which is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including an election to reduce compensation in order to make Annual Deferrals under the Plan). Compensation does not include amounts "picked up" by the Employer within the meaning of Code Section 414(h). Compensation includes any compensation described in paragraph (1) or (2), provided it is paid by the later of 2½ months after the Employee's Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer:

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

(2) a payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the Employee's Severance from Employment, and only if the Employee separately elects for such payment to be reduced on his or her Salary Reduction Agreement pursuant to Section 4.01.

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Any payment that is not described in paragraph (1) or (2) above is not considered Compensation if paid after Severance from Employment. Thus, for example, Compensation does not include amounts paid after Severance from Employment that are severance pay, unfunded nonqualified deferred compensation, or parachute payments within the meaning of Code Section 280G(b)(2).

(j) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 414(v) or 457(e)(15) for any applicable year.

(k) "Disabled" or "Disability" means disability within the meaning of Code Section 72(m)(7).

(l) "Employee" means each employee of the Employer, including a contingent employee (other than a contractual or a leased employee or an independent contractor) and an employee whose employment is governed by the terms of a collective bargaining agreement between representatives of the employee's bargaining unit and the State, and under which retirement benefits were the subject of good faith bargaining, unless the bargaining representatives for the bargaining unit and the Employer have agreed to have the employees in the bargaining unit excluded from participation.

(m) "Employer" means the University System of Maryland and its constituent institutions and centers, which are all governmental entities.

(n) "Former Vendor" means a service provider that was an approved Vendor under the Plan, but that ceases to be an approved Vendor under the Plan, that continues to hold Plan assets.

(o) "HEART" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

(p) "Includible Compensation" means all compensation received by an Employee from the University that is includible in his or her gross income for federal income tax purposes (computed without regard to Code Section 911) for that taxable year under Code Section 415(c)(3). Includible Compensation also includes any amounts excludable from taxable income because of an election (including Elective Deferrals under the Plan) under Code Sections 403(b), 457(b), 125, 401(k), or 132(f). Includible Compensation includes compensation paid by the later of 2½ months after an Employee's Severance from Employment or the end of the Plan Year that includes the date of the Employee's Severance from Employment, if:

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

(2) the payment is for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if the Employee had continued in employment; or

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(3) the payment is made to the Employee under a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the University and only to the extent that the payment is includible in the Employee's gross income.

Includible Compensation does not include any amounts "picked up" by the Employer within the meaning of Code Section 414(h). Includible Compensation is determined without regard to any community property laws.

(q) "Investment Options" mean the investment funds available under the Trust provided by the Vendor(s) and specifically approved by the Administrator, in its sole and absolute discretion, for use under this Plan.

(r) "Normal Retirement Age" means, for a Participant who is a member of:

(1) a State defined benefit retirement system, the age designated by the Participant, but beginning no earlier than the earliest age at which the Participant may retire under the State defined benefit retirement system in which he or she participates and receive immediate retirement benefits (without consent of the State and without actuarial or similar reduction), and ending no later than age 70½; or

(2) the State optional retirement plan, the age designated by the Participant, but beginning no earlier than age 65, and ending no later than age 70½.

Said designation may be amended by the Participant at any time prior to reaching such designated age. If the Participant shall, for any reason, fail to designate a Normal Retirement Age, the Normal Retirement Age shall be age 70½. The Normal Retirement Age specified must be the same for all eligible deferred compensation plans under Code Section 457(b) sponsored by the Employer in which the Participant participates.

(s) "Participant" means any Employee who is or may become eligible to receive a benefit of any type under the Plan. A Participant shall also mean, when appropriate to the context, a former Employee who is eligible to receive a benefit of any type under the Plan.

(t) "Participation Agreement" means the Applicable Form signed by the Employee when he or she commences participation in the Plan, any amendment thereto, and any subsequent agreement in which the Participant designates the amount of his or her Annual Deferral, his or her investment selections, his or her designated Normal Retirement Age, his or her date for commencement of benefits, and his or her method of payments of benefits.

(u) "Plan" means the University System of Maryland Deferred Compensation Plan and Trust, as amended from time to time.

(v) "Plan Year" means the calendar year.

(w) "Pre-Tax Contribution" means a contribution made to the Plan by the Employer at the election of a Participant pursuant to a Participation Agreement in accordance with Article III.

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(x) "Qualified Distribution" means a distribution from a Roth Contribution Account after the Participant has satisfied a five year tax holding period and has attained age 59½, died, or become Disabled, in accordance with Code Section 402A(d). The five year tax holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Contribution under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed.

(y) "Related Employer" means any entity which is under common control with the Employer under Code Section 414(b), (c), (m), or (o). The Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under IRS Notice 89-23, 1989-1 C.B. 654.

(z) "Rollover Contribution" means an amount contributed to the Plan pursuant to Article XI.

(aa) "Roth Contribution" means a contribution made to the Plan by the Employer at the election of a Participant pursuant to a Participation Agreement in accordance with Article III that has been (i) designated irrevocably by the Participant as a Roth Contribution being made in lieu of all or a portion of the Pre-Tax Contribution the Participant is otherwise eligible to make under the Plan, and (ii) treated by the Employer as includible in the Participant's gross income at the time the Participant would have received that amount in cash if the Participant had not made such an election. Roth Contributions shall be available under the Plan as soon as administratively practicable on or after January 1, 2020.

(bb) "Section" means, when not preceded by the word Code or ERISA, a section of the Plan.

(cc) "Severance from Employment" means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). For an Employee on a leave of absence, such separation shall occur when the leave of absence expires if the Employee does not return to service.

(dd) "Spouse" means the person to whom an Eligible Employee is legally married under the law of any state.

(ee) "State" means the State of Maryland acting through the Employer which has offered this Plan to its Employees.

(ff) "State Pers. & Pens. Art." means the State Personnel and Pensions Article of the Annotated Code of Maryland (1978, 2004 Repl. Vol.).

(gg) "Trust" means a trust that satisfies the requirements of Code Section 457(g), including a custodial account and/or an annuity contract treated as qualified trust under Code Section 401(f) that satisfies the requirements of Code Section 457(g)(3), established under the Plan to hold Plan assets.

(hh) "Trust Fund" means the assets of the Plan held pursuant to the terms of the Plan and Trust.

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(ii) "Trustee" means the Board; provided, however, that the entity or person(s) designated by the Administrator to hold the assets of a custodial account or hold an annuity contract in accordance with Code Sections 457(g)(3) and 401(f) shall be the custodial Trustee with respect to such assets.

(jj) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(kk) "Vendor" means the service provider that has been approved by the Administrator to serve as third party administrator and/or recordkeeper for the Plan and/or to offer Investment Options to Participants under the Plan. The Vendor(s) are listed in Appendix A, as modified from time to time in the Administrator's sole and absolute discretion. A modification of Appendix A is not an amendment of the Plan.

(ll) "Vest" or "Vested" means the interest of the Participant or Beneficiary in his or her Account that is unconditional, legally enforceable, and nonforfeitable.

ARTICLE III. **PARTICIPATION**

Section 3.01. Participation. An Employee may become a Participant in the Plan for purposes of Annual Deferrals or Rollover Contributions immediately after commencement of employment with the Employer. Participation in the Plan is voluntary.

Section 3.02. Election Required for Participation. An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as a Pre-Tax Contribution and/or Roth Contribution on his or her behalf) and filing it with the Administrator. This participation election shall be made on the Participant Agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. If the Employee fails to designate whether Annual Deferrals are Pre-Tax Contributions or Roth Contributions, the Employee will be deemed to have designated his or her Annual Deferrals as Pre-Tax Contributions. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. The participation election shall also include designation of Investment Options and designation of a Beneficiary. Any such election shall remain in effect until a new election is filed on the Applicable Form.

Section 3.03. Commencement of Participation. An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a Participation Agreement pursuant to Section 3.02, or upon establishing a Rollover Contribution Account as described in Article XI of the Plan, as applicable. An election pursuant to Section 3.02 shall become effective no earlier than the calendar month following the month in which the election is made. A new Employee may defer Compensation payable in the calendar month during which the Participant first becomes an Employee if a Participation Agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

Section 3.04. Deferrals of Sick, Vacation, and Back-Pay. A Participant who has not had a Severance from Employment may elect to defer accumulated sick pay, accumulated vacation pay, and back-pay if the requirements of Code Section 457(b) are satisfied and if

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permitted by Board policy and Maryland State law. These amounts may be deferred for any calendar month only if a Participation Agreement providing for the Annual Deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee on the date the amounts would otherwise be paid or made available. Compensation that would otherwise be paid for a payroll period that begins before Severance from Employment is treated as an amount that would otherwise be paid or made available before an Employee has a Severance from Employment. In addition, Annual Deferrals may be made for former Employees with respect to Compensation paid after an Employee has a Severance from Employment as described in Section 2.02(i) of the Plan.

Section 3.05. Information Provided by the Participant. Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code Section 457(b).

Section 3.06. Contributions Made Promptly. Annual Deferrals by the Participant under the Plan shall be transferred to the Vendors within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

Section 3.07. Amendment of Participation Election. Subject to other provisions of the Plan, a Participant may at any time revise his or her Participation Agreement, including a change of the amount of his or her Annual Deferrals, his or her Investment Options, and his or her designated Beneficiary on the Applicable Form in accordance with procedures established by the Administrator. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the Investment Option shall take effect as of the date provided by the Vendor on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor. The Participant may revoke his or her election to participate in the Plan by signing and filing with the Administrator (or such other entity as is designated by the Administrator) a written revocation on the Applicable Form and in the procedural manner approved by the Administrator. Any such revocation shall be effective prospectively only.

Section 3.08. Leave of Absence or Sabbatical. Unless an election is otherwise revised, if a Participant is absent from work by leave of absence or sabbatical, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

Section 3.09. Disability. A Disabled Participant may elect Annual Deferrals during any portion of the period of his or her Disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

Section 3.10. Cessation of Plan Participation. An Employee shall cease to be a Participant on the distribution of the Employee's entire interest in the Plan.

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Section 3.11. Vesting Standards. A Participant shall be 100% Vested in the Participant's Accounts.

Section 3.12. Plan Expenses. All reasonable expenses of administering the individual Accounts in the Plan will be charged against and paid from the Participants' Accounts.

ARTICLE IV.
LIMITATIONS ON AMOUNTS DEFERRED

Section 4.01. Basic Annual Limitation. The maximum amount of Annual Deferrals to the Plan for any calendar year shall be limited to the lesser of (i) the applicable dollar amount as provided in Code Section 457(e)(15) or (ii) the Participant's Includible Compensation as provided in Code Section 457(b)(2). The applicable dollar amount is \$19,500 for 2020, increased thereafter by the Cost of Living Adjustment.

Section 4.02. Age 50 Catch-up Annual Deferral Contributions. A Participant who attains age 50 or more by the end of the calendar year, and who is contributing up to the applicable dollar amount under Section 4.01, may make additional Annual Deferrals under Code Section 414(v) of up to \$6,500 for 2020, increased thereafter by the Cost of Living Adjustment.

Section 4.03. Special Section 457 Catch-up Limitation. If the applicable year is one of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section exceeds the amount computed under Sections 4.01 and 4.02, then the Annual Deferral limit under this Article IV shall be the lesser of:

(a) An amount equal to two times the applicable dollar amount under Section 4.01 for such year; or

(b) The sum of:

(1) An amount equal to (A) the aggregate Section 4.01 limit for the current calendar year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(2) An amount equal to (A) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Sections 4.02 and 4.03), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

However, in no event can the deferred amount under this Section 4.03 be more than the Participant's Compensation for the year. A Participant may not have more than one Normal Retirement Age under the Plan.

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Section 4.04. Special Rules. For purposes of this Article IV, the following rules shall apply:

(a) **Participant Covered By More Than One Eligible Plan.** If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code Section 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article IV. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) **Pre-Participation Years.** In applying Section 4.03, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 4.01 or any other plan ceiling required by Code Section 457(b).

(c) **Pre-2002 Coordination Years.** For purposes of Section 4.03(b)(ii)(B), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction, or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.03(b)(ii)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code Section 457(b)(2) for that year.

Section 4.05. Correction of Excess Deferrals. If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described under this Article IV, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described under this Article IV when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant as soon as administratively practicable. Subject to the terms of the Trust, if a Participant who made both Pre-Tax Contributions and Roth Contributions for a calendar year has excess amounts for that year, the excess Annual Deferrals will be distributed out of the Roth Contribution Account unless the Participant elects to instead have the excess Annual Deferrals distributed out of the Pre-Tax Contribution Account.

Section 4.06. Disregard Excess Deferrals. For purposes of Sections 4.01, 4.02, and 4.03, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in Section 4.05. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

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ARTICLE V.
ACCOUNTS AND REPORTS

Section 5.01. Accounts. The Vendor shall maintain a Pre-Tax Contribution Account and/or Roth Contribution Account with respect to each Participant. Pre-Tax Contributions shall be credited to the Pre-Tax Contribution Account of the Participant each payroll period. Roth Contributions shall be credited to the Roth Contribution Account of the Participant each payroll period. In addition, a Rollover Contribution Account shall also be maintained for any Participant making rollover contributions to the Plan pursuant to Article XI, and a Transfer Account shall also be maintained for any Participant making transfers to the Plan pursuant to Article XII. The balance of such Accounts shall be adjusted daily to reflect any distribution to the Participant and all interest, dividends, account charges and changes of market value resulting from the investment of the Participant's Accounts.

Section 5.02. Records. The records of each Participant's Account shall be maintained by each Vendor.

Section 5.03. Statements. Statements of each Participant's Account shall be furnished by the Vendor to each Participant at least annually, within 90 days after the end of each calendar year (or such other time as is designated by the Administrator), and at such more frequent intervals as is determined by the Administrator. The Vendor may use the Internet or other electronic means of communication to provide statements, if done through secure means. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Vendor within 60 days after the mailing or distribution of a report to the Participant.

Section 5.04. Year End Reports. Within 90 days after the end of each Plan Year, a written report shall be prepared by each Vendor and delivered to the Administrator showing the assets held under the Plan, a schedule of all receipts and disbursements and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Administrator requires. Such reports shall be maintained on file by the Administrator.

Section 5.05. Inspections. The Administrator's or its designee's records pertaining to a Participant's Account, shall be open to inspection by appointment during normal business hours by a Participant, or his or her designated representative. However, no Participant may review any record specifically relating to any other Participant.

ARTICLE VI.
VALUATION OF ACCOUNTS

Section 6.01. Valuation of Accounts. Each Participant's Account in the Plan and Trust shall be equal in value to the Participant's amount credited to the Account, plus (i) income earned and market gains for the Account under the Participant's investment selection, less (ii) market losses for the Account, and expenses and charges to such Account under the Participant's particular investment selection and less (iii) assessments and charges made against the Participant's Account by the Vendor, Administrator, or the Trustee for the expenses of the Plan.

Section 6.02. Valuation and Book Value. All interest, dividends, charges for premiums and changes in value due to market fluctuations, or charges or expenses of

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administration shall be credited or debited to the Participant's Accounts as they occur. All Accounts shall be valued every business day, except in cases where the Administrator authorizes a different valuation method. All reports to the Participant shall be based on fair market value as of the reporting date, except that: (i) investments or investment pools that are measured by daily income accruals and fair or book value of the contracts contained therein shall be valued in that manner, and shall not require independent appraisals of value, and; (ii) the Vendor, in cases where the marketability of an investment has been suspended at a time when value must be determined, may make such reasonable estimates of value of all accounts within such particular Investment Option as is necessary to determine the value of any interest therein.

Section 6.03. Deposits. In all cases, deposits of deferrals shall be treated as actually made only as of the date the funds are accepted as in good order by the Vendor.

ARTICLE VII. **DECLARATION OF TRUST**

Section 7.01. The Trust. Each Participant in the Plan shall have Accounts within the Trust Fund created by the Administrator under Article V. The Administrator may designate those individuals or institutions who shall act as custodial trustees under this Plan from time to time, and execute such further agreements with them as the Administrator shall deem necessary. The Administrator may designate more than one institution to act as custodial trustee, or may create sub-trusts. To the extent permitted by federal tax law, custodial accounts and annuity contracts may serve as trusts and the Administrator may use such combination of trusts and custodial accounts and annuity contracts to hold Plan assets as it shall see fit. Any reference to the Trust Fund shall include such custodial accounts or annuity contracts unless the context clearly indicates to the contrary. As further described in this Article, each Plan Account, and the Trust Fund as a whole, shall be held in trust for the exclusive benefit of Participants and their Beneficiaries, under the requirements of Code Section 457(g), and the State Pers. & Pens. Art. This Declaration of Trust shall apply to all future contributions and earnings of the Plan and Trust. This Declaration of Trust shall not be interpreted as prohibiting the use of Plan assets to pay fees and other expenses incurred in the maintenance, administration and investment of the Trust Fund, custodial accounts, or annuity contracts, or the Participant's share of Plan administration expense.

Section 7.02. Identification of Trust Assets. All assets of the Plan shall be held in trust or in custodial or annuity contracts as described herein by the Trustees for the exclusive benefit of Participants and their Beneficiaries. Such Trust Fund, and the investments, accounts, contracts, securities and other intangible property and rights that make up the Trust Fund and Plan assets, shall be sufficiently identified by the Trustees and any custodial trustees so that its status as Trust property, or Plan contracts and the individual interests therein, can always be determined. The Trustees shall take all reasonable and necessary steps to execute any documents necessary to effect such trust status or insurance company contract status for existing or future Plan assets.

Section 7.03. Fiduciary Status and Delegation of Duties. The Board is a fiduciary of Plan assets, custodial accounts, or annuity contracts only to the extent required by applicable provision of the Annotated Code of Maryland or the Code. The assumption of fiduciary status by the Board hereunder shall not extend to, or create, any liability or duty to a Participant with respect to the Investment Options offered for Participant selection. No provision of this Plan

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shall be construed in any manner that would be inconsistent with the duties and responsibilities specified herein. The Board, as an entity, may: (a) allocate duties and responsibilities under this Plan to one or more of its members; (b) designate one or more persons or entities in their employ to perform such duties and responsibilities; and (c) determine any matter with respect to this Plan by a majority vote of those individuals then constituting the Board.

Section 7.04. Unclaimed Benefit Payments. If any check or share certificate in payment of a benefit hereunder, which has been mailed by regular United States first-class mail to the last address of the payee furnished to the Vendors by the Administrator or the Participant or Beneficiary, is returned unclaimed, the Vendors shall follow such procedures regarding unclaimed benefit payments that the Administrator has established.

Section 7.05. Duty to Furnish Information. Both the Administrator and the Vendors shall furnish to each other any document, report, return, statement or other information that the other reasonably deems necessary to perform duties imposed under this Plan and Trust or otherwise imposed by law.

Section 7.06. Deposits And Disbursements From The Trust.

(a) **Trust Deposits.** The Board, acting through the Administrator, shall delegate to the Vendors the responsibility for accepting deposits to this Plan and Trust.

(b) **Trust Payments.** The Board, acting through the Administrator, shall delegate to the Vendors the responsibility for making payments from the Trust. The Vendors shall make payments from the Trust to Participants, their Beneficiaries and such other persons as the Plan may provide for from time to time. Such payments shall be made in such manner, in such amounts and for such purposes, including the payment of Plan benefits and the payment of expenses of administration of the Plan, as may be specified in the Plan. The Vendors shall ensure that any payment directed under this Section conforms to the provisions of this Plan and Trust and the provisions of any applicable law. Payments from the Trust shall be made by check (or the check of an agent) or deposit to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Vendors by the Administrator. The Vendors shall not incur any liability or other damage on account of any payment or other distribution made by the Trust in accordance with this Section.

(c) **Allocation of Trust Expenses.** All expenses of the Trust shall be paid from the Trust to the extent not paid by the Employer. All expenses of the Trust which are allocable to a particular Investment Option or Account may be allocated and charged to such Investment Option or Account as determined by the Trustees. All expenses of the Trust which are not allocable to a particular Investment Option or Account shall be charged to each such Investment Option or Account in proportion to the value of such Investment Options and Accounts as of the close of business of the immediately preceding valuation date.

Section 7.07. Resignation And Removal Of Trustees. Any custodial trustee may resign at any time in writing to the Administrator. Any custodial trustee may be removed by the Administrator. Upon such resignation or removal, a successor trustee shall be appointed by the Administrator, and shall have the same powers and duties as those conferred upon the custodial trustees hereunder.

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Section 7.08. No Guarantees. Neither the Board nor the Administrator guarantees the Trust from loss or depreciation or the payment of any amount which may become due to any person under this Plan and Trust.

Section 7.09. Parties Bound. This Plan and Trust shall be binding upon the parties hereto, all Participants in this Plan and Trust and persons claiming under or through them pursuant to this Plan and Trust, and, as the case may be, the heirs, executors, administrators, successors and assigns of each of them.

Section 7.10. Exclusive Benefit Rule. An Annual Deferral shall be delivered by the State to the Vendor who shall hold such amounts in trust for the exclusive benefit of Participant and Beneficiaries, to be paid by the Vendor, to the Participant pursuant to Article V.

ARTICLE VIII. **INVESTMENT OF ACCOUNTS**

Section 8.01. Investment Options. The Administrator shall determine from time to time the permitted Investment Options of the Trust that are available for selection by Participants and Beneficiaries, who shall select among those options for the investment of their Account Balance. These options may include securities (debt or equity), mutual funds and/or regulated investment companies, annuity contracts, investment contracts, real estate investment trusts, investment pools, bonds, and any other investment, including collective investment vehicles (whether or not such collective investment vehicles are generally available to the public) and such other investments as are permitted by statute. The Administrator may also invest in, or arrange for investment in, qualifying custodial accounts and contracts as permitted by Code Section 457(g)(3). In each case, however, regardless of the type of investment, it is the intention of this Plan that the individual interest of each Participant and Beneficiary within this Plan and Trust shall always be capable of identification. The Administrator shall at all times create and administer the Plan and the investments of the Plan in accordance with requirements of the State Pers. & Pens. Art., and shall only use such designated company or companies as allowed by Section 30-210 of that Article, or successor provision of similar import. The Vendor shall transfer to each such Investment Option such portion of the assets of the Trust as directed by Participants and Beneficiaries. The Vendor shall manage, acquire, or dispose of the assets in an Investment Option in accordance with the specific investment directions given by the Participants. All income received with respect to, and all proceeds received from, the disposition of property held in an Investment Option shall be credited to, and reinvested in, such Investment Option. From time to time, the Administrator may eliminate an Investment Option, and the proceeds thereof shall be reinvested in another Investment Option in accordance with the directions of the Administrator.

Section 8.02. Participant Investment Options.

(a) **Change of Investment Options.** The Participant may change the Investment Options he or she has selected for his or her Account Balance, or a portion of his or her Account Balance, by amending his or her Participation Agreement, and filing such amendment with the Administrator. Such amendment shall become effective only under such terms and conditions as are set by the Administrator, and at such time as the Vendor is able to change any Account Balance maintained by it for the Participant's benefit under the existing Investment Options previously chosen by the Participant, to the new Investment Options selected by the Participant

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in his or her amended Participation Agreement. Such amendments to the Participation Agreement may be made through electronic means under regular and secure procedures established therefore.

(b) Conditions for Change of Investment Options. Amendments to the Participation Agreement, for purposes of changing an Employee's Investment Option selection for his or her Account Balance, may be made on the Applicable Form at such times and under such conditions as may be determined from time to time by the Administrator during the Plan Year.

(c) Administrator's Right to Select Investment Options. The Administrator may, without consent of any Participant whose Investment Option selection may be affected, restrict or terminate the right to change an Investment Option selection for all Participants, or class of Participants. Such change, reduction or termination shall be made in accordance with applicable provisions of the State Pers. & Pens. Art. The maintenance by the Administrator or Vendor of electronic or automated methods of Investment Option selection, or of methods that permit daily change in Investment Option selection, shall not constitute a guarantee against any loss in value that may accrue through temporary inability to change such selection through use of such methods.

Section 8.03. Beneficiary Investment Options. A Beneficiary of a deceased Participant shall have the same rights as a Participant to elect a change of Investment Option selection.

Section 8.04. Investment Default. In the event that a Participant does not have a valid investment direction on file for any portion of the amount in that Participant's Account, the Account shall be invested in any default option or options as determined by the Administrator. In such event, the Participant shall be deemed to have directed that option (or options) for investment of his or her Account. The Administrator intends to establish one or more default Investment Options based upon various factors, including, but not limited to, market risk, stability and rate of return. If the Administrator has appropriately exercised its fiduciary duty in selecting a default option(s), it shall have no liability for any loss sustained by a Participant or Beneficiary whose Account is invested in the default option(s).

ARTICLE IX. **BENEFITS**

Section 9.01. Benefit Payments.

(a) Distributable Events. A Participant or, if applicable, a Beneficiary, shall be eligible to receive a distribution of his or her Vested Account under the Plan upon the Participant's:

- (1) Severance from Employment;
- (2) death;
- (3) attainment of age 70½; or
- (4) unforeseeable emergency, as described in Section 9.09.

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(b) Severance from Employment. Upon Severance from Employment, a Participant is entitled to receive a distribution of his or her Accounts under any form of distribution permitted under Section 9.02, subject to Section 9.04, commencing on a date selected by the Participant which may not be later than the required distribution date of Code Section 401(a)(9), as specified in Section 9.04. A Participant may elect to change the commencement date of distribution of the Accounts to a later date otherwise permitted under this Article, so long as the commencement date meets the required distribution commencement date provisions of Code Section 401(a)(9). All benefits shall be paid under a payment option under Section 9.02, subject to Section 9.04.

(c) Attainment of Age 70½. Upon attaining age 70½, a Participant may elect to have benefits commence on a date which is no later than the required distribution date of Code Section 401(a)(9), as specified in Section 9.04. All benefits shall be paid under a payment option under Section 9.02, subject to Section 9.04.

(d) Death. In the event of the Participant's death prior to the commencement of benefits under subsection (a), the value of the Participant's Accounts shall be paid to the Beneficiary under a payment option elected by the Beneficiary under Section 9.02, subject to the restrictions in Section 9.06. Such benefits shall be payable commencing within 60 days after receipt by the Administrator of satisfactory proof of the Participant's death. However, if the Beneficiary is the Spouse of the Participant, then the Spouse may elect within 60 days of Participant's death, to defer distribution to a date not later than the date when the Participant would have attained age 70½. In the event of the Participant's death after commencement of benefits, benefits shall be paid subject to Section 9.04.

Section 9.02. Payment Options.

(a) The election of a payment option by a Participant or a Beneficiary under Section 9.01 must be made no later than 30 days before the commencement of such benefits. Subject to restrictions established by the Administrator, the methods of payment of benefits available for election by a Participant shall be either: (i) a single sum payment of the entire value of the Participant's Account; (ii) an installment schedule of monthly, quarterly or yearly payments of a period of one or more years; (iii) through purchase of an individual fixed or variable annuity contract for that Account; (iv) a series of payments on an annuity basis as if an annuity contract was purchased for such person, or (v) such method as may be allowed under procedures described by the Administrator and allowed by the Trustee holding the account. It is the Participant's responsibility to notify the Administrator when he or she separates from State service, and to make the elections set forth in this Section.

(b) Subject to the terms of the Trust, Participants may elect to have either Roth Contributions or Pre-Tax Contributions distributed from the Plan first. Unless provided otherwise under the Trust, if the Participant fails to make an election, Pre-Tax Contributions will be distributed from the Plan first.

Section 9.03. Lump Sum Settlement. Notwithstanding anything in this Plan to the contrary, if a Participant's Account Balance does not exceed \$1,000 (determined without regarding to his or her Rollover Contribution Account) at the time of Severance from Employment, the Administrator may effect a lump sum distribution of the Participant's Accounts.

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Section 9.04. Minimum Distribution Rules. No payment option may be selected by a Participant unless the amounts payable to the Participant are expected to be at least equal to the minimum distribution required under Code Section 401(a)(9). With respect to distributions under the Plan, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the final Treasury Regulations under Code Section 401(a)(9), as follows:

(a) General Rules.

(1) The requirements of this Section will take precedence over any inconsistent provisions of the Plan.

(2) All distributions required under this Section will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9).

(3) Distributions to a Participant and his or her Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the Treasury Regulations thereunder.

(b) Time and Manner of Distribution.

(1) The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

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

(i) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving Spouse will begin by the later of: (A) December 31 of the calendar year immediately following the calendar year in which the Participant died; or (B) December 31 of the calendar year in which the Participant would have attained age 70½.

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

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

(iv) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 9.04(b)(2), other than Section 9.04(b)(2)(i), will apply as if the surviving Spouse were the Participant.

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For purposes of this Section 9.04(b)(2) and Section 9.04(d), unless Section 9.04(b)(2)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 9.04(b)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 9.04(b)(2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 9.04(b)(2)(i)), the date distributions are considered to begin is the date distributions actually commence.

(3) Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 9.04(c) and 9.04(d). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

(c) Required Minimum Distributions During Participant's Lifetime.

(1) During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.

(2) Required minimum distributions will be determined under this Section 9.04(c) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death

(d) Required Minimum Distributions After Participant's Death.

(1) Death On or After Date Distributions Begin.

(i) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

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(A) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving Spouse's death, the remaining Life Expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Distributions Begin.

(i) If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 9.04(d)(1).

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

(iii) If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 9.04(b)(2)(i), this Section 9.04(d)(2) will apply as if the surviving Spouse were the Participant.

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(e) Definitions.

(1) "Designated Beneficiary" means the individual who is designated as the Beneficiary under Section 9.05 of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-1, Q&A-4.

(2) "Distribution Calendar Year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 9.04(b)(2). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(3) "Life Expectancy" means Life Expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.

(4) "Participant's Account Balance" means the Account Balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

(5) "Required Beginning Date" means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches 70½, or (ii) the calendar year in which the Participant retires.

(f) 2009 Minimum Distributions. For 2009, the minimum distribution requirements under Section 9.04 will be satisfied as provided in either paragraph (1) or (2) below, as determined by the Vendor responsible for the Participant's required minimum distribution:

(1) A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (A) equal to the 2009 RMDs or (B) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or beneficiary chooses not to receive

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such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

(2) A Participant or Beneficiary who would have been required to receive 2009 RMDs, and who would have satisfied that requirement by receiving distributions that are (A) equal to the 2009 RMDs or (B) Extended 2009 RMDs, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

Further, if provided by the Vendor, the 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

Section 9.05. Designated Beneficiary. The Participant shall file with the Administrator, or such other entity as may be designated by the Administrator from time to time, the Applicable Form, designating or changing the person or persons who shall receive any balance of the Participant's Account under this Plan in the event of the Participant's death. The Participant may also designate his or her estate as the Beneficiary of his or her Account, or a trust created by him or her as the Beneficiary. The Applicable Form will have no effect until it is signed and filed with the Administrator, or such other entity as may be designated by the Administrator from time to time. If the Participant dies without having designated a Beneficiary, any payment due shall be made to the properly appointed fiduciary of the Participant's estate. The Participant shall have the burden for executing and filing the Applicable Form. Only the last designation of a Beneficiary prior to receipt of benefits shall have effect, and any new designation of a Beneficiary invalidates, supersedes, and revokes any prior designation.

A Participant shall have the right to designate at least one primary and contingent Beneficiary and to indicate whether the Beneficiaries in each class are to share equally or according to specified percentages. A contingent Beneficiary shall receive benefit payments only if there is no surviving primary Beneficiary. If a Beneficiary predeceases the Participant, the surviving Beneficiaries in the same class (*i.e.*, primary or contingent) will share among each other all benefits in the same proportion as originally designated by the Participant. In the event of the death of a Beneficiary after the Beneficiary has become entitled to receive benefits, the remaining benefits shall be paid to the estate of the Beneficiary in a lump sum.

Section 9.06. Voluntary In-Service Distribution.

(a) A Participant who is an active Employee of the Employer may elect to receive a distribution of the Participant's Pre-Tax Contribution Account and Transfer Account under the Plan before a Severance of Employment if the following requirements are met:

(1) the Participant's Vested Account (not including his or her Rollover Contribution Account) does not exceed the amount specified under Code Section 411(a)(11) (as of January 1, 2001, \$5,000) on the date of the distribution;

(2) the Participant has not previously received an in-service distribution of the Participant's Account under this Section; and

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(3) no Annual Deferrals have been made to the Plan with respect to the Participant during the two year period ending on the date of the in-service distribution under this Section.

(b) This election must be made in accordance with the procedures established by the Administrator.

Section 9.07. Distributions from the Rollover Contribution Account. Effective January 1, 2005, a Participant shall have the right to a distribution of the Participant's Rollover Contribution Account at any time at the direction of the Participant, subject to any applicable penalties or other distribution requirements under the Code.

Section 9.08. Unforeseeable Emergency Distributions. Notwithstanding any other provision herein and subject to guidelines and requirements set forth in procedures established by the Administrator, individuals with a Pre-Tax Contribution Account and/or Roth Contribution Account may request that benefits be paid in the event of an unforeseeable emergency, including individuals who are no longer employed by the Employer but who still have an Account Balance and individuals who are currently receiving benefits under the Plan which are not being paid as an annuity. If the Participant has an unforeseeable emergency before Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section.

(a) **Requests for Unforeseeable Emergency Distributions.** All requests for unforeseeable emergency distributions shall be made initially to the Administrator or such other entity as may be designated by the Administrator from time to time. Any decision made by the Administrator or its designee shall be final and conclusive. The Administrator may establish restrictions following a distribution pursuant to this Section.

(b) **Unforeseeable Emergency Defined.** An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's Spouse, or the Participant's dependent (as defined in Code Section 152 without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's Spouse, or dependent (as defined in Code Section 152 without regard to Code Section 152(d)(1)(B)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses for the Participant or the Participant's Spouse or dependent (as defined in Code Section 152 without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)), including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

(c) **Unforeseeable Emergency Distribution Standard.** A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of

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the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.

(d) Distribution Necessary To Satisfy Emergency Need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(e) Possible Class Restriction. The Administrator may further limit and/or prohibit such withdrawals for classes of accounts maintained under the Plan.

(f) Special Relief for Distributions. Notwithstanding the other provisions of this Article, the Administrator may authorize the Vendors to make any distribution authorized by the Internal Revenue Service or by Act of Congress in response to a natural disaster.

ARTICLE X.
ELIGIBLE ROLLOVERS FROM THIS PLAN

Section 10.01. Definitions for this Article.

(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee .

(b) "Distributee" means a Participant, the Spouse of the Participant, the Participant's former Spouse who is an alternate payee within the meaning of Code Section 414(p)(8), and, effective January 1, 2008, a Participant's non-Spouse Beneficiary, any of whom is eligible to receive a distribution from the Plan.

(a) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means:

- (1) an individual retirement account described in Code Section 408(a);
- (2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);
- (3) a simple retirement account described in Code Section 408(p)(1) following the two year period described in Code Section 72(t)(6);
- (4) any annuity plan described in Code Section 403(a);
- (5) a plan described in Code Section 403(b);
- (6) a qualified plan described in Code Section 401(a);
- (7) a Code Section 457(b) eligible deferred compensation plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and
- (8) effective January 1, 2008, a Roth individual retirement account described in Code Section 408A(e), provided the Distributee's adjusted gross income does not

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exceed any limit applicable under federal law for the tax year in which the distribution occurs.

Effective January 1, 2008, in the case of a distribution to a Participant's non-Spouse Beneficiary, an Eligible Retirement Plan shall mean the plans described in paragraphs (1) and (2) only, to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(b) "Eligible Rollover Distribution," as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under this Plan, except that an Eligible Rollover Distribution does not include:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a period of ten years or more;

(2) any distribution to the extent such distribution is required under Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; provided, however, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(i) to an individual retirement account or annuity described in Code Section 408(a) or 408(b), respectively, or to a qualified defined contribution plan described in Code Section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of such distribution which is not so includible;

(ii) to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(iii) to a Roth IRA described in Code Section 408A;

(4) any distribution which is made upon the financial hardship of the Participant; and

(5) other items designated by regulations, or by the Commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

Section 10.02. Direct Transfer of Eligible Rollover Distribution. A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the

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manner prescribed by the Vendor. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 457, or 408.

Section 10.03. Mandatory Withholding of Eligible Rollover Distributions.

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory 20% federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e), and only to the extent such amount would otherwise be includible in the Distributee's taxable gross income.

(a) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the 60th day following the day on which the Distributee received the distribution.

(b) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

Section 10.04. Explanation of Plan Distribution and Withholding Requirements. Not fewer than 30 days nor more than 180 days before an Eligible Rollover Distribution, the Vendor shall provide each Distributee a written explanation as required under Code Section 402(f), which explains the rules:

(a) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

(b) that require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan;

(c) that provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within 60 days after the date the Distributee receives the distribution; and

(d) if applicable, certain special rules regarding taxation of the distribution as described in Code Sections 402(d) and (e).

Notwithstanding the above, a distribution may begin fewer than 30 days after the notice discussed in the preceding sentence is given, provided that the Vendor clearly informs the Participant that he or she has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution and the Participant, after receiving a notice, affirmatively elects a distribution.

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ARTICLE XI.
ELIGIBLE ROLLOVERS TO THIS PLAN

Section 11.01. Participant Rollovers.

(a) At any time, a Participant who is an Employee and who is entitled to receive an Eligible Rollover Distribution, as defined under Code Section 402(c)(4) and Section 10.02(a) of the Plan, from another eligible retirement plan may contribute to the Plan in cash as a rollover contribution, a qualified rollover amount from a qualified plan under Code Section 401(a), an annuity plan under Code Section 403(a), an individual retirement account under Code Section 408(a) or individual retirement annuity under Code Section 408(b), an eligible governmental deferred compensation plan under Code Section 457(b), or a tax-sheltered annuity under Code Section 403(b). Any Rollover Contribution (i) shall be subject to the Administrator's determination, in its discretion, that the Rollover Contribution satisfies all applicable requirements of the Code and (ii) shall be made directly from such prior plan, or if such amount was distributed to the Participant, such Rollover Contribution shall be made within 60 days after the Participant receives the rollover amount.

(b) The Plan shall accept a Rollover Contribution to a Roth Contribution Account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(c) A Rollover Contribution shall be allocated to the Rollover Contribution Account of the Participant as of the date of the contribution. Before a Rollover Contribution is made, the Participant shall designate on the Applicable Form the Investment Options in which the Vendor should invest the Participant's Rollover Contribution.

Section 11.02. Administrator Requirements. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code Section 402(c)(8)(B). With respect to receipt or transfer of Account Balances under this Article the Vendor may rely upon representations made by either the Participant or other plan (made through those having apparent authority to make them).

Section 11.03. Separate Accounts for Rollovers. The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Code Section 457(b). In addition, the Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Code Section 457(b).

Section 11.04. In-Plan Roth Rollovers.

(a) Any portion or all of a Participant's Vested Account Balance (other than a Roth Contribution Account) is eligible for direct rollover to the Participant's Roth Contribution Account under the Plan, even if the Vested Account Balance is not otherwise distributable (pursuant to Code Section 402A(c)(4)(E)) under Article IX of the Plan, and the transfer shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)) to the Participant's Roth Contribution Account.

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(b) A Participant's election under this Section shall be subject to the reasonable administrative procedures established by the Administrator, Code Section 402A(c)(4) and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(c) The taxable portion of the Participant's Account directly rolled over to a Roth Contribution Account under this Section shall be included in the Participant's gross income in the tax year in which the transfer occurs.

(d) To the extent required by Code Section 402(f), the Administrator shall provide written information regarding in-Plan Roth rollovers under this Section, for amounts that are otherwise distributable under Article IX.

ARTICLE XII.
PLAN-TO-PLAN TRANSFERS

Section 12.01. Direct Transfers Among Plans of the Same Employer. A transfer from this Plan to another eligible governmental plan of the same Employer and a transfer to this Plan from another eligible governmental plan of the same Employer is permitted under the following conditions:

(1) The transfer is from an eligible governmental plan to another eligible governmental plan of the same Employer (and, for this purpose, the Employer is not treated as the same employer if the Participant's compensation is paid by a different entity);

(2) The transferor plan provides for transfers;

(3) The receiving plan provides for the receipt of transfers;

(4) The Participant or Beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer; and

(5) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the Participant or Beneficiary is performing services for the entity maintaining the receiving plan.

Section 12.02. Plan-to-Plan Transfers from the Plan to another Plan.

(a) **Requirements for Transfer.** At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Code Section 457(b) and Treasury Regulation Section 1.457-2(f). A transfer is permitted under this Section 12.02(a) for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 12.02(a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers and if each Participant and Beneficiary has an amount deferred under the other plan immediately after the

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transfer at least equal to the amount transferred. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 12.02 (for example, to confirm that the receiving plan is an eligible governmental plan and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation Section 1.457-10(b).

(b) Effect of Transfer. Upon the transfer of assets under this Section 12.02, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary.

Section 12.03. Plan-to-Plan Transfers to the Plan. At the direction of the Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under Code Section 457(b) to transfer assets to the Plan as provided in this Section. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator and Vendor may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) and Treasury Regulation Section 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treasury Regulation Section 1.457-2(f). The amount so transferred shall be credited to the Participant's Transfer Account and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Article V.

Section 12.04. Permissive Service Credit Transfers.

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section may be made before the Participant has had a Severance from Employment.

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

Section 12.05. Direct Transfers to this Plan. Subject to the approval of the Administrator, this Plan shall accept cash transfers of Participants' accounts maintained under an eligible Section 457 plan directly to this Plan.

Section 12.06. Representations. With respect to receipt or transfer of account balances under this Article, the Board, Administrator and Vendor may rely upon representations made by either the Participant or the other Section 457 plan (made through those having apparent authority to make them) with respect to matters relevant for the transfer.

Section 12.07. Plan Charges. An Employee who has become a Participant through a transfer allowed by this Section shall be liable for Plan charges and expenses in the same manner

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and to the same extent as any other Participant notwithstanding the fact that all or part of his or her existing Account Balance may have been derived from contributions and earnings attributable to another plan. In addition, the Administrator may from time to time impose charges on said transfers to be deducted directly from the Participant's Transfer Account in this Plan once the transfer has occurred.

Section 12.08. Effect of Elections. Neither this Plan nor a new Participant making such a transfer shall be bound by any elections or designations (whether of a commencement date of distributions, or manner of distributions, designation of retirement age or beneficiaries) made under such other plan, but, instead, shall make and be bound by such elections and designations as are required under this Plan.

ARTICLE XIII. **DOMESTIC RELATIONS ORDERS**

Section 13.01. General Provisions. If authorized by the Administrator, domestic relations orders which satisfy the requirements of Code Sections 414(p)(1)(A)(i) and 414(p)(1)(B), this Article, and the procedures established by the Administrator for such orders may be considered Plan-Approved Domestic Relations Orders ("PADROs") and may be honored by the Plan. If the Administrator determines to honor PADROs, this Article will apply to those PADROs. If the Administrator determines that certain PADROs will not be honored, then this Article shall not be interpreted as requiring that those PADROs be honored. The Administrator is authorized to establish and amend procedures for the determination of PADROs (including procedures for the resolution of disputes) consistent with the above-referenced Code provisions and this Article.

Section 13.02. Administration of Covered PADROs. In administration of this Plan, the Administrator or the Vendors, as appropriate, may establish such procedures as enable any discrete interest of an alternate payee established under a PADRO to be separately accounted for and distributed. Any funds held under such a separate account shall not be distributed in any form or manner that would cause the Plan to become an ineligible plan under Code Section 457. This Article shall not be construed as requiring the Administrator or Vendors to recognize or make distributions under any PADRO whose validity is in doubt.

Section 13.03. Investments of Covered PADROs. During any period that the issue of whether an order satisfies the applicable requirements of the Code and the procedures established by the Administrator is under consideration, the investment direction of the Participant with respect to the Participant's Accounts shall remain in effect, subject to a determination by the Administrator that such investment direction would be contrary to a final court order. After a determination has been made that a domestic relations order satisfies the applicable requirements of the Code and the procedures established by the Administrator and a separate Plan Account has been established for the alternate payee, the alternate payee shall direct the investment of his or her Plan Account. The Administrator shall direct the investment of an alternate payee's Account to a default investment pursuant to Section 8.04 when there is no valid investment direction on file. The alternative payee's Account shall be assessed administrative fees in the same amount and in the same manner as a Participant's Account.

Section 13.04. Distributions to Alternate Payees of Covered PADROs. Distribution of benefits to the alternate payee shall commence as soon as administratively practicable after (i)

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a determination is made that the order satisfies the applicable requirements of the Code and the procedures established by the Administrator, and (ii) receipt by the Administrator of the Applicable Forms for the election of benefits. In the event of an alternative payee's death, any remaining benefits shall be payable solely to the alternate payee's estate, via the duly-appointed and then-currently serving executor of the alternative payee's estate.

ARTICLE XIV.
LOANS

Section 14.01. Loans. A Participant who is an Employee may apply for and receive a loan from his or her Vested Accounts as provided in this Section. Any such loan may not be for an amount less than the minimum amount specified by the Vendor in accordance with the applicable law.

Section 14.02. Maximum Loan Amount.

(a) No loan to a Participant under the Plan may exceed the lesser of:

(1) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Vendor (not taking into account any payments made during such one year period); or

(2) One-half of the value of the Participant's Vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved by the Vendor).

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

Section 14.03. Terms of Loan. The terms of the loan shall:

(a) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on an bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of Code Section 414(u) or for the duration of a leave which is due to qualified military service;

(b) require that the loan be repaid within five years unless the Participant certifies in writing to the Administrator that the loan is to be used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant; and

(c) provide for a reasonable interest rate established by the Vendor in accordance with the applicable law.

DRAFT**November 25, 2019****Section 14.04. Security for Loan; Default.**

(a) **Security.** Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.

(b) **Default.** In the event that a Participant fails to make a loan payment under this Section within 90 days after the date such payment is due, a default on the loan shall occur. In the event of such default, (i) all remaining payments on the loan shall be immediately due and payable, (ii) effective as of the first day of the calendar month next following the month in which any such loan default occurs, the interest rate for such loan shall be (if higher than the rate otherwise applicable) the rate being charged on loans from the Plan that are approved by the Administrator in the month in which such default occurs, (iii) no contributions shall be made on such Participant's behalf prior to the first payroll period that follows by 12 calendar months the date of repayment in full of such loan, and (iv) the Participant shall be permanently ineligible for any future loans from the Plan.

In the case of any default on a loan to a Participant, the Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment. In addition, the Administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Account Balance of the Participant.

Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

Section 14.05. Repayment. Repayment of a loan may be made by payroll deduction, by direct payment to the Plan, by direct debit of the Participant's checking account, or may such other means as the Vendor may permit. A Vendor may require the Participant, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the Employer to make payroll deductions from his or her Compensation as long as the Participant is an Employee and to transfer such payroll deduction amounts to the Trustee in payment of such loan plus interest. Repayments of a loan shall be made in equal installments (comprised of both principal and interest) each due date, with the first such repayment to be made as soon as practicable after the loan funds are disbursed; provided however, that a Participant may prepay the entire outstanding balance of his or her loan at any time; and provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which in which the amount would have been deducted.

Section 14.06. Special Relief for Loans. Notwithstanding any other Sections of this Article, the Administrator may authorize the Vendors to observe the terms of any Internal Revenue Service guidance or Act of Congress regarding plan loans, which guidance or Act was issued or enacted in response to a natural disaster.

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ARTICLE XV.
PLAN ADMINISTRATION

Section 15.01. Authority of the Administrator. The Administrator shall have the authority to control and manage the operation and administration of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. The Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan

Section 15.02. Powers of the Administrator. The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claim procedures, the Administrator shall be the sole and final judge of such expediency. Benefits are payable under the Plan only if the Administrator, in its sole and absolute discretion, determines the benefits are payable under the provisions the Plan.

Section 15.03. Delegation by Administrator.

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

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

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

Section 15.04. Fiduciary Insurance. Subject to State law, the Board may require the purchase of fiduciary liability insurance for any Plan fiduciary or fiduciaries to cover liability or losses occurring by reason of the act or omission of a fiduciary.

Section 15.05. Employment of Consultants. The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

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ARTICLE XVI.
CLAIMS PROCEDURE

Section 16.01. Requests for Information Concerning Eligibility, Participation and Contributions. Requests for information concerning eligibility, participation, contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the Administrator of the Plan. If a written request is denied, the Administrator shall, within a reasonable period of time, provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Administrator and may submit issues and comments in writing to the Administrator. The Administrator shall provide to the Participant a written decision upon such request for review of a denied claim.

Section 16.02. Requests for Information Concerning Investment Arrangements. Requests for information concerning the Trust and the terms, conditions, and interpretations thereof, claims thereunder, any requests for review of such claims, and service of legal process, should be in writing and directed to the Vendor. If a written request is denied, the Vendor shall, within a reasonable period of time, provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Vendor and may submit issues and comments in writing to the Vendor. The Vendor shall provide to the Participant a written decision upon such request for review of a denied claim.

ARTICLE XVII.
AMENDMENT OF THE PLAN

Section 17.01. Amendment and Termination of Plan. The Board may at any time amend this Plan with or without consent of the Participant (or any Beneficiary thereof). No amendment may be effected, however, if it removes Plan assets from the Trust hereunder, or causes Plan assets to be used for a purpose other than the exclusive benefit of Participants and their Beneficiaries. Any modification, alteration, or amendment of the Plan made in accordance with this Section may be made retroactively if deemed necessary or appropriate by the Board.

Section 17.02. Right to Suspend Deferrals. Suspension or termination of additional deferral of salary under the Plan generally, or under one or more Investment Options maintained by the Plan, shall not otherwise restrict or affect other provisions of this Plan. The Board, in its sole discretion, may suspend or terminate additional deferral of salary for (i) all Participants, or (ii) a class of Participants, or (iii) for one or more Investment Options maintained under the Plan.

Section 17.03. Amendment for Eligible Plan Status. It is the intent of the Board that the Plan shall be and remain an eligible plan under the provisions of Code Section 457 and that the Trust be exempt from tax under Code Section 457. The Board may make any modifications, alterations, or amendments to the Plan necessary to obtain and retain approval of the Secretary of the Treasury or his or her delegate as may be necessary to establish and maintain the status of the Plan as an eligible plan under the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Plan, made in accordance with this Section, may be made retroactively, if necessary or appropriate.

Section 17.04. Effective Date of Amendments. All amendments shall become effective on the date established by the Board. No amendments shall deprive any Participant of

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any of the benefits to which the Participant is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment.

ARTICLE XVIII.
TERMINATION OF THE PLAN

The Board may terminate the Plan at any time. In such an event, the Employer shall be responsible for directing distribution of all assets of the Trust to Participants, Beneficiaries or to a successor plan, as soon as administratively practicable after the termination of the Plan.

ARTICLE XIX.
MISCELLANEOUS

Section 19.01. Non-Assignability.

(a) Except as provided in Article XIII, a Participant's Account under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.

(b) Notwithstanding subsection (a), the Plan shall offset from the benefit otherwise payable to a Participant or his or her Beneficiary such amounts as are permitted to be offset under a court order, civil judgment, or settlement agreement in accordance with Code Section 401(a)(13)(C).

Section 19.02. Military Service.

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with USERRA, HEART, Code Section 414(u), and Code Section 401(a)(37). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(b) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service may elect to make Annual Deferrals upon resumption of employment with the Employer up to the maximum Annual Deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Participant during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for the lesser of (i) five years following the resumption of employment or (ii) a period equal to three times the period of the interruption or leave. Such Annual Deferrals by the Participant may only be made during such period and while the Participant is reemployed by the Employer.

(c) Effective January 1, 2007, to the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be

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entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

(d) Effective January 1, 2009, differential wage payments within the meaning of Code Section 414(u)(12)(D) shall be treated as Compensation and Includible Compensation under the Plan.

Section 19.03. Limitation of Rights and Obligations. Neither the establishment nor maintenance of the Plan, nor any amendment thereof nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) as conferring upon any Participant, Beneficiary or any other person a right or claim against the Administrator or Employer, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Board, the Employer, or the Administrator for the validity or effect of the Plan;

(c) as a contract or agreement between the Board, Employer, or the Administrator and any Participant or other person;

(d) as an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Employee to continue or terminate the employment relationship at any time, except as otherwise provided under any applicable collective bargaining agreement; or

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

Section 19.04. Federal and State Taxes. It is intended that Annual Deferrals other than Roth Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries, and that Roth Contributions and earnings thereunder are excludable from gross income for federal and state income tax purposes when paid to Participants or Beneficiaries to the extent that they are Qualified Distributions. However, the Administrator does not guarantee that any particular federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

Section 19.05. Erroneous Payments. If the Administrator or Vendor makes any payment that, according to the terms of the Plan and the benefits provided hereunder, should not have been made, the Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or Vendor may deduct it when making any future payments directly to that Participant.

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Section 19.06. Benefit Payment Issue Resolution. The Administrator, or its designee, if in doubt regarding the correctness of its action with respect to a benefit payment, may direct suspension of payment until satisfied as to the correctness of the payment or the person to receive the payment. Alternatively, the Administrator, or its designee, may file, in any state court of competent jurisdiction, a suit, in the form it deems appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator, or its designee, may also bring a suit, or take other action as it deems appropriate, to resolve questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and Participants and the Administrator shall be bound by such an order, insofar as it affects the benefits payable under this Plan, or the method or manner of payment.

Section 19.07. Release. Any payments to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Trustees or Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Trustees or Administrator.

Section 19.08. Liability. The Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the Administrator to be genuine or to be executed or sent by an authorized person.

Section 19.09. Information Provided by the Participant. Each Participant should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan.

Section 19.10. Family Medical Leave Act. Notwithstanding any provisions of this Plan to the contrary, Contributions and benefits with respect to qualified leave will be provided in accordance with the Family Medical Leave Act of 1993, 29 U.S.C. Section 2601 et. seq.

Section 19.11. Payments to Minors or Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is determined to be legally incapable of giving valid receipt and discharge for such benefits by a court or by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to the Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

Section 19.12. Missing or Lost Participants. In the event that the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary under the Plan, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. A reasonable attempt to locate a missing or lost Participant or Beneficiary shall include (i) providing notice to the Participant at the Participant's last known address via certified mail; (ii) determining whether the Employer's records or the records of another plan maintained by the Employer has a more current address for the Participant; (iii) attempting to contact any named Beneficiary of the Participant; and (iv) searching for the missing Participant via free electronic search tools, such as Internet search engines, public record databases, obituaries, and social media. If such search methods are unsuccessful, based on the facts and circumstances, the Administrator may use other

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search methods, including using Internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases, and analogous services that may involve charges. The Administrator may charge missing Participants and Beneficiaries reasonable expenses for efforts to find them.

Section 19.13. Indemnification. The Employer shall satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Administrator is delegated pursuant to Section 15.03, except a Vendor or other service provider. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the regulations or by-laws of the Employer, under any provision of law, or under any other agreement; provided, however, that the Employer will not satisfy any such liability to the extent that the person did not act in good faith.

Section 19.14. No Reversion. Under no circumstances or conditions will any Annual Deferrals revert to, be paid to, or inure to the benefit of, directly or indirectly, the Employer, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, if Annual Deferrals are made by the Employer by a good faith mistake of fact, such amount may be returned to the Employer within one year of the date that they were made to the Plan.

Section 19.15. Finality of Determination. All determinations with respect to crediting of service under the Plan are made on the basis of the records of the Employer, and all determinations made are final and conclusive upon Employees, former Employees, and all other persons claiming a benefit under the Plan.

Section 19.16. Counterparts. The Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be evidenced by any one counterpart.

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November 25, 2019

IN WITNESS WHEREOF, the Board has caused this amended and restated Plan to be executed by its duly authorized representative as of the date written below, but effective as of January 1, 2020.

**UNIVERSITY SYSTEM OF MARYLAND
BOARD OF REGENTS**

Signature

Printed

Title

Date

DRAFT

December 2, 2019

APPENDIX A

APPROVED VENDORS

The current selection of Vendor(s) is not intended to limit future additions or deletions of Vendor(s). The Administrator from time to time may add or delete Vendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in a revised Appendix A.

1.1 **Approved Vendors**

As of January 1, 2020, the Board has approved the following Vendors under the Plan:

- TIAA
- Fidelity Investments

1.2 **Former Vendors**

As of January 1, 2008, the Former Vendor under the Plan is AIG VALIC.

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

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Amended and Restated Effective January 1, 2009

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UNIVERSITY SYSTEM OF MARYLAND
SUPPLEMENTAL 403(b) RETIREMENT PLAN

ARTICLE I.

PLAN ESTABLISHMENT AND RESTATEMENT OF PLAN

Section 1.01. Plan Establishment and History.

(a) The University System of Maryland is a public university system established under Maryland law and an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The Board of Regents of the University System of Maryland ("Board") established ~~a supplemental retirement plan~~ the University System of Maryland Supplemental 403(b) Retirement Plan ("Plan") pursuant to Code Section 403(b) and Sections 30-210 et seq. of the State Personnel and Pensions Article of the Annotated Code of Maryland (1978, 2004 Repl. Vol.), to provide eligible employees the opportunity to supplement their retirement benefits through voluntary contributions.

(b) The ~~plan was~~ Plan is, and is intended to remain, a defined contribution plan under Code Section 403(b) ~~plan and~~. The Plan is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(c) The ~~Board~~ Plan was most recently amended and restated effective June 17, 2011.

Section 1.02. Plan Restatement.

(a) The Plan is now ~~desires to reduce the terms of the plan to writing~~ being amended and restated effective January 1, ~~2009~~ 2020, ~~except as otherwise specifically provided herein, to incorporate the prior amendments to the Plan and to comply with all applicable provisions of the Code and Maryland statutes, including the final regulations under Code Section 403(b).~~ make certain discretionary changes.

(b) Except as otherwise specifically provided herein, the ~~University System of Maryland Supplemental 403(b) Retirement Plan ("Plan")~~ Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, ~~2009~~ 2020, and to transactions under the Plan on and after January 1, ~~2009~~ 2020. The rights and benefits, if any, of individuals who are not Employees on or after January 1, ~~2009~~ 2020, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

Section 1.03. Plan Funding. The Plan is funded exclusively through the purchase of ~~Funding Vehicles from the Vendors described~~ Investment Arrangements in Appendix A attached hereto, as that Appendix may be amended from time to time accordance with the requirements of the Code. The terms and conditions of ~~such Funding Vehicles~~ the Investment

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~~Arrangements shall be considered part of, and shall be construed as having been incorporated into, this Plan, except; provided, however, that to the extent that there are any provisions that conflict with the Plan. To the extent that there is any conflict between the terms of such Funding Vehicles the Investment Arrangements and the terms of the Plan as provided herein, the terms of the Plan shall govern, except as otherwise expressly specifically provided herein.~~

ARTICLE II.

DEFINITION RULES OF TERMS USED CONSTRUCTION AND DEFINITIONS

~~Section 2.01. The following words Rules of Construction and terms Governing Law.~~

~~(a) This Plan shall be interpreted, enforced, and administered in accordance with the Code and, when used in the Plan, have the not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Maryland without regard to conflict of law principles.~~

~~(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and vice versa, and words used herein in the singular or plural shall be construed as being in the plural or singular, where appropriate, and vice versa.~~

~~(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.~~

~~(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.~~

~~(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning set forth below or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute a defined contribution plan under the provisions of Code Section 403(b), (ii) be a governmental plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with all applicable requirements of the Code, shall prevail over any different interpretation.~~

~~Section 2.02. Definitions. When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:~~

~~Section 1.01. "Account. The account(s)" means the separate accounts maintained for the benefit of any each Participant or and Beneficiary under an Annuity Contract or a Custodial Account reflecting his or her interest in such Annuity Contract or Custodial Account as follows:~~

~~(a) "Elective Deferral Account" means the account maintained to reflect the interest of the the Plan. The following Accounts shall be established for a Participant in the Funding Vehicle or Beneficiary, if applicable:~~

~~(a)(1) A Pre-Tax Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Elective Deferrals made in the Plan on~~

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~~behalf of the Participant~~Pre-Tax Contributions pursuant to Section ~~3.024.01~~. Such ~~account~~Account may be further divided into a "Pre-1987 ~~Elective-Deferral~~Pre-Tax Contribution Account" reflecting ~~Elective-Deferrals~~Pre-Tax Contributions made to the Plan prior to 1987; and a "Post-1986 ~~Elective-Deferral~~Pre-Tax Contribution Account" reflecting ~~Elective-Deferrals~~Pre-Tax Contributions made to the Plan after 1986, including any earnings on the ~~pre~~Pre-1987 ~~Elective-Deferrals~~Pre-Tax Contributions.

~~(b)(2) "Rollover~~A Roth Contribution Account" ~~means the account maintained to reflect the Participant's or Beneficiary's interest of under the Participant in the Funding Vehicle~~Plan attributable to ~~his or her Rollover~~Roth Contributions ~~made to the Plan pursuant to Section 3.044.01~~.

~~**Section 1.02. Account Balance.** The balance in all Accounts maintained for each Participant which reflects the aggregate amount credited to or debited from the Participant's Accounts, including Elective Deferrals, Rollover Contributions, the earnings or losses of each Annuity Contract or Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance will be maintained for each Beneficiary after a Participant's death. A separate Account Balance will be established for an alternate payee (as defined in Code Section 414(p)(8)).~~

~~**Section 1.03. Administrator.** The Board, provided, however, to the extent that the Board has delegated any of its responsibilities as Administrator to any other person or persons, the term "Administrator" will be deemed to refer to that person or persons. For purposes of this definition, "person" may include an entity such as a corporation, partnership or committee.~~

~~(3) **Annuity Contract.** A "Post-Severance Employer Contribution Account" means the account maintained to reflect the Participant's or Beneficiary's interest under the Plan attributable to his or her Post-Severance Employer Contributions, if any, pursuant to Section 4.02.~~

~~(4) A Rollover Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Rollover Contributions pursuant to Section 4.03.~~

~~(b) "Administrator" means the Administrative Committee as designated by the Board, or such other person, persons, or entity designated by the Board, to perform the administrative duties and functions under the Plan.~~

~~(c) "Allocable Income" means the sum of the allocable gain or loss for the year or partial year determined in accordance with Code Section 402(g) and the regulations promulgated thereunder.~~

~~(d) "Annual Addition" means annual addition as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines annual addition as the sum of the following amounts credited to a Participant's Account for the Limitation Year under this Plan and to a Participant's account under any other Code Section~~

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401(a) defined contribution plan maintained by the Employer (or, if required by Code Section 415 and the regulations thereunder, to any other defined contribution plan):

(1) employee contributions;

(2) employer contributions;

(3) forfeitures;

(4) allocations under a simplified employee pension;

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

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

Annual Additions shall not include (i) elective deferrals made by a Participant who is age 50 or older in accordance with Code Section 414(v), (ii) excess elective deferrals distributed in accordance with Treasury Regulation Section 1.402(g)-1(e)(2), (iii) rollover contributions, or (iv) transfer contributions.

Section 2.04.(e) "Annuity Contract" means a nontransferable contract as defined in Code Sections 403(b)(1) and 401(g), established for Participants by the Board Employer, or by each Participant individually, that is issued by a Vendor which who is a company licensed as an insurance company in a state and-qualified to issue annuities in the State of Maryland and that includes payment in the form of an annuity.

(f) Beneficiary. The designated person or persons, institution "Applicable Form" means the appropriate form as designated and furnished by the Administrator or Vendor to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically required by the Code, the Administrator or Vendor may prescribe a verbal, electronic, or telephonic instruction in lieu of or in addition to a written form.

Section 2.05.(g) "Beneficiary" means the person, company, trustee, or estate entitled designated by the Participant on the Applicable Form to receive any benefits under the Plan after the death of a Participant; provided, however, unless otherwise provided in the Individual Agreements, that payable under the Plan in the event that of the Participant's death. A designation of an individual as a Beneficiary shall remain in effect until affirmatively revoked by the Participant on a subsequent Applicable Form. Unless otherwise provided in the Investment Arrangement, if the designated Beneficiary does not survive the Participant or there is no designated Beneficiary or designated, the Participant's Spouse shall be the Beneficiary predeceases the Participant, the Participant's surviving spouse shall be the Beneficiary, or, if none, the Participant's estate shall be the Beneficiary. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

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Section 2.06.(h) "Board; ~~The~~ means the Board of Regents of the University System of Maryland.

Section 2.07.(i) "Code; ~~The~~ means the Internal Revenue Code of 1986, as ~~now in effect or as hereafter amended. All citations to sections of the Code are to such sections as these may~~ from time to time ~~be amended or renumbered.~~

Section 2.08.(j) "Compensation; ~~All~~ means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, which is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including an election ~~made~~ to reduce compensation in order to ~~havemake~~ Elective Deferrals under the Plan). Compensation does not include amounts "picked up" by the Employer within the meaning of Code Section 414(h). Compensation includes any compensation described in paragraphs (a)1) or (b)2), provided it is paid by the later of 2½ months after the ~~Employee's~~ Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer:

(a)1) any payment that would have been paid to the Employee prior to a Severance from Employment if the Employee continued in employment with the Employer and that is regular compensation for services during the ~~Employee's~~ regular working hours, compensation for services outside the ~~Employee's~~ regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(b)2) a payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the ~~Employee's~~ Severance from Employment, and only if the Employee separately elects for such payment to be reduced on his or her Salary Reduction Agreement pursuant to Section ~~3.024.01.~~

Notwithstanding the above, ~~to the extent applicable,~~ Compensation shall not exceed the limits under Code Section 401(a)(17); ~~), as increased for the Cost of Living Adjustment for the Plan Year.~~

(k) "Contributions" mean ~~Pre-Tax Contributions, Roth Contributions, Post-Severance Employer Contributions, and Rollover Contributions.~~

(l) "Cost of Living Adjustment" means ~~the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17), 402(g), 414(v), or 415(d) for any applicable year.~~

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

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~~Section 2.10.(n)~~ "Disabled; ~~The definition of~~ or "Disability" means disability ~~provided in the applicable Individual Agreement that satisfies~~within the meaning of Code Section 72(m)(7).

~~Section 1.04. Elective Deferral.~~ The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash Compensation. ~~Elective Deferrals are limited to pre-tax salary deferral contributions.~~

~~(o)~~ "Elective Deferral" means Pre-Tax Contributions, Roth Contributions, and any other elective deferral as defined by Code Section 402(g)(3).

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

~~(q)~~ "Employer; ~~One~~ means one of the following Public Schools:

- ~~(1)~~ (1) the University System of Maryland Office;
- ~~(2)~~ (2) Bowie State University;
- ~~(3)~~ (3) Coppin State University;
- ~~(4)~~ (4) Frostburg State University;
- ~~(5)~~ (5) Salisbury University;
- ~~(6)~~ (6) Towson University;
- ~~(7)~~ (7) University of Baltimore;
- ~~(8)~~ (8) University of Maryland, Baltimore;
- ~~(9)~~ (9) University of Maryland, Baltimore County;
- ~~(10)~~ (10) University of Maryland, College Park;
- ~~(11)~~ (11) University of Maryland, Eastern Shore;
- ~~(12)~~ (12) University of Maryland University College;
- ~~(13)~~ (13) University of Maryland Biotechnology Institute;
- ~~(14)~~ (14) University System of Maryland Center for Environmental Science; and

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Section 2.13.(15) any other center, component, or institute established and operated by the University System of Maryland in accordance with its mission pursuant to Section 12-101 of the Annotated Code of Maryland (1978, 2006 Repl. Vol.).

(r) "Excess Annual Additions" mean, except as provided in Code Section 414(v), that portion of a Participant's Contributions to the Plan and contributions to another qualified defined contribution plan sponsored by the Employer (or, if required by Code Section 415 and the regulations thereunder, to any other defined contribution plan) for a Limitation Year which exceeds the limits of Code Section 415.

(s) "Excess Elective Deferrals" mean, except as provided in Code Section 414(v), that portion of a Participant's Pre-Tax Contributions and/or Roth Contributions to the Plan and Elective Deferrals to any other 403(b) or 401(k) plan maintained by the Employer or a Related Employer for a Plan Year which exceeds the limits of Code Section 402(g).

Section 2.14.(t) "Former Vendor;—The" means a service provider of that was an Annuity Contract or Custodial Account approved Vendor under the Plan, but that ceases to be eligible to receive new contributions an approved Vendor under the Plan; provided, however, that continues to hold Plan assets. Notwithstanding the preceding, a Former Vendor shall not include any vendor a service provider that ceased to be eligible to receive new contributions under the Plan prior to January-1, 2005.—A list of Former Vendors is hereby incorporated as part of this Plan and set forth in Appendix B. The Administrator may amend the list of Former Vendors to reflect changes in the providers who cease to be eligible to receive new contributions under the Plan.

Section 1.05. —Funding Vehicles.—The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the Board for use under the Plan.

(u) "HEART" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

Section 2.16.(v) "Includible Compensation.—An Employee's" means all compensation received by an Employee from the Employer that is includible in the Employee's his or her gross income for Federal federal income tax purposes (computed without regard to Code Section-911) for the most recent period that is a Year of Service, which precedes the taxable year by no more than five years within the meaning of Code Section 403(b)(3). Includible Compensation also includes any amounts excludable from taxable income because of an election (including Elective Deferrals under the Plan) under Code SectionSections 403(b), 457(b), 125, 401(k), or 132(f) (including Elective Deferrals under this Plan).—The amount of Includible Compensation is determined without regard to any community property laws. Includible Compensation does not include any amounts "picked up" by the Employer within the meaning of Code Section 414(h).). Includible Compensation includes any compensation described in paragraphs (a) or (b), provided the compensation is paid by the later of 2½ months after the later of an Employee's Severance from Employment with the Employer or the end of the calendar year in which Plan Year that includes the Employee has a date of the Employee's Severance from Employment with the Employer, if:

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~~(a)(1) any payment that the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (e.g., overtime or shift differential), commissions, bonuses, or other similar payments and the payment~~ would have been paid to the Employee prior to a Severance from Employment if the Employee had continued in employment with the Employer ~~and that is regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;~~ and

~~(2) at the payment is~~ for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if ~~employment the Employee~~ had continued ~~and the payment would have been included in the definition of~~ in employment.

~~(b) Includible Compensation if paid prior does not include any amounts "picked up" by the Employer within the meaning of Code Section 414(h). Includible Compensation is determined without regard to the Employee's Severance from Employment any community property laws. To the extent applicable, Includible Compensation shall not exceed the limits under Code Section 401(a)(17), as increased for the Cost of Living Adjustment for the Plan Year.~~

~~**Section 1.06. Individual Agreement.** The agreement between a Vendor and the Board or a Participant that constitutes or governs a Custodial Account or "Investment Arrangement" means an Annuity Contract.~~

~~**Section 2.18.(w) Investment Options.** The mutual funds and other investment options available for investing or Custodial Account that satisfies the requirements of Treasury Regulation Section 1.403(b)-3 and that is issued or established for funding amounts held in Funding Vehicles under the Plan and specifically approved by the Board Administrator for use under the Plan.~~

~~(x) "Investment Options" mean the investment funds available under the Investment Arrangements provided by the Vendor(s) and specifically approved by the Administrator, in its sole and absolute discretion, for use under this Plan.~~

~~(y) "Limitation Year" means the Plan Year; provided, however, that if the Participant is in control of an employer within the meaning of Treasury Regulation Section 1.415(a)-1(f), the Limitation Year is the limitation year of that employer.~~

~~**Section 2.19.(z) "Participant. An individual"** means any Employee who is or may become eligible to receive a benefit of any type under the Plan, and. A Participant shall also mean, when appropriate to the context, a former Employee who has not received a distribution of his or her entire Account is eligible to receive a benefit of any type under the Plan.~~

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

~~**Section 2.21.(bb) "Plan Year. The"** means the calendar year.~~

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(cc) "Post-Severance Employer Contribution" means Employer contributions made to the Plan on behalf of a Participant in connection with the Participant's Severance from Employment as determined in the sole and absolute discretion of the Board or its delegate pursuant to Section 4.02.

(dd) "Pre-Tax Contribution" means a contribution made to the Plan by the Employer at the election of a Participant pursuant to a Salary Reduction Agreement in accordance with Section 4.01.

~~Section 2.22.(ee)~~ "Public School ~~—A~~" means a state sponsored educational organization described in Code Section 170(b)(1)(A)(ii).

(ff) "Qualified Distribution" means a distribution from a Roth Contribution Account after the Participant has satisfied a five year tax holding period and has attained age 59½, died, or become Disabled, in accordance with Code Section 402A(d). The five year tax holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Contribution under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed.

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

~~Section 2.24.(hh)~~ "Rollover Contribution ~~—An eligible rollover distribution that is~~" means an amount contributed to the Plan pursuant to ~~Section 3.04~~ 4.03.

(ii) "Roth Contribution" means a contribution made to the Plan by the Employer at the election of a Participant pursuant to a Salary Reduction Agreement ~~—An~~ in accordance with Section 4.01, where the contribution has been (i) designated irrevocably by the Participant as a Roth Contribution being made in lieu of all or a portion of the Pre-Tax Contribution the Participant is otherwise eligible to make under the Plan, and (ii) treated by the Employer as includible in the Participant's gross income at the time the Participant would have received that amount in cash if the Participant had not made such an election. Roth Contributions shall be available under the Plan as soon as administratively practicable on or after January 1, 2020.

~~Section 2.25.(jj)~~ "Salary Reduction Agreement" means an agreement entered into between an Employee and ~~an~~the Employer pursuant to ~~Section 3.02, which~~ 4.01. Such agreement shall not be effective ~~only~~ with respect to Compensation ~~earned on or after made available prior to~~ the effective date of such agreement and ~~which~~ shall be binding on the parties and irrevocable with respect to Compensation earned while it is in effect.

(kk) "Section" means, when not preceded by the word Code or ERISA, a section of the Plan.

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~~Section 2.26.(ll)~~ "Severance from Employment. ~~For purposes of the Plan, Severance from Employment means severance from~~ means the complete termination of the employment ~~with relationship between the Employee and~~ the Employer and any Related Employer. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of an Employer or Related Employer that is a Public School, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a Public School or in a capacity that is not employment with a Public School (e.g., ceasing to be an employee performing services for a Public School but continuing to work for the same State or local government employer). ~~Notwithstanding the preceding, effective January 1, 2009, and for purposes of Section 7.01 only, a Participant will be treated as having had a Severance from Employment during any period the Participant is performing service in the uniformed services described in Code Section 3401(h)(2)(A).~~

~~(mm)~~ "Spouse" means the person to whom an Eligible Employee is legally married under the law of any state.

~~(nn)~~ "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

~~Section 2.27.(oo)~~ "Vendor. ~~The~~" means the service provider ~~of an Annuity Contract or Custodial Account, as selected that has been approved~~ by the ~~Board and Administrator to serve as third party administrator and/or recordkeeper for the Plan and/or to offer Investment Options to Participants under the Plan. The Vendor(s) are~~ listed in Appendix A, as ~~amended~~ modified from time to time in the ~~Board's Administrator's sole and absolute discretion, from the designated companies eligible under Maryland law. A modification of Appendix A is not an amendment of the Plan.~~

~~Section 2.28.(pp)~~ "Vest" or "Vested. ~~The~~" means the interest of the Participant or Beneficiary in his or her Account that is unconditional, legally enforceable, and nonforfeitable.

~~Section 1.07. Valuation Date.~~ Each business day that the NYSE is open.

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

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ARTICLE II:ELIGIBILITY AND CONTRIBUTIONSARTICLE III, Eligibility: Each EmployeePARTICIPATION

Section 3.01. Participation. An Employee may become a Participant in the Plan for purposes of Elective Deferrals or Rollover Contributions immediately after commencement of employment with the Employer. Participation in the Plan is voluntary.

Section 3.02. Notice and Enrollment.

Section 3.01.(a) The Employer shall notify an Employee when he or she is eligible to participate in the Plan and elect to have for purposes of Elective Deferrals made on his or her behalf to the Plan immediately upon becoming employed by the Employer.

Section 2.01. Elective Deferral Contributions.

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

(b) Information Provided by the Employee. Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

(b) Change in Elective Deferral Election. Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation elections, including a change of the amount. An Employee must complete the enrollment process

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and make investment elections with the Vendor on the Applicable Form, including a Salary Reduction Agreement for purposes of Elective Deferrals, to become a Participant in the Plan. An Employee who fails to complete the enrollment process and make investment elections with the Vendor on the Applicable Form shall be deemed to have waived all of his or her rights under the Plan, provided that such Employee may become a Participant in the Plan at any time thereafter by completing the enrollment process and making investment elections with the Vendor on the Applicable Form.

Section 3.03. Cessation of Contributions. A Participant shall cease to be eligible for Elective Deferrals under the Plan when he or she is no longer an Employee.

Section 3.04. Cessation of Participation. A Participant shall cease to be a Participant on the distribution of his or her entire interest in the Plan.

Section 3.05. Reemployment. A former Participant who is reemployed by the Employer shall immediately become a Participant in this Plan as of his or her date of rehire as an Employee.

ARTICLE IV. CONTRIBUTIONS

Section 4.01. Elective Deferrals, his or her investment direction, and his or her designated Beneficiary. A change in the Elective Deferral amount, investment direction or Beneficiary designation will take effect.

(a) Subject to the limitations under Article V, an Employee who has satisfied the participation requirements under Section 3.01 may enter into a written Salary Reduction Agreement with the Employer agreeing to contribute each pay period Pre-Tax Contributions and/or Roth Contributions to the Plan in any flat dollar amount.

(b) Pre-Tax Contributions and Roth Contributions shall begin as soon as administratively practicable following the date applicable under the Employee's change in participation elections and will be on a uniform basis specified in the Salary Reduction Agreement, or, if later or if no date is specified, as soon as administratively practicable after the Salary Reduction Agreement is filed with the Administrator or the Vendor, as applicable.

(c) Pre-Tax Contributions and/or Roth Contributions shall reduce the Compensation otherwise payable to a Participant and shall be paid in cash to the Vendor by the Employer, on a basis consistent with its payroll practices, as is practicable for all Employees.

(d) **Contributions Made Promptly.** Elective Deferrals under the Plan will be transferred to the applicable Funding Vehicle within soon as administratively feasible after being withheld from the Compensation of a Participant, but no later than 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

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

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

~~**Section 2.02. — Protection of Persons Who Serve in a Uniformed Service.** Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended; effective January 1, 2009, the Heroes Earnings Assistance and Relief Tax Act of 2008; and Code Section 414(u). For this purpose, an Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Elective Deferrals upon resumption of employment with the Employer up to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of the Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). Effective January 1, 2009, an Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u), and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, will be treated as an Employee of the Employer and the differential wage payment will be treated as Compensation and Includible Compensation.~~

~~**Section 2.03. — Eligible Rollover Contributions to the Plan.**~~

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

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

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

~~**ARTICLE IV. ARTICLE I.**
of
LIMITATIONS ON CONTRIBUTIONS~~

~~**Section 2.04. — Basic Annual Limitation for Elective Deferrals.** Except as provided in Sections 4.02 and 4.03, the maximum amount of Elective Deferrals contributed to the Plan for any calendar year will not exceed the applicable dollar amount for the calendar year. The applicable dollar amount is the amount established under Code Section 402(g)(1)(B), as adjusted for cost of living after 2008 to the extent provided under Code Section 402(g).~~

~~**Section 2.05. — Age 50 Catch-up Elective Deferrals.** A Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals is \$5,000 for 2008, and is adjusted for cost of living after 2008 to the extent provided under Code Section 414(v).~~

~~**Section 2.06. — Elective Deferral Catch-Up Provision Coordination.** Elective Deferrals in excess of the limitation set forth in Section 4.01 shall be allowed only up to an amount equal to the age 50 catch-up contribution limit under Section 4.02 and only for a Participant eligible under Section 4.02, and the special catch-up provided for under Code Section 4.02(g)(7) shall not apply.~~

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

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~~other plan. Notwithstanding the foregoing, another plan maintained by a Related Employer will be taken into account for purposes of Section 4.02 only if the other plan is Section 403(b) plan.~~

~~(d) **Correction of Excess Elective Deferrals.** If the Elective Deferral on behalf of a Participant for any calendar year exceeds Participant fails to designate whether Elective Deferrals are Pre-Tax Contributions or Roth Contributions, the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds these limitations when combined with other amounts deferred by will be deemed to have designated his or her Elective Deferrals as Pre-Tax Contributions. Pre-Tax Contributions shall be allocated to the Pre-Tax Contribution Account of the Participant under another plan as of the date of contribution. Roth Contributions shall be allocated to the Roth Contribution Account of the Employer under Code Section 403(b) (and any other plan that permits elective deferrals under Code Section 402(g) for which the Participant provides information that is accepted by as of the date of contribution.~~

~~(e) A Salary Reduction Agreement shall remain in effect until superseded by another election or until the Administrator), then the Elective Deferral, to the extent in excess of the requires a Participant to complete a new Salary Reduction Agreement on a uniform and nondiscriminatory basis.~~

~~(1) A Participant may change his or her election to make Pre-Tax Contributions and/or Roth Contributions at any time by filing a new Salary Reduction Agreement with the Administrator or the Vendor, as applicable limitations (adjusted for any income or loss. Any such changes shall be effective as soon as administratively practicable following the date specified in value the new Salary Reduction Agreement, or, if any, allocable thereto), will be later, as soon as administratively practicable after the Salary Reduction Agreement is filed.~~

~~(2) A Participant may terminate his or her election to make Pre-Tax Contributions and/or Roth Contributions at any time by filing the Applicable Form with the Administrator or the Vendor, as applicable, which shall be effective as soon as administratively practicable after the Applicable Form is filed.~~

~~(f) An election to make Pre-Tax Contributions and/or Roth Contributions shall not be valid with respect to any period during which the Participant is not an Employee. No election to make, change, or discontinue Pre-Tax Contributions and/or Roth Contributions shall be given retroactive effect.~~

~~(g) The Administrator may establish additional nondiscriminatory rules and procedures governing the manner and timing of elections by Participants to make, change, or discontinue Pre-Tax Contributions and/or Roth Contributions.~~

~~**Section 4.02. Post-Severance Employer Contributions.** The Employer may make Post-Severance Employer Contributions to the Plan in an amount and for such Employee or Employees as determined by the Board or its delegate in its sole and absolute discretion each Plan Year. Post-Severance Employer Contributions shall be allocated to the Post-Severance~~

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Employer Contribution Account of the Participant as of the date of the contribution, and shall be made in accordance with Code Section 403(b)(3) and Treasury Regulation Section 1.403(b)-4(d).

Section 4.03. Rollover Contributions to the Plan.

~~Section 4.05.~~(a) Subject to the Investment Arrangements, Participants who are Employees may transfer to the Plan as a Rollover Contribution a distribution from a Code Section 401(a) (including 401(k)) or 403(a) qualified plan (excluding after-tax contributions), a Code Section 403(b) plan (excluding after-tax contributions), a Code Section 408 individual retirement account or annuity, or a Code Section 457(b) eligible deferred compensation plan which is maintained by an eligible employer described in Code Section 457(e)(1)(A). Any Rollover Contribution (i) shall be subject to the Vendor's determination, in its discretion, that the Rollover Contribution satisfies all applicable requirements of the Code and (ii) shall be made directly from such prior plan, or if such amount was distributed to the Participant—, such Rollover Contribution shall be made within 60 days after the Participant receives the rollover amount.

(b) The Plan shall accept a Rollover Contribution to a Roth Contribution Account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(c) A Rollover Contribution shall be allocated to the Rollover Contribution Account of the Participant as of the date of the contribution. Before a Rollover Contribution is made, the Participant shall designate on the Applicable Form the Investment Options in which the Vendor should invest the Participant's Rollover Contribution.

Section 4.04. In-Plan Roth Rollovers.

(a) Any portion or all of a Participant's Vested Account (other than a Roth Contribution Account) is eligible for direct rollover to the Participant's Roth Contribution Account under the Plan, even if the Vested Account is not otherwise distributable (pursuant to Code Section 402A(c)(4)(E)) under Article VIII of the Plan, and the transfer shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)) to the Participant's Roth Contribution Account.

(b) A Participant's election under this Section 4.04 shall be subject to the reasonable administrative procedures established by the Administrator, Code Section 402A(c)(4) and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(c) The taxable portion of the Participant's Account directly rolled over to a Roth Contribution Account under this Section 4.04 shall be included in the Participant's gross income in the tax year in which the transfer occurs.

(d) To the extent required by Code Section 402(f), the Administrator shall provide written information regarding in-Plan Roth rollovers under this Section 4.04, for amounts that are otherwise distributable under Article VIII.

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Section 4.05. Leave of Absence. During a paid leave of absence, Pre-Tax Contributions and/or Roth Contributions shall continue to be made for a Participant on the basis of Compensation paid by the Employer during the leave. No Contributions shall be made during an unpaid leave of absence.

Section 4.06. Expenses of Plan. All reasonable expenses of administering the Plan shall be charged against and paid from the Participant's Accounts, subject to the terms of the applicable Investment Arrangements, unless paid by the Employer. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with rules promulgated by the Internal Revenue Service.

ARTICLE V. LIMITATIONS ON CONTRIBUTIONS

Section 5.01. Elective Deferral Limits.

(a) The maximum amount of Elective Deferrals to the Plan for any calendar year shall be limited to the applicable dollar amount as provided in Code Section 402(g)(B)(1). The applicable dollar amount is \$19,500 for 2020, increased thereafter by the Cost of Living Adjustment.

(b) A Participant who attains age 50 or more by the end of the calendar year, and who is contributing up to the applicable dollar amount under paragraph (a), may make additional Elective Deferrals under Code Section 414(v) of up to \$6,500 for 2020, increased thereafter by the Cost of Living Adjustment.

(c) The special catch-up under Code Section 402(g)(7) shall not apply.

~~Section 2.07. Excess Elective Deferrals. Annual Additions Limitation.~~

Section 5.02. Excess Elective Deferrals resulting from Elective Deferrals made on behalf of the Participant to this Plan and to any other 403(b) or 401(k) plan maintained by the Employer or a Related Employer (or, to the extent timely requested by the Participant, to any other 403(b) or 401(k) plan maintained by any other employer) shall be distributed along with Allocable Income to the Participant no later than the April 15th following the calendar year in which the Excess Elective Deferral was made. Such distributions shall be made in accordance with the rules under Code Section 402(g) and the regulations thereunder.

Section 5.03. Code Section 415 Limits.

(a) Notwithstanding any provision of the Plan to the contrary, ~~annual additions~~ Annual Additions to the Plan and ~~to any other Code Section 403(b) plan maintained by the Employer or a Related Employer~~ (or, if required by Code Section 415 and the ~~Treasury Regulations~~ regulations thereunder, to any other defined contribution plan) for a Participant ~~within a Limitation Year shall~~ not exceed the ~~limitation~~ limitations set forth in Code Section 415(c), except to the extent permitted under Code Section 414(v).

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

- (1) ~~\$4057,000, adjusted for cost of living to 2020, increased thereafter by the extent provided under section 415(d) of the Code~~ Cost of Living Adjustment; or
- (2) 100% of the Participant's Includible Compensation.

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

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

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

~~**Section 2.08. Excess Annual Additions.** Excess annual additions will be allocated to an excess annual additions Account under the Annuity Contract or Custodial Account in accordance with Treasury Regulation Sections 1.403(b)-3(b)(2) and 1.403(b)-4(f)(2) for the year of excess and each year thereafter.~~

Section 5.04.

Excess Annual Additions.

~~**ARTICLE V. ARTICLE I.** If as of the end of the Plan Year, the Annual Additions allocated to any Participant's Account exceed the limitations of this Article V, the Excess Annual Additions will be corrected as VESTING~~

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

ARTICLE VI. ARTICLE I.

LOANS

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~~**Section 2.09. Loans.** Loans will be permitted under the Plan in accordance with Code Section 72(p) to the extent permitted by the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured. Loans shall be subject to separate loan procedures issued by the Vendor under the Plan; provided, however, that (a) no loans are permitted for former Employees who have had a Severance from Employment with the Employer, (b) a Participant who has defaulted on a loan shall not be entitled to a future loan under the Plan, (c) only one loan is permitted at one time, and (d) no loans are permitted from Former Vendors. Participants may be charged a reasonable processing fee per loan.~~

~~(a) **Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable Federal and State law in connection with permitted under the Employee Plans Compliance Resolution System (or similar Internal Revenue Service correction program).~~

~~(b) In any Plan Year, in the event Contributions would exceed the Code Section 415(c) limitations, an adjustment to comply with this Article shall be made as soon as administratively practicable, but no later than the time permitted under Internal Revenue Service to any plan maintained by the Participant or another employer that is required to be aggregated under Code Section 415(c) with the Plan.~~

ARTICLE VI. **ACCOUNTING**

~~**Section 6.01. Participant Accounts.** The Vendor(s) shall establish and maintain adequate records to reflect the Accounts of each Participant and Beneficiary. Credits and charges shall be made to such Accounts to reflect additions, distributions and loans. To minimize the instances in which Participants have taxable income as a result, and withdrawals, and to reflect gains or losses pursuant to the terms of each Investment Arrangement. The maintenance of loans from the Plan, individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.~~

~~**Section 6.02. Participant Statements.** The Vendor(s) shall provide to each Participant a quarterly statement reflecting the value of the Participant's Account as of the end of each quarter, and shall provide similar information to the Administrator upon its request.~~

~~**Section 6.03. Value of Account.** The value of the Account of a Participant as of any valuation date is the value of the Account balance as determined by the Vendor. The valuation date shall be the last day of the Plan Year and each other date designated by the Administrator or Vendor in a uniform and nondiscriminatory manner. All transactions and Account records shall be based on fair market value.~~

ARTICLE VII. **INVESTMENT OF CONTRIBUTIONS**

Section 7.01. Vendors and Investment Options.

~~(a) All Contributions under the Plan shall be transferred to the Vendor(s) to be held, managed, invested and distributed in accordance with the provisions of the Plan and the~~

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Investment Arrangements as applicable. All benefits under the Plan shall be distributed solely from the Investment Arrangements, and the Employer shall have no liability for any such benefits other than the obligation to make Contributions as provided in the Plan.

(b) Participants' Accounts shall be invested in one or more of the Investment Options available to Participants from a Vendor(s) approved under this Plan, as selected by the Administrator and communicated to Participants. The current Vendor(s) are listed in Appendix A. The Administrator's current selection of Vendor(s) and Investment Options is not intended to limit future additions or deletions of Vendor(s) or Investment Options.

(c) A Participant shall have the right to direct the investment of his or her Accounts by filing the Applicable Form with the Vendor(s). A Participant may change his or her investment election as often as determined by the Vendor(s). A Participant may elect to transfer all or any portion of his or her Accounts invested in any one Investment Option to another Investment Option, regardless of whether offered by the same or a different Vendor, subject to the limitations of the Investment Arrangements, by filing a request on the Applicable Form with the Vendor(s) or by such other means that may be provided for by the Vendor(s). A Participant may also elect to transfer all or any portion of his or her Accounts invested with a Former Vendor to an Investment Option with a Vendor, subject to the terms of the Investment Arrangements. In no event, however, may a Participant transfer any portion of his or her Accounts invested in an Investment Option with a Vendor to an investment with a Former Vendor or any other vendor that is not eligible to receive Contributions under the Plan.

Section 7.02. Exclusive Benefit. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries.

Section 7.03. Default Investments. If a Participant does not have a valid and complete investment direction on file with the Vendor on the Applicable Form, Contributions will be invested in a default Investment Option selected by the Administrator in its sole and absolute discretion, until the Participant makes an affirmative election regarding the investment of his or her Account.

ARTICLE VIII. **DISTRIBUTIONS**

Section 8.01. Commencement of Distributions.

(a) A Participant or, if applicable, a Beneficiary, shall be eligible to receive a distribution of his or her Vested Account under the Plan upon the Participant's:

- (1) Severance from Employment;
- (2) death;
- (3) Disability;

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(4) attainment of age 59½; or

(5) financial hardship, as described in Section 8.03.

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

(c) Subject to the terms of the Investment Arrangements, Participants may elect to have either Pre-Tax Contributions or Roth Contributions distributed from the Plan first. Unless provided otherwise under the terms of the applicable Investment Arrangement, if the Participant fails to make an election, Pre-Tax Contributions will be distributed from the Plan first.

(d) Subject to the terms of the Investment Arrangements, a Rollover Contribution Account may be distributed to a Participant at any time, to the extent that Rollover Contributions have been separately accounted for by the Vendor.

(e) A Participant or Beneficiary may submit a request for a distribution to the Vendor on the Applicable Form. The Employer shall certify that the Participant has had a Severance from Employment or is Disabled.

Section 8.02. Form of Distribution.

(a) A Participant may elect to receive his or her Vested Account under any payment option available under the Investment Arrangement. Subject to the terms of the Investment Arrangement, these may include, but are not necessarily limited to, a single lump sum, annuity payments, and installment payments. All forms of payment shall be subject to the limitations of the Investment Arrangement.

(b) To the extent permitted by the Investment Arrangement, a lump sum payment of a Vested Account may be made without the consent of the Participant or Beneficiary if his or her Account balance does not exceed \$1,000 (determined without regard to his or her Rollover Contribution Account), unless the Participant elects to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in a lump sum.

Section 8.03. Hardship Distributions.

(a) To the extent (i) a Vendor has been approved by the Administrator to allow hardship withdrawals under the Plan and (ii) a hardship withdrawal is permitted by the terms governing the applicable Investment Arrangement, distribution of Elective Deferrals (excluding any earnings on such Elective Deferrals after December 31, 1988) may be made to a Participant who is an Employee in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Participants may be charged a reasonable processing fee per hardship withdrawal.

(b) The following are the only financial needs considered immediate and heavy:

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(1) expenses incurred or necessary for medical care described in Code Section 213(d) (without regard to whether the expenses exceed 7.5% of adjusted gross income) of the Participant, the Participant's Spouse or dependents (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(2) the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) payment of tuition and related educational fees and room and board expenses for the next 12 months of post-secondary education for the Participant, the Participant's Spouse or dependents (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(4) payments necessary to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;

(5) payments for funeral or burial expenses for the Participant's deceased parent, Spouse, any dependent (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(6) expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income);

(7) expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; and

(8) such other circumstances as the Commissioner of Internal Revenue determines constitute financial hardship under Code Section 401(k) or the Treasury Regulations thereunder.

(c) A distribution will be considered necessary to satisfy an immediate and heavy financial need of the Participant only if:

(1) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);

(2) The Participant has obtained all distributions currently available under the Plan or any other plans maintained by the Employer, other than hardship distributions and non-taxable loans;

(3) For distributions on or before December 31, 2019, all plans maintained by the Employer provide that the Participant's Elective Deferrals will be suspended until the

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earlier of (i) six months after the receipt of the hardship distribution or (ii) January 1, 2020;

(4) For distributions made on or after January 1, 2020, the Participant represents that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need; and

(5) The Participant has met any such additional or alternative requirements as may be prescribed in Treasury Regulation Section 1.401(k)-1(d)(3)(iv)(E) or subsequent promulgations.

(d) A Participant must provide substantiation of the reason for and the amount of the immediate and heavy financial need to the Vendor. The Vendor shall approve all hardship distributions under this Section 8.03.

(e) The Administrator shall take such steps as ~~may be~~ appropriate to coordinate the ~~limitations on loans set forth in Section 6.03~~ hardship distribution rules, including ~~the~~ collection of information from Vendors ~~and Former Vendors~~, and transmission of information requested by any Vendor ~~or Former Vendor~~, concerning the ~~outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator will also take such steps as may be appropriate to collect information from Vendors and/or Former Vendors, and to transmit any information to any Vendor or Former Vendor, concerning any failure by a Participant to timely repay any loans made to a Participant under the Plan or any other plan of the Employer.~~ The Administrator may delegate this responsibility to a Vendor or to another service provider pursuant to Article XII of the Plan.

Section 8.04. Reemployment. If a Participant who is a former Employee subsequently becomes an Employee again, the Participant cannot request a distribution of his or her Vested Accounts until he or she is again entitled to a distribution under Section 8.01.

~~Section 6.02,~~ **Section 8.05. Death Benefits.** ~~Section~~ If a Participant dies before the distribution of his or her entire Account, his or her remaining Account shall be distributed to his or her Beneficiary(ies) as soon as administratively practicable after the Participant's death, unless the Beneficiary elects a later payment date on the Applicable Form, subject to Code Section 401(a)(9). A Beneficiary may elect to receive the Participant's Account under any distribution option available under the ~~Section 8.02 of the Plan,~~ subject to Code Section 401(a)(9).

Section 8.06. Maximum Required Distribution Rules. The provisions of this Section 8.06 take precedence over any inconsistent provisions of the Plan or of any Investment Arrangement. All distributions under this Plan shall be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G), and shall comply with the following rules.

(a) Distributions may only be made over one of the following periods (or a combination thereof):

(1) The life of the Participant;

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(2) The life of the Participant and a designated Beneficiary;

(3) A period certain not extending beyond the life expectancy of the Participant; or

(4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary.

(b) A Participant's Accounts shall be distributed to the Participant beginning no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or, if later, April 1 of the calendar year following the calendar year that the Participant has a Severance from Employment.

(c) Notwithstanding anything to the contrary in this Section 8.06, if the Vendor(s) separately accounts for Contributions made prior to January 1, 1987, then distribution of such Contributions (but not any interest accumulated with respect thereto) need not commence until April 1 of the calendar year following the calendar year in which the Participant attains age 75.

(d) Upon the death of the Participant, the following distribution provisions shall take effect:

(1) If the Participant dies after distribution of his or her Account(s) begins, any remaining portion of the Account(s) shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(2) If the Participant dies before distributions of his or her Account(s) begins and the Participant has no designated Beneficiary(ies), the Participant's Account(s) under the Plan shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) If the Participant dies before distributions of his or her Account(s) begins and any portion of his or her Account(s) are payable to a designated Beneficiary, the designated Beneficiary may elect for the Participant's Account(s) to be distributed (i) by December 31 of the calendar year containing the fifth anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. If the designated Beneficiary is the surviving Spouse, the Beneficiary may elect to delay payment under item (ii) until December 31 of the calendar year in which the Participant would have attained age 70½. If the designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (i).

(4) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this Section 8.06(d).

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(e) Each Vendor shall be separately and solely responsible for complying with the provisions of this Section 8.06 with respect to its Investment Arrangements under the Plan. The Vendor(s) shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions at least 60 days prior to the date distributions must begin.

Section 8.07. Transfer to Defined Benefit Governmental Plan.

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account transferred to the defined benefit governmental plan, subject to the terms of the Investment Arrangement. A transfer under this Section may be made before the Participant has had a Severance from Employment.

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

Section 8.08. Additional Tax on Early Withdrawals.

(a) Generally, and except as described in paragraph (b), if a Participant receives any amount under the Plan, his or her tax for the taxable year in which such amount is received is increased by an amount equal to 10% of the portion of such amount which is includible in gross income. Such amount shall be included in gross income to the extent allocable to income on the Investment Arrangement and shall not be included in gross income to the extent allocable to the investment in the Investment Arrangement as provided in Code Section 72(e)(2)(b).

(b) The penalty described in paragraph (a) generally does not apply to any distribution (i) made on or after the date on which the Participant attains age 59½, (ii) made on or after the death of the Participant, (iii) attributable to the Participant becoming Disabled, (iv) which is part of a series of substantially equal periodic payments made (not less frequently than annually) for the life or life expectancy of the Participant or the joint lives (or joint life expectancies) of such Participant and his or her designated Beneficiary, (v) made to a Participant after Severance from Employment following the attainment of age 55, (vi) which is a qualified reservist distribution within the meaning of Code Section 72(t)(2)(G)(iii), or (vii) any other circumstance permitted by the Code or the Internal Revenue Service.

ARTICLE IX.
LOANS

Section 9.01. Loans Generally.

(a) To the extent (i) a Vendor has been approved by the Administrator to allow loans under the Plan and (ii) loans are permitted by the terms governing the applicable Investment Arrangement, loans shall be available to a Participant who is an Employee from his or her

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Vested Account. No loans shall be permitted from Investment Arrangements held by Former Vendors.

(b) Loans shall be subject to all applicable requirements and restrictions of the Code, including the provisions of Code Section 72(p) and the regulations thereunder. A Participant who has defaulted on a loan shall not be entitled to a future loan under the Plan until it has been fully repaid to the Plan.

(c) All loans shall be subject to the approval of the Vendor. The Vendor may charge a reasonable processing fee with respect to any loan.

Section 9.02. Loan Procedures. The Vendor shall establish written procedures to govern Participant loans under the Plan, which may be amended from time to time. All loans shall comply with such procedures, and shall be administered subject to the terms of the applicable Investment Arrangement.

Section 9.03. Loan Limits.

(a) No loan to a Participant under the Plan may exceed the lesser of:

~~Section 6.03.(a) Loan Amount.~~ No loan to a Participant under the Plan may exceed the lesser of:

(a)(1) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the ~~Administrator~~Vendor (not taking into account any payments made during such one-year period); or

(b)(2) ~~one~~One-half of the value of the Participant's Vested Account ~~Balance~~(as of the valuation date immediately preceding the date on which such loan is approved by the ~~Administrator~~), ~~or any lesser amount in accordance with the Individual Agreements.~~Vendor).

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

ARTICLE III.

BENEFIT DISTRIBUTIONS

Section 3.01. Distribution of Elective Deferrals.

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

~~(b) — The distribution restrictions in paragraph (a) do not apply to Elective Deferrals to the Plan prior to January 1, 1989 (not Administrator shall take such steps as appropriate to coordinate the limitations on loans, including earnings thereon) provided such Elective Deferrals are separately accounted for under the Plan.~~

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

~~(d) — Effective January 1, 2009, if a Participant experiences a Severance from Employment solely because he or she is performing service in the uniformed services as described in section 3401(h)(2)(A) of the Code, and the Participant receives a distribution from this Plan because of that service, the Participant may not make Elective Deferrals to this Plan for the six month period beginning on the date of the distribution.~~

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

~~**Section 3.02. — Forms of Payment.** — A Participant may elect to receive his or her Account under any payment option available under and subject to the other provisions of this Article and the terms and conditions of the Individual Agreements.~~

~~**Section 3.03. — Small Account Balances.** — The terms of the Individual Agreement may permit distributions to be made in the form of a lump sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed \$1,000 (determined without regard to any separate Account that holds Rollover Contributions).~~

~~**Section 3.04. — Minimum Distributions.** — For purposes of applying the distribution rules of Code Section 401(a)(9), each Individual Agreement is treated as an individual retirement account (IRA) and distributions will be made in accordance with the provisions of Treasury Regulation Section 1.408-8, except as provided in Treasury Regulation Section 1.403(b)-6(e). Notwithstanding the preceding sentence, each Vendor will separately comply with the minimum distribution requirements under Code Section 401(a)(9) and the regulations thereunder with respect to its Funding Vehicles under the Plan.~~

~~**Section 3.05. — Hardship Withdrawals.**~~

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

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

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

ARTICLE X. **VESTING**

~~(e) — Participants may be charged a reasonable processing fee per hardship withdrawal.~~

~~A Participant or, in the event of the Participant's death, the Beneficiary, shall be 100% Vested in his or her Account at all times.~~

ARTICLE XI. **ROLLOVERS FROM THIS PLAN**

~~**Section 11.01. Definitions for this Article.** For purposes of this Article, the following definitions shall apply.~~

~~(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.~~

~~(b) "Distributee" means a Participant, the Spouse of the Participant, the Participant's former Spouse who is an alternate payee within the meaning of Code Section 414(p)(8), and, effective January 1, 2008, a Participant's non-Spouse Beneficiary, any of whom is eligible to receive a distribution from the Plan.~~

~~(c) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means:~~

~~(1) an individual retirement account described in Code Section 408(a);~~

~~(2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);~~

~~(3) a simple retirement account described in Code Section 408(p)(1) following the two year period described in Code Section 72(t)(6);~~

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(4) any annuity plan described in Code Section 403(a);

(5) a plan described in Code Section 403(b);

(6) a qualified plan described in Code Section 401(a);

(7) a Code Section 457(b) eligible deferred compensation plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and

(8) effective January 1, 2008, a Roth individual retirement account described in Code Section 408A(e), provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs.

Effective January 1, 2008, in the case of a distribution to a Participant's non-Spouse Beneficiary, an Eligible Retirement Plan shall mean the plans described in subparagraphs (1) and (2) only, to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(d) "Eligible Rollover Distribution," as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under this Plan, except that an Eligible Rollover Distribution does not include:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a period of ten years or more;

(2) any distribution to the extent such distribution is required under Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; provided, however, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(i) to an individual retirement account or annuity described in Code Section 408(a) or 408(b), respectively, or to a qualified defined contribution plan described in Code Section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of such distribution which is not so includible;

(ii) to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross

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income and the portion of the distribution that is not so includible; or

(iii) to a Roth IRA described in Code Section 408A;

(4) any distribution which is made upon the financial hardship of the Participant; and

(5) other items designated by regulations, or by the Commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

Section 11.02. Direct Transfer of Eligible Rollover Distribution. A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Vendor. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 403, or 408.

Section 11.03. Mandatory Withholding of Eligible Rollover Distributions.

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory 20% federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e), and only to the extent such amount would otherwise be includible in the Distributee's taxable gross income.

(b) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the 60th day following the day on which the Distributee received the distribution.

(c) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

Section 11.04. Explanation of Plan Distribution and Withholding Requirements. Not fewer than 30 days nor more than 180 days before an Eligible Rollover Distribution, the Vendor shall provide each Distributee a written explanation as required under Code Section 402(f), which explains the rules:

(a) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

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(b) that require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan;

(c) that provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within 60 days after the date the Distribute receives the distribution; and

(d) if applicable, certain special rules regarding taxation of the distribution as described in Code Sections 402(d) and (e).

Notwithstanding the above, a distribution may begin fewer than 30 days after the notice discussed in the preceding sentence is given, provided that the Vendor clearly informs the Participant that he or she has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution and the Participant, after receiving a notice, affirmatively elects a distribution.

~~**Section 3.06. — Death Benefits.** If a Participant dies before the entire distribution of his or her Account has been made, his or her remaining Account, if any, will be distributed to his or her Beneficiary as soon as administratively feasible after the Participant's death, unless the Beneficiary elects a later payment date on the appropriate form as designated and furnished by the Vendor, subject to the minimum distribution requirements of Code Section 401(a)(9) and regulations thereunder. A Beneficiary may elect to receive the deceased Participant's Account under any payment option available under and subject to the terms and conditions of the Individual Agreements.~~

~~**Section 3.07. — Rollover Distributions from Plan.**~~

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

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

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

DRAFT**12/2/2019 4:56:41 PM****Section 3.08. — Permissive Service Credit Transfers.**

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

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

ARTICLE VIII. ARTICLE I.**INVESTMENT OF CONTRIBUTIONS**

Section 3.09. — Manner of Investment. ~~All Elective Deferrals, Rollover Contributions or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights will be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account will provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.~~

Section 3.10. — Investment of Contributions. ~~Each Participant or Beneficiary will direct the investment of his or her Account among the Investment Options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under the applicable Treasury Regulations in accordance with Section 8.03.~~

Section 3.11. — Investment Changes. ~~A Participant or Beneficiary is permitted to change the investment of his or her Account among the Investment Options available under the Plan, subject to the terms of the Individual Agreements. An investment change that includes an investment with a Former Vendor or other vendor that is not eligible to receive contributions under the Plan is not permitted; provided, however, that a Participant or Beneficiary is permitted to change the investment of his or her Account from an Investment Option with a Former Vendor to an Investment Option with a current Vendor. A change of investment of a Participant's Account among the Vendors under the Plan (or from a Former Vendor to a current Vendor under the Plan) must satisfy the conditions of this Section:~~

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

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

~~**Section 3.12. — Current Vendors.** The Administrator will maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan and set forth in Appendix A. Each Vendor and the Administrator will exchange such information as may be necessary to satisfy Code Section 403(b) or other requirements of applicable law. The Administrator may amend the list of Vendors contained at Appendix A to reflect the deletion or addition of a Vendor as a designated company, in accordance with Section 30-210 of the State Personnel and Pensions Article of the Annotated Code of Maryland.~~

~~**Section 3.13. — Former Vendors.** The Board will make a good faith reasonable effort to enter into an information sharing agreement with each Former Vendor to the extent that any existing agreement with that Former Vendor does not already provide for such information sharing on a continuing basis. The agreement will provide for mutual sharing of the following information:~~

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

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

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

ARTICLE IX. ARTICLE XII.

PLAN ADMINISTRATION

Section 3.14. Authority of the Administrator.

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

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

~~(1) — to make~~may provide rules and regulations ~~with respect to the Plan, not inconsistent with the Plan or the Code, and to provisions hereof, for the operation and management of the Plan, and may from time to time amend or rescind such rules and~~or regulations;

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

~~(3) Section 12.01. to direct the Vendors and Former Vendors to make payments to Participants, their Beneficiaries, and other persons as the. The Administrator may determine pursuant to the terms of the Plan, subject to the terms and conditions of the Individual Agreements (to the extent that the Individual Agreements are not inconsistent with~~is authorized to accept service of legal process for the Plan document or instructions of the Administrator communicated to the Vendor prior to the issuance of an Individual Agreement);.

~~(3) — subject to and consistent with the Code,~~ **Powers of the Administrator.** The Administrator shall have the power and discretion to construe and interpret the Plan and, including any ambiguities, to determine all questions of fact or law arising ~~hereunder; and~~

~~(4) — to under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defects~~defect, supply any ~~omissions,~~omission or reconcile any ~~inconsistencies~~inconsistency in the Plan in such manner and to such extent as the Administrator ~~deems expedient.~~

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

~~(d)~~**Section 12.02. Benefits** and, subject to the Plan's claim procedures, the Administrator shall be the sole and final judge of such expediency. Benefits are payable under the Plan only if the Administrator, in its sole discretion and subject to the terms and conditions of the Individual Agreements (to the extent that the Individual Agreements are not inconsistent with the Plan document or instructions of the Administrator communicated to the Vendor prior to the issuance of an Individual Agreement), and absolute discretion, determines the benefits are payable under the provisions of the Plan.

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Section 9.02. Section 12.03. Delegation by Administrator.

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

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

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

Section 12.04. Fiduciary Insurance. Subject to State law, the Board may require the purchase of fiduciary liability insurance for any Plan fiduciary or fiduciaries to cover liability or losses occurring by reason of the act or omission of a fiduciary.

Section 9.03. Section 12.05. Employment of Consultants. The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

ARTICLE XIII.
CLAIMS PROCEDURES

Section 9.04. Section 13.01. Requests for Information Concerning Eligibility, Participation and Contributions. Requests for information concerning eligibility, participation, contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the Administrator of the Plan. If a written request is denied, the Administrator shall, within a reasonable period of time, provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Administrator and may submit issues and comments in writing to the Administrator. The Administrator shall provide to the Participant a written decision upon such request for review of a denied claim.

Section 9.05. Section 13.02. Requests for Information Concerning Annuity Contracts and Custodial Accounts. Investment Arrangements. Requests for information concerning the Annuity Contracts and Custodial Accounts and their terms, conditions, and interpretations thereof, claims thereunder, any requests for review of such claims, and service of legal process, should be in writing and directed to the Vendor. If a written request is denied, the Vendor shall, within a reasonable period of time, provide a written denial to the Participant. A

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

~~**Section 3.15. Plan Expenses.** All reasonable expenses of administering the individual Accounts in the Plan will be charged against and paid from the Participants' Accounts, subject to the terms of the Individual Agreements (to the extent that the Individual Agreements are not inconsistent with the Plan document or instructions of the Administrator communicated prior to the issuance of the Individual Agreement).~~

~~ARTICLE X. ARTICLE XIV.~~

~~AMENDMENT AND PLAN TERMINATION~~

~~**Section 3.16. Termination of Contributions.** The Board has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Board has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance by resolution of the Board.~~

~~**Section 10.02. Section 14.01. Amendment and Termination of Plan.** The Board reserves shall have the authority right, in its sole and final discretion, to amend or terminate this the Plan at any time and from time to time, to any extent which it may deem advisable.~~

~~**Section 14.02. Restrictions on Amendments.** The Plan may not be amended in a manner that violates any provision of the Code.~~

~~**Section 10.03. Section 14.03. Distribution upon Upon Termination of the Plan.** The Board may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will shall be distributed, provided that the Employer and any Related Employer on the date of the termination does not make contributions to an alternative Code Section-403(b) contract plan that is not part of the Plan during the period beginning on the date of plan Plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Treasury Regulations regulations. For purposes of distributing all accumulated benefits under the Plan in the event of Plan termination, delivery of a fully paid individual insurance annuity contract shall be treated as a distribution.~~

~~ARTICLE XI. ARTICLE XV.~~

~~MISCELLANEOUS~~

~~**Section 15.01. Non-Assignability.** Except as provided below Alienation.~~

~~(a) A Participant's Account under the Plan shall not be liable for a domestic relation order any debt, liability, contract, engagement, or IRS levy, the interest stort of each the Participant or his or her Beneficiary under the Plan are not-, nor subject to the claims anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution,~~

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alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.

~~Section 11.01.(b)~~ Notwithstanding paragraph (a), the Plan shall comply with any judgment, decree or order ("domestic relations order") which establishes the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary will have any right of an alternate payee within the meaning of Code Section 414(p)(8) to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest all or a portion of a Participant's benefit under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p). The Vendor shall establish reasonable written procedures to determine whether a domestic relations order is a QDRO and to administer the distribution of benefits with respect to such orders, which procedures may be amended from time to time, and which shall be provided to Participants upon request. Notwithstanding any other provisions in the Plan, the Plan may make an immediate distribution to the alternate payee pursuant to a QDRO.

~~Section 3.17. Domestic Relation Orders.~~ Notwithstanding Section 11.01, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance will be paid in the manner and to the person or persons so directed in the domestic relations order to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p). Such payment will be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan, but is subject to the terms of the Individual Agreements. The Administrator will establish reasonable procedures for determining the status of any such decree or order as a QDRO and for effectuating distribution pursuant to the QDRO. A participant may be charged a reasonable processing fee per domestic relations order.

~~Section 3.18. IRS Levy.~~ Notwithstanding Section 11.01, the Administrator may pay from a Participant's or Beneficiary's Account Balance, in accordance with the terms of the Funding Vehicles, the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

~~Section 3.19. Tax Withholding.~~ Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under Code Section 3121). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Code Section 3401 and the Employment Tax Regulations thereunder). A payee will provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

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~~**Section 3.20. — Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator or the Vendor, benefits will be paid to a court appointed guardian or in accordance with the terms of a court order. Such payments will be considered a payment to such Participant or Beneficiary and will, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.~~

~~**Section 3.21. — Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) will be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.~~

~~**Section 3.22. — Procedure When Distributee Cannot Be Located.** The Vendor will make reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. If the Vendor is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Funding Vehicle will continue to hold the benefits due such person.~~

~~**Section 3.23. — Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of Code Section 403(b) and the Treasury Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Code Section 403(b).~~

~~**Section 3.24. — Governing Law.** The Plan will be construed, administered and enforced according to the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Maryland without regard to conflict of law principles.~~

~~**Section 3.25. — Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.~~

~~**Section 3.26. — Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.~~

~~**Section 11.12. Section 1.01. Federal and State Taxes.** It is intended that contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries. However, the Administrator does not guarantee that any particular Federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.~~

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~~**Section 3.27. Erroneous Payments.** If the Vendor makes any payment that, according to the terms of the Plan and the benefits provided thereunder, should not have been made, the Vendor may recover that incorrect payment by whatever means necessary, whether or not it was made due to the error of the Administrator or the Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Vendor may deduct it when making any future payments directly to that Participant.~~

~~(c) Notwithstanding paragraph (a), the Plan shall offset from the benefit otherwise payable to a Participant or his or her Beneficiary such amounts as are permitted to be offset under a court order, civil judgment, or settlement agreement in accordance with Code Section 401(a)(13)(C).~~

Section 15.02. Military Service.

~~(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with USERRA, HEART, Code Section 414(u), and Code Section 401(a)(37). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.~~

~~(b) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service may elect to make Elective Deferrals upon resumption of employment with the Employer up to the maximum Elective Deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Participant during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for the lesser of (i) five years following the resumption of employment or (ii) a period equal to three times the period of the interruption or leave. Such Elective Deferrals by the Participant may only be made during such period and while the Participant is reemployed by the Employer.~~

~~(c) Effective January 1, 2007, to the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.~~

~~(d) Effective January 1, 2009, differential wage payments within the meaning of Code Section 414(u)(12)(D) shall be treated as Compensation and Includible Compensation under the Plan.~~

~~**Section 11.14. Section 15.03. Limitation of Rights and Obligations.** Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor the purchase of any~~

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~~Annuity Contract or Custodial Account~~, nor any act or omission under the Plan or resulting from the operation of the Plan ~~will~~shall be construed:

(a) as conferring upon any Participant, Beneficiary, or any other person ~~any~~a right or claim against the ~~Board, the Employer or the~~ Administrator or Employer, except to the extent that such right or claim ~~will~~shall be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Board ~~or, the~~ Employer or the Administrator for the validity or effect of the Plan;

(c) as a contract or agreement between the Board, the Employer ~~-, or the Administrator~~ and any Participant or other person;

(d) as ~~being an agreement, consideration for, or an inducement or condition of,~~ employment ~~of any Participant or other person,~~ or as ~~affecting or restricting~~effecting in any manner or to any extent whatsoever the rights or obligations of the Employer or any ~~Participant or other person~~Employee to continue or terminate the employment relationship at any time, except as otherwise provided under any applicable collective bargaining agreement; or

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

Section 15.04. Federal and State Taxes. It is intended that Contributions other than Roth Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries, and that Roth Contributions and earnings thereunder are excludable from gross income for federal and state income tax purposes when paid to Participants or Beneficiaries to the extent that they are Qualified Distributions. However, the Administrator does not guarantee that any particular federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

Section 15.05. Erroneous Payments. If the Administrator or Vendor makes any payment that, according to the terms of the Plan and the benefits provided hereunder, should not have been made, the Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or Vendor may deduct it when making any future payments directly to that Participant.

Section 15.06. Benefit Payment Issue Resolution. The Administrator, or its designee, if in doubt regarding the correctness of its action with respect to a benefit payment, may direct suspension of payment until satisfied as to the correctness of the payment or the person to receive the payment. Alternatively, the Administrator, or its designee, may file, in any state court of competent jurisdiction, a suit, in the form it deems appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator, or

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its designee, may also bring a suit, or take other action as it deems appropriate, to resolve questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and Participants and the Administrator shall be bound by such an order, insofar as it affects the benefits payable under this Plan, or the method or manner of payment.

Section 15.07. Release. Any payments to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Administrator.

Section 15.08. Liability. The Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram, or other paper or document or electronic transmission believed by the Administrator to be genuine or to be executed or sent by an authorized person.

Section 15.09. Information Provided by the Participant. Each Participant should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan.

Section 15.10. Family Medical Leave Act. Notwithstanding any provisions of this Plan to the contrary, Contributions and benefits with respect to qualified leave will be provided in accordance with the Family Medical Leave Act of 1993, 29 U.S.C. Section 2601 et. seq.

Section 15.11. Payments to Minors or Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is determined to be legally incapable of giving valid receipt and discharge for such benefits by a court or by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to the Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

Section 15.12. Missing or Lost Participants. In the event that the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary under the Plan, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. A reasonable attempt to locate a missing or lost Participant or Beneficiary shall include (i) providing notice to the Participant at the Participant's last known address via certified mail; (ii) determining whether the Employer's records or the records of another plan maintained by the Employer has a more current address for the Participant; (iii) attempting to contact any named Beneficiary of the Participant; and (iv) searching for the missing Participant via free electronic search tools, such as Internet search engines, public record databases, obituaries, and social media. If such search methods are unsuccessful, based on the facts and circumstances, the Administrator may use other search methods, including using Internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases, and analogous services that may involve charges. The Administrator may charge missing Participants and Beneficiaries reasonable expenses for efforts to find them.

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Section 15.13. Indemnification. The Employer shall satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Administrator is delegated pursuant to Section 12.03, except a Vendor or other service provider. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the regulations or by-laws of the Employer, under any provision of law, or under any other agreement; provided, however, that the Employer will not satisfy any such liability to the extent that the person did not act in good faith.

Section 15.14. No Reversion. Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the Employer, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, if Contributions are made by the Employer by a good faith mistake of fact, such amount may be returned to the Employer within one year of the date that they were made to the Plan.

Section 15.15. Finality of Determination. All determinations with respect to crediting of service under the Plan are made on the basis of the records of the Employer, and all determinations made are final and conclusive upon Employees, former Employees, Eligible Employees, former Eligible Employees, and all other persons claiming a benefit under the Plan.

Section 11.15. Section 15.16. Counterparts. The Plan may be executed in any number of counterparts, each of which ~~will~~shall be deemed to be an original. All counterparts ~~will~~shall constitute but one and the same instrument and ~~will~~shall be evidenced by any one counterpart.

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IN WITNESS WHEREOF, the Board has caused this ~~Plan amendment~~amended and ~~restatement~~restated Plan to be executed by its duly authorized representative as of the date written below, but effective as of January 1, ~~2009~~2020.

**UNIVERSITY SYSTEM OF MARYLAND
BOARD OF REGENTS**

Signature

Printed

Title

Date

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

APPENDIX A

CURRENT APPROVED VENDORS

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

~~**1.1 CURRENT LIST OF APPROVED VENDORS.**~~

APPROVED VENDORS

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

~~TIAA-CREF~~

~~Fidelity Investments~~

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

~~The current selection of VendorsVendor(s) is not intended to limit future additions or deletions of VendorsVendor(s). The Board reserves the right Administrator from time to time may add or delete Vendors at any timeVendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in its sole discretion, and to amend this revised Appendix A to reflect the addition or deletion of Vendors.~~

**UNIVERSITY SYSTEM OF MARYLAND
BOARD OF REGENTS**

Signature

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Date

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APPENDIX B

FORMER VENDORS

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

List of Former Vendors:

1.1 Approved Vendors

As of January 1, 2009, ~~there are no Former~~2020, the Board has approved the following Vendors under the Plan:

Right to Add or Delete Vendors and Investment Options:

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

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BOARD OF REGENTS**

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- TIAA
- Fidelity Investments

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1.2 Former Vendors

As of January 1, 2008, the Former Vendor under the Plan is AIG VALIC.

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~~December 17, 2015~~ **December 2, 2019**

**UNIVERSITY SYSTEM OF MARYLAND
DEFERRED COMPENSATION PLAN AND TRUST**

~~Amended and Restated Effective January 1, 2016~~

1544949.12

~~1544949.7~~ **Amended and Restated Effective as of January 1, 2020**

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**UNIVERSITY SYSTEM OF MARYLAND
DEFERRED COMPENSATION PLAN AND TRUST**

**ARTICLE I
ESTABLISHMENT AND RESTATEMENT OF PLAN**

Section 1.01. Plan Establishment and History.

(a) The University System of Maryland is a public university system established under Maryland law and an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The Board of Regents of the University System of Maryland (hereafter "the ("Board") hereby amends and restates this established the University System of Maryland Deferred Compensation Plan and Trust ("Plan") pursuant to Code Section 457(b) and Sections 30-210 et seq. of the State Personnel and Pensions Article of the Annotated Code of Maryland (1978, 2004 Repl. Vol.), to provide eligible employees the opportunity to supplement their retirement benefits through voluntary contributions.

(b) The Plan is, and is intended to remain, a defined contribution plan under Code Section 457(b). The Plan is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(c) The Plan was most recently amended and restated effective January 1, 2006, and has been amended from time to time thereafter.

Section 1.02. Plan Restatement.

(a) The Plan is now being amended and restated effective January 1, 2020, except as otherwise specifically provided herein, to incorporate the prior amendments to the Plan and to make certain discretionary changes.

(b) Except as otherwise specifically provided herein, the Plan as hereinafter referred to as the "Plan"). The Plan consists of these set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2020, and to transactions under the Plan on and after January 1, 2020. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2020, shall be determined in accordance with the terms and provisions set forth in this document and is applicable to each public employee employed by an eligible employing institution who elects to participate in the Plan. The Plan is effective as to each such public employee upon of the Plan that were in effect on the date he becomes a "Participant" by signing and filing a Participation Agreement with either the Administrator or such other entity or body designated, from time to time, by the Administrator. The Plan is intended to operate as a Section 457 plan for employees of the State as permitted by Internal Revenue Code Section 457(b) and State Pers. & Pens. Art. Section 30-210; and all funds held by the Plan shall be held by the designated institutions as a separate and distinct fund, either in trust of their Severance from Employment, except as otherwise specifically provided herein or in an annuity contract otherwise satisfying the a subsequent amendment.

Section 1.03. Plan Funding. The Plan is funded through one or more Trusts in accordance with the qualification requirements of the Code.

DRAFT**November 25, 2019**

ARTICLE II.
RULES OF CONSTRUCTION AND DEFINITIONS

Section 2.01. Rules of Construction and Governing Law.

(a) This Plan shall be interpreted, enforced, and administered in accordance with the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Maryland without regard to conflict of law principles.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and vice versa, and words used herein in the singular or plural shall be construed as being in the plural or singular, where appropriate, and vice versa.

(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute an eligible plan under the provisions of Code Section 457(g) and Section 401(f) of the Internal Revenue Code, for the exclusive benefit of Participants and their Beneficiaries. Except where an earlier effective date would be necessary to and the Trust to be exempt from tax under Code Section 457, (ii) be a governmental plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with federal law, the amendments made by the restated Plan are effective January 1, 2016. all applicable requirements of the Code, shall prevail over any different interpretation.

ARTICLE I.
DEFINITIONS

~~1.01.~~**Section 2.02. Definitions.** ~~The following terms used in this Plan shall have~~When the initial letter of a word or phrase is capitalized herein, the meaning set forth in this Section of such word or phrase shall be as follows:

(a) "Account Balance-~~shall mean~~" means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred ~~Compensation~~compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Article ~~XXI~~ for ~~rollover contributions~~Rollover Contributions and Article ~~XXII~~ for plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Code Section 414(p)(8) of the Code)).

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(b) "Account" means the separate accounts maintained for each Participant and Beneficiary under the Plan. The following Accounts shall ~~mean~~ be established for a Participant or Beneficiary, if applicable:

(1) A Pre-Tax Contribution Account to reflect the Participant's ~~Regular Account, Employer Matching Account, or~~ Beneficiary's interest under the Plan attributable to Pre-Tax Contributions pursuant to Article III.

(2) A Roth Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Roth Contributions pursuant to Article III.

(3) A Rollover ~~Account, and~~ Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Rollover Contributions pursuant to Article XI.

(b)(4) A Transfer Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to transfers pursuant to Article XII.

(c) "Administrator ~~shall mean the~~" means the Administrative Committee as designated by the Board, or such other person ~~or~~ persons, or entity designated by the Board, to perform the ~~basic~~ administrative duties and functions under the Plan. ~~In the absence of a designation, the Board shall be the administrator. The Board may appoint more than one Administrator;~~

(e)(d) "Annual Deferrals" mean Pre-Tax Contributions and ~~limit the responsibility of the appointed party to such matters as it sees fit.~~/or Roth Contributions.

(d) ~~Annual Deferral~~ shall mean the amount of Compensation deferred by a Participant in any year pursuant to Articles II and III of the Plan.

(e) "Applicable Form ~~shall mean~~" means the appropriate form as designated and furnished by the Administrator or Vendor to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically required by the Code, the Administrator or Vendor may prescribe a verbal, electronic, or telephonic instruction in lieu of or in addition to a written form.

(f) "Beneficiary ~~shall mean~~" means the person, company, trustee, or person's estate designated by at the Participant on the Applicable Form to receive any benefits payable upon under the Plan in the event of the Participant's death. A designation of an individual as a Beneficiary shall remain in effect until affirmatively revoked by the Participant on a subsequent Applicable Form. Unless otherwise provided in the Trust, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's Spouse shall be the Beneficiary or, if none, the Participant's estate shall be the Beneficiary. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

(g) "Board ~~shall mean~~" means the Board of Regents of the University System of Maryland.

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(h) ~~"Code shall mean" means~~ the Internal Revenue Code of 1986, as ~~now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may~~ from time to time ~~be amended or renumbered.~~

(i) ~~-"Compensation shall mean" means~~ all cash compensation for services to the ~~Employing Institution~~Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, ~~that which~~ is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the ~~Employing Institution~~Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under ~~Code~~ Section 125, 132(f), 401(k), 403(b), or 457(b) ~~of the Code~~ (including an election ~~by the Participant to defer Compensation reduce compensation in order to make Annual Deferrals under Article II of the Plan).~~ ~~Compensation does not include amounts "picked up" by the Employer within the meaning of Code Section 414(h).~~ Compensation ~~that would otherwise be includes any compensation described in paragraph (1) or (2), provided it is paid for a payroll period that begins before~~by the later of 2½ months after the Employee's Severance from Employment ~~is treated as an amount that would otherwise be paid or made available before~~ ~~with the Employer or the end of the calendar year in which the~~ Employee has a Severance from Employment. ~~In addition: - with the Employer:~~

~~(1) — Any compensation described in this Section any payment that is paid by the later of 2½ months after an Employee's Severance from Employment or the end of the calendar year that includes an Employee's Severance from Employment does not fail to be Compensation merely because it is paid after the Employee's Severance from Employment. The following are types of post-severance compensation that are not excluded from Compensation because of timing if they are paid within 2½ months following Severance from Employment or the end of the calendar year that includes an Employee's Severance from Employment:~~

~~(A)(1) Payments that, absence a Severance from Employment, would have been paid to the Employee while prior to a Severance from Employment if the Employee continued in employment with the Employing Institution Employer and are that is regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation payments; and~~

~~(B)(1) Payments a payment for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the Employee's Severance from Employment, and only if the Employee separately elects for such payment to be reduced on his or her Salary Reduction Agreement pursuant to Section 4.01.~~

~~(ii) Any payment that is not described in subsection (i) of this Section paragraph (1) or (2) above is not considered Compensation if paid after Severance from Employment. Thus, for example, Compensation does not include amounts paid after Severance from Employment that are severance pay, unfunded nonqualified deferred compensation, or parachute payments within the meaning of Code Section 280G(b)(2) of the Code.~~

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~~(3) Compensation also includes payments to an individual who does not currently perform services for the Employing Institution by reason of qualified military service (as that term is used in Section 414(u)(1) of the Code) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employing Institution rather than entering qualified military service.~~

~~(4) Compensation also includes compensation described in Treas. Reg. § 1.415(e)-2(g)(4) with respect to Participants who are permanently and totally disabled.~~

~~(5) To the extent applicable, Compensation of each Participant shall not exceed the applicable limit established in Section 401(a)(17) of the Code, as adjusted for cost of living.~~

~~(j) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 414(v) or 457(e)(15) for any applicable year.~~

~~(k) "Disabled" or "Disability" means disability within the meaning of Code Section 72(m)(7).~~

~~(j)(1) "Employee shall mean" means each employee of the **Employing Institution** Employer, including a contingent employee (other than a contractual or a leased employee or an independent contractor) ~~or~~ **and** an employee whose employment is governed by the terms of a collective bargaining agreement between representatives of the employee's bargaining unit and the State, and under which retirement benefits were the subject of good faith bargaining, unless the bargaining representatives for the bargaining unit and the **Employing Institution** Employer have agreed to have the employees in the bargaining unit excluded from participation.~~

~~(k) "Employer **Matching Account** [Reserved]."~~

~~(4)(m) **Employing Institution shall mean** means the University System of Maryland and its constituent institutions and centers, which are all governmental entities.~~

~~(m) **Includible Compensation** shall have the same meaning as Compensation; provided, however, that an Employee who is in qualified military service (within the meaning of Section 414(u)(1) of the Code) shall be treated as receiving compensation from the Employer during such period of qualified military service equal to (i) the compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received from the Employer but for the absence during the period of qualified military service, or (ii) if the compensation the Employee would have received during such period was not reasonably certain, the Employee's average compensation from the Employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).~~

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(n) "Former Vendor" means a service provider that was an approved Vendor under the Plan, but that ceases to be an approved Vendor under the Plan, that continues to hold Plan assets.

(o) "HEART" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

(p) "Includible Compensation" means all compensation received by an Employee from the University that is includible in his or her gross income for federal income tax purposes (computed without regard to Code Section 911) for that taxable year under Code Section 415(c)(3). Includible Compensation also includes any amounts excludable from taxable income because of an election (including Elective Deferrals under the Plan) under Code Sections 403(b), 457(b), 125, 401(k), or 132(f). Includible Compensation includes compensation paid by the later of 2½ months after an Employee's Severance from Employment or the end of the Plan Year that includes the date of the Employee's Severance from Employment, if:

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

(2) the payment is for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if the Employee had continued in employment; or

(3) the payment is made to the Employee under a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the University and only to the extent that the payment is includible in the Employee's gross income.

Includible Compensation does not include any amounts "picked up" by the Employer within the meaning of Code Section 414(h). Includible Compensation is determined without regard to any community property laws.

(q) "Investment Options" mean the investment funds available under the Trust provided by the Vendor(s) and specifically approved by the Administrator, in its sole and absolute discretion, for use under this Plan.

(n) "Normal Retirement Age" shall mean:

(r) For" means, for a Participant who is a member of:

(i)(1) a State defined benefit retirement system, the age designated by the Participant, but beginning no earlier than the earliest age at which the Participant may retire under the State defined benefit retirement system in which he or she participates

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and receive immediate retirement benefits (without consent of the State and without actuarial or similar reduction), and ending no later than age 70½. ~~1/2; or~~

~~(ii)(2) For a Participant who is a member of~~ the State optional retirement plan, the age designated by the Participant, but beginning no earlier than age 65, and ending no later than age 70½.

~~(iii)~~ Said designation may be amended by the Participant at any time prior to reaching such designated age. If the Participant shall, for any reason, fail to designate a Normal Retirement Age, the Normal Retirement Age shall be age 70½. The Normal Retirement Age specified must be the same for all ~~plans~~ eligible deferred compensation plans under Code Section 457(b) sponsored by the ~~Employing Institution~~ Employer in which the Participant participates.

~~(o) Participant shall mean an individual who is currently deferring Compensation (or has previously deferred Compensation) under the Plan by salary reduction or has made a rollover into the Plan and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employing Institution as an Employee may defer Compensation under the Plan. A Participant shall not include a Beneficiary.~~

~~(s) "Participant" means any Employee who is or may become eligible to receive a benefit of any type under the Plan. A Participant shall also mean, when appropriate to the context, a former Employee who is eligible to receive a benefit of any type under the Plan.~~

~~(p)(t) "Participation Agreement shall mean" means~~ the Applicable Form signed by the Employee when he or she commences participation in the Plan, any amendment thereto, and any subsequent agreement in which the Participant designates the amount of his or her Annual Deferral, his or her investment selections, his or her designated Normal Retirement Age, his or her date for commencement of benefits, and his or her method of payments of benefits.

~~(u) "Plan" means the University System of Maryland Deferred Compensation Plan and Trust, as amended from time to time.~~

~~(q)(v) "Plan Year shall mean" means~~ the calendar year.

~~(r)(w) Regular Account shall mean the Account maintained for "Pre-Tax Contribution" means a contribution made to the Plan by the Employer at the election of a Participant by the Administrator to which deferrals pursuant to a Participation Agreement in accordance with Article II shall be credited III.~~

~~(s) Rollover Account shall mean the Account maintained for a Participant by the Administrator to which rollover contributions pursuant to Article X shall be credited.~~

~~(x) "Qualified Distribution" means a distribution from a Roth Contribution Account after the Participant has satisfied a five year tax holding period and has attained age 59½, died, or become Disabled, in accordance with Code Section 402A(d). The five year tax holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Contribution under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed.~~

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(y) "Related Employer" means any entity which is under common control with the Employer under Code Section 414(b), (c), (m), or (o). The Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under IRS Notice 89-23, 1989-1 C.B. 654.

(z) "Rollover Contribution" means an amount contributed to the Plan pursuant to Article XI.

(aa) "Roth Contribution" means a contribution made to the Plan by the Employer at the election of a Participant pursuant to a Participation Agreement in accordance with Article III that has been (i) designated irrevocably by the Participant as a Roth Contribution being made in lieu of all or a portion of the Pre-Tax Contribution the Participant is otherwise eligible to make under the Plan, and (ii) treated by the Employer as includible in the Participant's gross income at the time the Participant would have received that amount in cash if the Participant had not made such an election. Roth Contributions shall be available under the Plan as soon as administratively practicable on or after January 1, 2020.

(bb) "Section" means, when not preceded by the word Code or ERISA, a section of the Plan.

(†)(cc) "Severance from Employment-~~shall mean~~" means the date that the Employee dies, retires, or otherwise has a severance from employment with the ~~Employing Institution~~Employer, as determined by the Administrator (and taking into account guidance issued under the Code). For an Employee on a leave of absence, such separation shall occur when the leave of absence expires if the Employee does not return to service.

(dd) "Spouse" means the person to whom an Eligible Employee is legally married under the law of any state.

(u)(ee) "State-~~shall mean~~" means the State of Maryland acting through the ~~Employing Institution~~Employer which has offered this Plan to its Employees.

(v)(ff) "State Pers. & Pens. Art.-~~shall mean~~," means the State Personnel and Pensions Article of the Annotated Code of Maryland- (1978, 2004 Repl. Vol.).

(w) ~~Transfer Account shall mean the Account maintained for a Participant by the Administrator to which transfers pursuant to Article XI shall be credited.~~

(x) ~~"Trust shall mean" means a trust that satisfies the trust(s) or contracts created herein to hold Plan assets. A requirements of Code Section 457(g), including a custodial account and/or an annuity contract described in Section 401(f) of the Code is treated as a qualified trust to the extent it is one described in under Code Section 401(f) of that satisfies the requirements of Code and Section 1.457-8(a) of the Treasury Regulations.~~

(y)(gg) ~~Trust Fund shall mean the trust fund~~457(g)(3), established under the Plan to hold the Plan assets of the Plan.

(z) ~~Trustees shall mean, with regard to the Trust Fund, the Board. In the case of a contract described in Section 401(f) of the Code, the person or entity holding such contract is treated as the custodial trustee thereof. In the absence of a specific designation by the Board, the~~

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~~Board shall act as trustee for funds not otherwise allocated to a contract described in Section 401(f) of the Code or to a trust.~~

~~(aa) **Valuation Date** shall mean each business day.~~

~~(bb) **Vendor** shall mean the person(s) or organization(s) appointed by the Administrator to perform service and administrative functions.~~

~~(hh) "Trust Fund" means the assets of the Plan held pursuant to the terms of the Plan and Trust.~~

~~(ii) "Trustee" means the Board; provided, however, that the entity or person(s) designated by the Administrator to hold the assets of a custodial account or hold an annuity contract in accordance with Code Sections 457(g)(3) and 401(f) shall be the custodial Trustee with respect to such assets.~~

~~(jj) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.~~

~~(kk) "Vendor" means the service provider that has been approved by the Administrator to serve as third party administrator and/or recordkeeper for the Plan and/or to offer Investment Options to Participants under the Plan. The Vendor(s) are listed in Appendix A, as modified from time to time in the Administrator's sole and absolute discretion. A modification of Appendix A is not an amendment of the Plan.~~

~~(ll) "Vest" or "Vested" means the interest of the Participant or Beneficiary in his or her Account that is unconditional, legally enforceable, and nonforfeitable.~~

~~ARTICLE II~~ **ARTICLE III.** **PARTICIPATION**

~~**2.01. Section 3.01. Eligibility.** Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Employing Institution. Each Employee shall also be eligible to participate in the Plan upon establishing a Rollover Account as described in Article X of the Plan. **Participation.** An Employee may become a Participant in the Plan for purposes of Annual Deferrals or Rollover Contributions immediately after commencement of employment with the Employer. Participation in the Plan is voluntary.~~

~~**2.02. Section 3.02. Election Required for Participation.** An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as ~~an Annual Deferral~~ **Pre-Tax Contribution and/or Roth Contribution** on his or her behalf) and filing it with the Administrator. This participation election shall be made on the Participant Agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. If the Employee fails to designate whether Annual Deferrals are Pre-Tax Contributions or Roth Contributions, the Employee will be deemed to have designated his or her Annual Deferrals as Pre-Tax Contributions. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. The participation election shall also include designation of~~

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~~investment options~~Investment Options and designation of a Beneficiary. Any such election shall remain in effect until a new election is filed on the Applicable Form. ~~Each Employee shall also be eligible to participate in the Plan upon establishing a Rollover Account as described in Article X of the Plan.~~

2.03.Section 3.03. Commencement of Participation. An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a Participation Agreement pursuant to Section ~~23.02.~~Such election, or upon establishing a Rollover Contribution Account as described in Article XI of the Plan, as applicable. An election pursuant to Section 3.02 shall become effective no earlier than the calendar month following the month in which the election is made. A new Employee may defer Compensation payable in the calendar month during which the Participant first becomes an Employee if a Participation Agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the ~~Employing Institution.~~Employer.

2.04.Section 3.04. Deferrals of Sick, Vacation, and Back-Pay. A Participant who has not had a Severance from Employment may elect to defer accumulated sick pay, accumulated vacation pay, and back-pay if the requirements of Code Section 457(b) ~~of the Code~~ are satisfied and if permitted by Board policy and Maryland State law. These amounts may be deferred for any calendar month only if a Participation Agreement providing for the ~~deferral~~Annual Deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee on the date the amounts would otherwise be paid or made available. Compensation that would otherwise be paid for a payroll period that begins before Severance from Employment is treated as an amount that would otherwise be paid or made available before an Employee has a Severance from Employment. In addition, ~~deferrals~~Annual Deferrals may be made for former Employees with respect to Compensation paid after an Employee has a Severance from Employment as described in Section ~~1.012.02(i) of the Plan (relating to certain Compensation paid within 2½ months following Severance from Employment, Compensation described in Section 1.415(e) 2(g)(4) of the Treasury Regulations with respect to Compensation paid to participants who are permanently and totally disabled, and Compensation relating to qualified military service under Section 414(u) of the Code).~~

2.05.Section 3.05. Information Provided by the Participant. Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code Section 457(b) ~~of the Code.~~

2.06.Section 3.06. Contributions Made Promptly. Annual Deferrals by the Participant under the Plan shall be transferred to the Vendors within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

2.07.Section 3.07. Amendment of Participation Election. Subject to other provisions of the Plan, a Participant may at any time revise his or her ~~participation~~

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~~election~~Participation Agreement, including a change of the amount of his or her Annual Deferrals, his or her ~~investment options~~Investment Options, and his or her designated Beneficiary on the Applicable Form in accordance with procedures established by the Administrator. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the ~~investment option~~Investment Option shall take effect as of the date provided by the Vendor on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor. The Participant may revoke his or her election to participate in the Plan by signing and filing with the Administrator (or such other entity as is designated by the Administrator) a written revocation on the Applicable Form and in the procedural manner approved by the Administrator. Any such revocation shall be effective prospectively only.

~~2.08.~~Section 3.08. Leave of Absence or Sabbatical. Unless an election is otherwise revised, if a Participant is absent from work by leave of absence or sabbatical, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

~~2.09.~~Section 3.09. Disability. A ~~disabled~~Disabled Participant may elect Annual Deferrals during any portion of the period of his or her ~~disability~~Disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

~~2.10.~~Section 3.10. Cessation of Plan Participation. An Employee shall cease to be a Participant on the distribution of the Employee's entire interest in the Plan.

~~2.11.~~Section 3.11. Vesting Standards. A Participant shall be 100% ~~vested~~Vested in the Participant's Accounts.

Section 3.12. Plan Expenses. All reasonable expenses of administering the individual Accounts in the Plan will be charged against and paid from the Participants' Accounts.

~~ARTICLE III.~~ARTICLE IV. LIMITATIONS ON AMOUNTS DEFERRED

~~3.01.~~Section 4.01. Basic Annual Limitation. The maximum amount of ~~the~~ Annual ~~Deferral under~~Deferrals to the Plan for any calendar year shall ~~not exceed~~be limited to the lesser of (i) the ~~Applicable Dollar Amount~~applicable dollar amount as provided in Code Section 457(e)(15) or (ii) the Participant's Includible Compensation ~~for the calendar year as provided in Code Section 457(b)(2).~~ The ~~Applicable Dollar Amount is the amount established under Section 457(e)(15)~~applicable dollar amount is \$19,500 for 2020, increased thereafter by the Cost of the Code applicable as set forth below:Living Adjustment.

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For the following years:	The Applicable Dollar Amount is:
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000, adjusted for cost of living after 2006 to the extent provided under Section 415(d) of the Code.

3.02. Section 4.02. Age 50 Catch-up Annual Deferral Contributions. A Participant who ~~will attain~~attains age 50 or more by the end of the calendar year ~~is permitted to elect an, and~~ who is contributing up to the applicable dollar amount under Section 4.01, may make additional amount of Annual Deferrals, up to the maximum age 50 catch up Annual Deferrals for the year. ~~The maximum dollar amount of the age 50 catch up Annual Deferrals for a year is as follows: under Code Section 414(v) of up to \$6,500 for 2020, increased thereafter by the Cost of Living Adjustment.~~

For the following years:	The maximum age 50 catch-up dollar amount is:
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 or thereafter	\$5,000, adjusted for cost of living after 2006 to the extent provided under Section 415(d) of the Code.

3.03. Section 4.03. Special Section 457 Catch-up Limitation. If the applicable year is one of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section exceeds the amount computed under Sections ~~34.01~~ and ~~34.02~~, then the Annual Deferral limit under this Article ~~HHIV~~ shall be the lesser of:

(a) An amount equal to two times the applicable dollar amount under Section ~~34.01~~ ~~Applicable Dollar Amount~~ for such year; or

(b) The sum of:

~~(i)(1)~~ (i)(1) An amount equal to (A) the aggregate Section ~~34.01~~ limit for the current calendar year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

~~(ii)(2)~~ (ii)(2) An amount equal to (A) the aggregate limit referred to in Code Section 457(b)(2) ~~of the Code~~ for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Sections ~~34.02~~ and ~~34.03~~), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

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However, in no event can the deferred amount under this Section ~~34.03~~ be more than the Participant's Compensation for the year. A Participant may not have more than one Normal Retirement Age under the Plan.

3.04.Section 4.04. Special Rules. For purposes of this Article ~~HHIV~~, the following rules shall apply:

(a) Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code Section 457(b) ~~of the Code.~~, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article ~~HHIV~~. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the ~~Employing Institution~~Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) Pre-Participation Years. In applying Section ~~34.03~~, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section ~~34.01~~ or any other plan ceiling required by Code Section 457(b) ~~of the Code.~~

(c) Pre-2002 Coordination Years. For purposes of Section ~~34.03(b)(ii)(B)~~, "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction, or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18) ~~of the Code.~~ including plans, arrangements or accounts maintained by the ~~Employing Institution~~Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section ~~34.03(b)(ii)(B)~~ to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code Section 457(b)(2) ~~of the Code~~ for that year.

3.05.Section 4.05. Correction of Excess Deferrals. If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described under this Article ~~HHIV~~, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described under this Article ~~HHIV~~ when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) ~~of the Code~~ for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant as soon as administratively practicable. Subject to the terms of the Trust, if a Participant who made both Pre-Tax Contributions and Roth Contributions for a calendar year has excess amounts for that year, the excess Annual Deferrals will be distributed out of the Roth Contribution Account unless the Participant elects to instead have the excess Annual Deferrals distributed out of the Pre-Tax Contribution Account.

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3.06.Section 4.06. Disregard Excess Deferrals. For purposes of Sections ~~34.01, 34.02,~~ and ~~34.03,~~ an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in Section ~~34.05.~~ To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

ARTICLE IV.ARTICLE V.
ACCOUNTS AND REPORTS

4.01.Section 5.01. Accounts. The Vendor shall maintain a ~~Regular~~Pre-Tax Contribution Account and/or Roth Contribution Account with respect to each Participant,~~and that Regular Account.~~ Pre-Tax Contributions shall be credited ~~with~~to the ~~Participant's deferred amount for~~Pre-Tax Contribution Account of the Participant each ~~pay~~payroll period. Roth Contributions shall be credited to the Roth Contribution Account of the Participant each payroll period. In addition, a Rollover Contribution Account shall also be maintained for any Participant making rollover contributions to the Plan pursuant to Article ~~XXI,~~ and a Transfer Account shall also be maintained for any Participant making transfers to the Plan pursuant to Article ~~XXII.~~ The balance of such Accounts shall be adjusted daily to reflect any distribution to the Participant and all interest, dividends, account charges and changes of market value resulting from the investment of the Participant's Accounts. ~~If the Board elects to provide Employer Matching Contributions to this Plan, there shall be established an Employer Matching Account.~~

4.02.Section 5.02. Records. The records of each Participant's Account shall be maintained by each Vendor.

4.03.Section 5.03. Statements. Statements of each Participant's Account shall be furnished by the Vendor to each Participant at least annually, within ~~ninety (90)~~ days after the end of each calendar year (or such other time as is designated by the ~~Board~~Administrator), and at such more frequent intervals as is determined by the ~~Board and the~~ Administrator. The Vendor may use the Internet or other electronic means of communication to provide statements, if done through secure means. Participant reports shall be deemed to have been accepted by the Participant as correct unless written notice to the contrary is received by the Vendor within ~~sixty (60)~~ days after the mailing or distribution of a report to the Participant.

4.04.Section 5.04. Year End Reports. Within ~~ninety (90)~~ days after the end of each Plan Year, a written report shall be prepared by each Vendor and delivered to the Administrator showing the assets held under the Plan, a schedule of all receipts and disbursements and all material transactions of the Plan during the preceding year. This report shall be in a form and shall contain other information as the Administrator requires. Such reports shall be maintained on file by the Administrator.

4.05.Section 5.05. Board Records.Inspections. The ~~Board's Administrator's or its designee's~~ records,~~and any records of the Administrator (or its designee)~~ pertaining to a Participant's Account, shall be open to inspection by appointment during normal business hours by a Participant, or his or her designated representative. However, no Participant may review any record specifically relating to any other Participant.

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~~ARTICLE V~~**ARTICLE VI.**
VALUATION OF ACCOUNTS

~~5.01~~**Section 6.01.** **Valuation of Accounts.** Each Participant's Account in the Plan and Trust shall be equal in value to the Participant's amount credited to the Account, plus (i) income earned and market gains for the Account under the Participant's investment selection, less (ii) market losses for the Account, and expenses and charges to such Account under the Participant's particular investment selection and less (iii) assessments and charges made against the Participant's Account by the Vendor, Administrator, or the Trustee for the expenses of the Plan.

~~5.02~~**Section 6.02.** **Valuation and Book Value.** All interest, dividends, charges for premiums and changes in value due to market fluctuations, or charges or expenses of administration shall be credited or debited to the Participant's Accounts as they occur. All Accounts shall be valued every business day, except in cases where the Administrator authorizes a different valuation method. All reports to the Participant shall be based on fair market value as of the reporting date, except that: (i) investments or investment pools that are measured by daily income accruals and fair or book value of the contracts contained therein shall be valued in that manner, and shall not require independent appraisals of value, and; (ii) the Vendor, in cases where the marketability of an investment has been suspended at a time when value must be determined, may make such reasonable estimates of value of all accounts within such particular ~~investment option~~**Investment Option** as is necessary to determine the value of any interest therein.

~~5.03~~**Section 6.03.** **Deposits.** In all cases, deposits of deferrals shall be treated as actually made only as of the date the funds are accepted as in good order by the Vendor.

~~ARTICLE VI~~**ARTICLE VII.**
DECLARATION OF TRUST

~~6.01~~**Section 7.01.** **The Trust.** Each Participant in the Plan shall have Accounts within the Trust Fund created by the ~~Board~~**Administrator** under Article ~~IV~~**V**. The ~~Board~~**Administrator** may designate those individuals or institutions who shall act as custodial trustees under this Plan from time to time, and execute such further agreements with them as the ~~Board~~**Administrator** shall deem necessary. The ~~Board~~**Administrator** may designate more than one institution to act as custodial trustee, or may create sub-trusts. To the extent permitted by federal tax law, custodial accounts and annuity contracts may serve as trusts and the ~~Board~~**Administrator** may use such combination of trusts and custodial accounts and annuity contracts to hold Plan assets as it shall see fit. Any reference to the Trust Fund shall include such custodial accounts or annuity contracts unless the context clearly indicates to the contrary. As further described in this Article, each Plan Account, and the Trust Fund as a whole, shall be held in trust for the exclusive benefit of Participants and their Beneficiaries, under the requirements of ~~Code~~ **Section 457(g) of the Code,** and the State Pers. & Pens. Art. This Declaration of Trust shall apply to all future contributions and earnings of the Plan and Trust. This Declaration of Trust shall not be interpreted as prohibiting the use of Plan assets to pay fees and other expenses incurred in the maintenance, administration and investment of the Trust Fund, custodial accounts, or annuity contracts, or the Participant's share of Plan administration expense.

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6.02.Section 7.02. Identification of Trust Assets. All assets of the Plan shall be held in trust or in custodial or annuity contracts as described herein by the Trustees for the exclusive benefit of Participants and their Beneficiaries. Such Trust Fund, and the investments, accounts, contracts, securities and other intangible property and rights that make up the Trust Fund and Plan assets, shall be sufficiently identified by the Trustees and any custodial trustees so that its status as Trust property, or Plan contracts and the individual interests therein, can always be determined. The Trustees shall take all reasonable and necessary steps to execute any documents necessary to effect such trust status or insurance company contract status for existing or future Plan assets.

6.03.Section 7.03. Fiduciary Status and Delegation of Duties. The Board is a fiduciary of Plan assets, custodial accounts, or annuity contracts only to the extent required by applicable provision of the Annotated Code of Maryland or the ~~Internal Revenue~~ Code. The assumption of fiduciary status by the Board hereunder shall not extend to, or create, any liability or duty to a Participant with respect to the ~~investment options~~ Investment Options offered for Participant selection. No provision of this Plan shall be construed in any manner that would be inconsistent with the duties and responsibilities specified herein. The Board, as an entity, may: (a) allocate duties and responsibilities under this Plan to one or more of its members; (b) designate one or more persons or entities in their employ to perform such duties and responsibilities; and (c) determine any matter with respect to this Plan by a majority vote of those individuals then constituting the Board.

6.04.Section 7.04. Unclaimed Benefit Payments. If any check or share certificate in payment of a benefit hereunder, which has been mailed by regular United States first-class mail to the last address of the payee furnished to the Vendors by the Administrator or the Participant or Beneficiary, is returned unclaimed, the Vendors shall follow such procedures regarding unclaimed benefit payments that the Administrator has established.

6.05.Section 7.05. Duty to Furnish Information. Both the Administrator and the Vendors shall furnish to each other any document, report, return, statement or other information that the other reasonably deems necessary to perform duties imposed under this Plan and Trust or otherwise imposed by law.

6.06.Section 7.06. Deposits And Disbursements From The Trust.

(a) **Trust Deposits.** The Board, acting through the Administrator, shall delegate to the Vendors the responsibility for accepting deposits to this Plan and Trust.

(b) **Trust Payments.** The Board, acting through the Administrator, shall delegate to the Vendors the responsibility for making payments from the Trust. The Vendors shall make payments from the Trust to Participants, their Beneficiaries and such other persons as the Plan may provide for from time to time. Such payments shall be made in such manner, in such amounts and for such purposes, including the payment of Plan benefits and the payment of expenses of administration of the Plan, as may be specified in the Plan. The Vendors shall ensure that any payment directed under this Section conforms to the provisions of this Plan and Trust and the provisions of any applicable law. Payments from the Trust shall be made by check (or the check of an agent) or deposit to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Vendors by the

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Administrator. The Vendors shall not incur any liability or other damage on account of any payment or other distribution made by the Trust in accordance with this Section.

(c) **Allocation of Trust Expenses.** ~~The Board~~ All expenses of the Trust shall ~~pay all expenses of the Trust be paid~~ from the Trust to the extent not paid by the ~~Employing Institution~~ Employer. All expenses of the Trust which are allocable to a particular ~~investment option~~ Investment Option or Account may be allocated and charged to such ~~investment option~~ Investment Option or Account as determined by the Trustees. All expenses of the Trust which are not allocable to a particular ~~investment option~~ Investment Option or Account shall be charged to each such ~~investment option~~ Investment Option or Account in proportion to the value of such ~~investment options~~ Investment Options and Accounts as of the close of business of the immediately preceding valuation date.

6.07:Section 7.07. Resignation And Removal Of Trustees. Any custodial trustee may resign at any time in writing to the ~~Board~~ Administrator. Any custodial trustee may be removed by the ~~Board~~ Administrator. Upon such resignation or removal, a successor trustee shall be appointed by the ~~Board~~ Administrator, and shall have the same powers and duties as those conferred upon the custodial trustees hereunder.

6.08:Section 7.08. No Guarantees. Neither the Board nor the Administrator guarantees the Trust from loss or depreciation or the payment of any amount which may become due to any person under this Plan and Trust.

6.09:Section 7.09. Parties Bound. This Plan and Trust shall be binding upon the parties hereto, all Participants in this Plan and Trust and persons claiming under or through them pursuant to this Plan and Trust, and, as the case may be, the heirs, executors, administrators, successors and assigns of each of them.

6.10:Section 7.10. Exclusive Benefit Rule. An Annual Deferral shall be delivered by the State to the Vendor, ~~or to such other entities selected by the Board to administer such amounts,~~ who shall hold such amounts in trust for the exclusive benefit of Participant and Beneficiaries, to be paid by the Vendor, to the Participant pursuant to Article ~~IV~~ V.

ARTICLE VII.ARTICLE VIII. **INVESTMENT OF ACCOUNTS**

7.01:Section 8.01. Investment Options. The ~~Board (or, if the Board delegates this power to the Administrator, the Administrator)~~ shall determine from time to time the permitted ~~investment options~~ Investment Options of the Trust that are available for selection by Participants and Beneficiaries, who shall select among those options for the investment of their Account Balance. These options may include securities (debt or equity), mutual funds and/or regulated investment companies, annuity contracts, investment contracts, real estate investment trusts, investment pools, bonds, and any other investment, including collective investment vehicles (whether or not such collective investment vehicles are generally available to the public) and such other investments as are permitted by statute. The ~~Board~~ Administrator may also invest in, or arrange for investment in, qualifying custodial accounts and contracts as permitted by ~~Code Section 457(g)(3) of the Code.~~ In each case, however, regardless of the type of investment, it is the intention of this Plan that the individual interest of each Participant and Beneficiary within this Plan and Trust shall always be capable of identification. The ~~Board~~ Administrator shall at all

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times create and administer the Plan and the investments of the Plan in accordance with requirements of the State Pers. & Pens. Art., and shall only use such designated company or companies as allowed by Section 30-210 of that Article, or successor provision of similar import. The Vendor shall transfer to each such ~~investment option~~ Investment Option such portion of the assets of the Trust as directed by Participants and Beneficiaries. The Vendor shall manage, acquire, or dispose of the assets in an ~~investment option~~ Investment Option in accordance with the specific investment directions given by the Participants. All income received with respect to, and all proceeds received from, the disposition of property held in an ~~investment option~~ Investment Option shall be credited to, and reinvested in, such ~~investment option~~ Investment Option. From time to time, the ~~Board (or if the Board delegates this power to the Administrator)~~ may eliminate an ~~investment option~~ Investment Option, and the proceeds thereof shall be reinvested in another ~~investment option~~ Investment Option in accordance with the directions of the ~~Board or Administrator, as appropriate.~~

7.02. Section 8.02. Participant Investment Options.

(a) Change of Investment Options. The Participant may change the ~~investment options~~ Investment Options he or she has selected for his or her Account Balance, or a portion of his or her Account Balance, by amending his or her Participation Agreement, and filing such amendment with the Administrator ~~or other entity designated by the Board.~~ Such amendment shall become effective only under such terms and conditions as are set by the Administrator, and at such time as the Vendor is able to change any Account Balance maintained by it for the Participant's benefit under the existing ~~investment options~~ Investment Options previously chosen by the Participant, to the new ~~investment options~~ Investment Options selected by the Participant in his or her amended Participation Agreement. Such amendments to the Participation Agreement may be made through electronic means under regular and secure procedures established therefore.

(b) Conditions for Change of Investment Options. Amendments to the Participation Agreement, for purposes of changing an Employee's ~~investment option~~ Investment Option selection for his or her Account Balance, may be made on the Applicable Form at such times and under such conditions as may be determined from time to time by the Administrator during the Plan Year.

(c) Board's Administrator's Right to Select Investment Options. The ~~Board Administrator~~ may, without consent of any Participant whose ~~investment option~~ Investment Option selection may be affected, restrict or terminate the right to change an ~~investment option~~ Investment Option selection for all Participants, or class of Participants. Such change, reduction or termination shall be made in accordance with applicable provisions of the State Pers. & Pens. Art. The maintenance by the Administrator or Vendor of electronic or automated methods of ~~investment option~~ Investment Option selection, or of methods that permit daily change in ~~investment option~~ Investment Option selection, shall not constitute a guarantee against any loss in value that may accrue through temporary inability to change such selection through use of such methods.

7.03. Section 8.03. Beneficiary Investment Options. A Beneficiary of a deceased Participant shall have the same rights as a Participant to elect a change of ~~investment option~~ Investment Option selection.

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7.04.Section 8.04. Investment Default. In the event that a Participant does not have a valid investment direction on file for any portion of the amount in that Participant's Account, the Account shall be invested in any default option or options as determined by the Administrator. In such event, the Participant shall be deemed to have directed that option (or options) for investment of his or her Account. The Administrator intends to establish one or more default ~~investment options~~Investment Options based upon various factors, including, but not limited to, market risk, stability and rate of return. If the Administrator has appropriately exercised its fiduciary duty in selecting a default option(s), it shall have no liability for any loss sustained by a Participant or Beneficiary whose Account is invested in the default option(s).

ARTICLE VIII.ARTICLE IX.
BENEFITS

~~**8.01.Section 9.01. Benefit Payments.** Benefits shall be paid from the Trust in accordance with this Article following a Participant's Severance from Employment, attainment of age seventy and one half (70½), death, disability or the occurrence of an unforeseeable emergency, as described in Section 8.09. Benefits payable to a Participant or a Beneficiary shall be based upon the value of the Participant's Accounts.~~

~~(a) Distributable Events. A Participant or, if applicable, a Beneficiary, shall be eligible to receive a distribution of his or her Vested Account under the Plan upon the Participant's:~~

- ~~(1) Severance from Employment;~~
- ~~(2) death;~~
- ~~(3) attainment of age 70½; or~~
- ~~(4) unforeseeable emergency, as described in Section 9.09.~~

~~(a)(b) Severance from Employment. Upon Severance from Employment, a Participant is entitled to receive a distribution of his or her Accounts under any form of distribution permitted under Section 89.02, subject to Section 89.04, commencing on a date selected by the Participant which may not be later than the required distribution date of Code Section 401(a)(9) ~~of the Code,~~ as specified in Section 89.04. A Participant may elect to change the commencement date of distribution of the Accounts to a later date otherwise permitted under this Article, so long as the commencement date meets the required distribution commencement date provisions of Code Section 401(a)(9) ~~of the Code,~~. All benefits shall be paid under a payment option under Section 89.02, subject to Section 89.04.~~

~~(b)(c) Attainment of Age **Seventy and One Half** (70½).½. Upon attaining age ~~seventy and one half~~ (70½).½, a Participant may elect to have benefits commence on a date which is no later than the required distribution date of Code Section 401(a)(9) ~~of the Code,~~ as specified in Section 89.04. All benefits shall be paid under a payment option under Section 89.02, subject to Section 89.04.~~

~~(e)(d) Death. In the event of the Participant's death prior to the commencement of benefits under paragraphsubsection (a), the value of the Participant's Accounts shall be paid to~~

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the Beneficiary under a payment option elected by the Beneficiary under Section ~~89.02~~, subject to the restrictions in Section ~~89.06~~. Such benefits shall be payable commencing within ~~sixty (60)~~ days after receipt by the Administrator of satisfactory proof of the Participant's death. However, if the Beneficiary is the ~~spouse~~Spouse of the Participant, then the ~~spouse~~Spouse may elect within ~~sixty (60)~~ days of Participant's death, to defer distribution to a date not later than the date when the Participant would have attained age ~~seventy and one half (70½)~~70½. In the event of the Participant's death after commencement of benefits, benefits shall be paid subject to Section ~~89.04~~.

~~(d) — **Disability.** — Upon Severance from Employment because of disability, a Participant may elect to have benefits commence on a date which is no later than age seventy and one half (70½). All benefits shall be paid under a payment option under Section 8.02, subject to the restrictions in Section 8.04. A Participant who has previously made an election under this Section shall have the opportunity to change his or her election pursuant to this paragraph.~~

Section 9.02. Payment Options.

~~8.02.(a)~~ 8.02.(a) The election of a payment option by a Participant or a Beneficiary under Section ~~89.01~~ must be made no later than ~~thirty (30)~~ days before the commencement of such benefits. Subject to restrictions established by the Administrator, the methods of payment of benefits available for election by a Participant shall be either: (i) a single sum payment of the entire value of the Participant's Account; (ii) an installment schedule of monthly, quarterly or yearly payments of a period of one or more years; (iii) through purchase of an individual fixed or variable annuity contract for that Account; (iv) a series of payments on an annuity basis as if an annuity contract was purchased for such person, or (v) such method as may be allowed under procedures described by the Administrator and allowed by the Trustee holding the account. It is the Participant's responsibility to notify the Administrator when he or she separates from State service, and to make the elections set forth in this Section.

~~(b) Subject to the terms of the Trust, Participants may elect to have either Roth Contributions or Pre-Tax Contributions distributed from the Plan first. Unless provided otherwise under the Trust, if the Participant fails to make an election, Pre-Tax Contributions will be distributed from the Plan first.~~

~~8.03.~~Section 9.03. **Lump Sum Settlement.** Notwithstanding anything in this Plan to the contrary, if a Participant's Account Balance does not exceed \$1,000 (~~determined without regarding to his or her Rollover Contribution Account~~) at the time of Severance from Employment, the Administrator may effect a lump sum distribution of the Participant's Accounts.

~~8.04.~~Section 9.04. **Minimum Distribution Rules.** No payment option may be selected by a Participant unless the amounts payable to the Participant are expected to be at least equal to the minimum distribution required under ~~Code Section 401(a)(9) of the Code.~~ With respect to distributions under the Plan, the Plan will apply the minimum distribution requirements of ~~Code Section 401(a)(9) of the Code~~ in accordance with the final Treasury Regulations under Code Section 401(a)(9), as follows:

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DRAFT**November 25, 2019**(a) General Rules.

~~(i)(1)~~ The requirements of this Section will take precedence over any inconsistent provisions of the Plan.

~~(ii)(2)~~ All distributions required under this Section will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9).

~~(iii)(3)~~ Distributions to a Participant and his or her Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) ~~of the Code~~ and the Treasury Regulations thereunder.

(b) Time and Manner of Distribution.

~~(i)(1)~~ The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

~~(ii)(2)~~ If the Participant dies before required distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

~~(A)(i)~~ If the Participant's surviving spouseSpouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouseSpouse will begin by the later of: ~~(IA)~~ December 31 of the calendar year immediately following the calendar year in which the Participant died; or ~~(HB)~~ December 31 of the calendar year in which the Participant would have attained age ~~seventy and one half (70½)-½~~.

~~(B)(ii)~~ If the Participant's surviving spouseSpouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

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

~~(D)(iv)~~ If the Participant's surviving spouseSpouse is the Participant's sole Designated Beneficiary and the surviving spouseSpouse dies after the Participant but before distributions to the surviving spouseSpouse begin, this Section 89.04(b)(ii)(2), other than Section 89.04(b)(ii)(A2)(i), will apply as if the surviving spouseSpouse were the Participant.

For purposes of this Section 89.04(b)(ii)(2) and Section 89.04(d), unless Section 89.04(b)(ii)(D2)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 89.04(b)(ii)(D2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouseSpouse under Section 89.04(b)(ii)(A2)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouseSpouse

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before the date distributions are required to begin to the surviving ~~spouse~~Spouse under Section 89.04(b)(~~ii~~)(A2)(i)), the date distributions are considered to begin is the date distributions actually commence.

~~(iii)~~(3) Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 89.04(c) and 89.04(d). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9)-~~of the Code~~ and the Treasury Regulations.

(c) Required Minimum Distributions During Participant's Lifetime.

~~(i)~~(1) During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

~~(A)~~(i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

~~(B)~~(ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's ~~spouse~~Spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and ~~spouse's~~Spouse's attained ages as of the Participant's and ~~spouse's~~Spouse's birthdays in the Distribution Calendar Year.

~~(ii)~~(2) Required minimum distributions will be determined under this Section 89.04(c) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death

(d) Required Minimum Distributions After Participant's Death.

~~(i)~~(1) Death On or After Date Distributions Begin.

~~(A)~~(i) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:

~~(+)~~(A) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

~~(-)~~(B) If the Participant's surviving ~~spouse~~Spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy

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of the surviving ~~spouse~~Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving ~~spouse's~~Spouse's age as of the ~~spouse's~~Spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving ~~spouse's~~Spouse's death, the remaining Life Expectancy of the surviving ~~spouse~~Spouse is calculated using the age of the surviving ~~spouse~~Spouse as of the ~~spouse's~~Spouse's birthday in the calendar year of the ~~spouse's~~Spouse's death, reduced by one for each subsequent calendar year.

~~(3)~~(C) If the Participant's surviving ~~spouse~~Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

~~(B)~~(ii) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

~~(ii)~~(2) Death Before Date Distributions Begin.

~~(A)~~(i) If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section ~~89.04(d)~~(i1).

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

~~(C)~~(iii) If the Participant dies before the date distributions begin, the Participant's surviving ~~spouse~~Spouse is the Participant's sole Designated Beneficiary, and the surviving ~~spouse~~Spouse dies before distributions are required to begin to the surviving ~~spouse~~Spouse under Section ~~89.04(b)~~(ii)(A2)(i), this Section ~~89.04(d)~~(ii2) will apply as if the surviving ~~spouse~~Spouse were the Participant.

(e) Definitions.

~~(i)~~(1) "~~Designated Beneficiary shall mean~~" means the individual who is designated as the Beneficiary under Section ~~89.05~~ of the Plan and is the designated

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beneficiary under Code Section 401(a)(9) ~~of the Code~~ and Treasury Regulation Section 1.401(a)(9)-1, Q&A-4, ~~of the Treasury Regulations~~.

~~(ii)(2)~~ (ii)(2) "Distribution Calendar Year ~~shall mean~~ means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section ~~89.04(b)(ii)(2)~~ 89.04(b)(ii)(2). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

~~(iii)(3)~~ (iii)(3) "Life Expectancy ~~shall mean~~ means Life Expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9 ~~of the Treasury Regulations~~.

~~(iv)(4)~~ (iv)(4) "Participant's Account Balance ~~shall mean~~ means the Account Balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

~~(v)(5)~~ (v)(5) "Required Beginning Date ~~shall mean~~ means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches ~~age seventy and one half (70½), 70½,~~ age seventy and one half (70½), 70½, or (ii) the calendar year in which the Participant retires.

(f) 2009 Minimum Distributions. For 2009, the minimum distribution requirements under Section ~~89.04~~ 89.04 will be satisfied as provided in either ~~subsection (i) paragraph (1) or (ii)(2)~~ subsection (i) paragraph (1) or (ii)(2) below, as determined by the Vendor responsible for the Participant's required minimum distribution:

~~(i)(1)~~ (i)(1) A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ~~of the Code ("2009 RMDs");~~ and who would have satisfied that requirement by receiving distributions that are (A) equal to the 2009 RMDs or (B) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least ~~ten (10) years ("Extended 2009 RMDs");~~ ten (10) years ("Extended 2009 RMDs"); will receive those distributions for 2009 unless the Participant or beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the

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preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

~~(ii)(2)~~ A Participant or Beneficiary who would have been required to receive 2009 RMDs, and who would have satisfied that requirement by receiving distributions that are (A) equal to the 2009 RMDs or (B) Extended 2009 RMDs, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

Further, if provided by the Vendor, the 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

8.05. Section 9.05. Designated Beneficiary. The Participant shall file with the Administrator, or such other entity as may be designated by the Administrator from time to time, the Applicable Form, designating or changing the person or persons who shall receive any balance of the Participant's Account under this Plan in the event of the Participant's death. The Participant may also designate his or her estate as the Beneficiary of his or her Account, or a trust created by him or her as the Beneficiary. The Applicable Form will have no effect until it is signed and filed with the Administrator, or such other entity as may be designated by the Administrator from time to time. If the Participant dies without having designated a Beneficiary, any payment due shall be made to the properly appointed fiduciary of the Participant's estate. The Participant shall have the burden for executing and filing the Applicable Form. Only the last designation of a Beneficiary prior to receipt of benefits shall have effect, and any new designation of a Beneficiary invalidates, supersedes, and revokes any prior designation.

A Participant shall have the right to designate at least one primary and contingent Beneficiary and to indicate whether the Beneficiaries in each class are to share equally or according to specified percentages. A contingent Beneficiary shall receive benefit payments only if there is no surviving primary Beneficiary. If a Beneficiary predeceases the Participant, the surviving Beneficiaries in the same class (*i.e.*, primary or contingent) will share among each other all benefits in the same proportion as originally designated by the Participant. In the event of the death of a Beneficiary after the Beneficiary has become entitled to receive benefits, the remaining benefits shall be paid to the estate of the Beneficiary in a lump sum.

Section 9.06. Voluntary In-Service Distribution.

8.06.(a) A Participant who is an active Employee of the ~~Employing Institution~~ Employer may elect to receive a distribution of the Participant's ~~Regular Account, Transfer Pre-Tax Contribution~~ Account and ~~Employer Matching Transfer~~ Account under the Plan before a Severance of Employment if the following requirements are met:

~~(i)(1)~~ the Participant's ~~Regular Vested~~ Account ~~and Transfer (not including his or her Rollover Contribution)~~ Account does not exceed the amount specified under Code Section 411(a)(11) ~~of the Code~~ (as of January 1, 2001, \$5,000) on the date of the distribution;

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(ii)(2) the Participant has not previously received an in-service distribution of the Participant's ~~Regular~~ Account; under this Section; and

(iii)(3) no ~~amount has~~ Annual Deferrals have been ~~deferred under~~ made to the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution under this Section.

(b) This election must be made in accordance with the procedures established by the Administrator.

8.07. Section 9.07. Distributions from the Rollover Contribution Account.

Effective January 1, 2005, a Participant shall have the right to a distribution of the Participant's Rollover Contribution Account at any time at the direction of the Participant, subject to any applicable penalties or other distribution requirements under the Code.

8.08. Section 9.08. Unforeseeable Emergency Distributions. Notwithstanding any other provision herein and subject to guidelines and requirements set forth in procedures established by the Administrator, individuals with ~~aaa~~ Pre-Tax Contribution Account ~~Balance~~ and/or Roth Contribution Account may request that benefits be paid in the event of an unforeseeable emergency, including individuals who are no longer employed by the ~~Employing Institution~~ Employer but who still have an Account Balance and individuals who are currently receiving benefits under the Plan which are not being paid as an annuity. If the Participant has an unforeseeable emergency before Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section.

(a) Requests for Unforeseeable Emergency Distributions. All requests for unforeseeable emergency distributions shall be made initially to the Administrator or such other entity as may be designated by the Administrator from time to time. Any decision made by the Administrator or its designee shall be final and conclusive. The Administrator may establish restrictions following a distribution pursuant to this Section.

(b) Unforeseeable Emergency Defined. An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's ~~spouse~~ Spouse, or the Participant's dependent (as defined in Code Section 152 ~~of the Code~~ without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's ~~spouse~~ Spouse, or dependent (as defined in Code Section 152 ~~of the Code~~ without regard to Code Section 152(d)(1)(B)); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses for ~~you, your spouse, the Participant~~ or you ~~the Participant's Spouse or~~ dependent (as defined in Code Section 152 ~~of the Code~~ without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)), including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

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(c) Unforeseeable Emergency Distribution Standard. A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.

(d) Distribution Necessary To Satisfy Emergency Need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(e) Possible Class Restriction. The Administrator may further limit and/or prohibit such withdrawals for classes of accounts maintained under the Plan.

(f) Special Relief for Distributions. Notwithstanding the other provisions of this Article, the Administrator may authorize the Vendors to make any distribution authorized by the Internal Revenue Service or by Act of Congress in response to a natural disaster.

~~**ARTICLE IX**~~ **ARTICLE X.**
ELIGIBLE ROLLOVERS FROM THIS PLAN

~~**Section 10.01. Plan Distributions and Withholding Requirements.** Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of Definitions for this Article.~~

(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan specified by for the benefit of the Distributee.

(b) "Distributee" means a Participant, the Spouse of the Participant, the Participant's former Spouse who is an alternate payee within the meaning of Code Section 414(p)(8), and, effective January 1, 2008, a Participant's non-Spouse Beneficiary, any of whom is eligible to receive a distribution from the Plan.

(a) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means:

(1) an individual retirement account described in Code Section 408(a);

~~9.01.~~(2) an individual retirement annuity (other than an endowment contract) described in a Direct Rollover Code Section 408(b);

~~**Section 9.02. Definitions.**~~

(3) An a simple retirement account described in Code Section 408(p)(1) following the two year period described in Code Section 72(t)(6);

(4) any annuity plan described in Code Section 403(a);

(5) a plan described in Code Section 403(b);

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(6) a qualified plan described in Code Section 401(a);

(7) a Code Section 457(b) eligible deferred compensation plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and

(8) effective January 1, 2008, a Roth individual retirement account described in Code Section 408A(e), provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs.

Effective January 1, 2008, in the case of a distribution to a Participant's non-Spouse Beneficiary, an Eligible Retirement Plan shall mean the plans described in paragraphs (1) and (2) only, to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(b) "Eligible Rollover Distribution" is, as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee payable pursuant to Article VIII under this Plan, except that an Eligible Rollover Distribution does not include (i);

(a)(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includible in gross income; or (iv) any distribution which is made upon the hardship of the Distributee. period of ten years or more;

(b) — An "Eligible Retirement Plan" is an individual retirement account described in Section 408(a) of the Code; an individual retirement annuity described in Section 408(b) of the Code; effective January 1, 2008, a Roth individual retirement annuity or account described in Section 408A of the Code; an annuity plan described in Section 403(a) of the Code; a qualified trust described in Section 401(a) of the Code; an annuity contract described in Section 403(b) of the Code; and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, that accepts the distributee's eligible rollover distribution and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code. Effective January 1, 2010, **NEED CONFIRM DATE CHOSEN IN FINAL AMENDMENT.** the definition of an Eligible Retirement Plan for a nonspouse designated beneficiary (as defined in Section 401(a)(9)(E) of the Code) of a deceased participant means an individual retirement annuity account established for the purpose of receiving a distribution from this Plan and treated as an inherited individual retirement account or annuity (within the meaning of Section 408(d)(3)(C) of the Code).

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(c) — A "Distributee" includes an Employee, former Employee, Employee's spouse or a former Employee's spouse. Effective January 1, 2010, ~~[NEED CONFIRM DATE CHOSEN IN FINAL AMENDMENT]~~ a Distributee also includes a nonspouse designated beneficiary (as defined in Section 401(a)(9)(E) of the Code) of a deceased Participant. In addition, the Employee's or former Employee's former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, is a Distributee with regard to the interest the former spouse."

(d) — A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(2) any distribution to the extent such distribution is required under Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; provided, however, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(i) to an individual retirement account or annuity described in Code Section 408(a) or 408(b), respectively, or to a qualified defined contribution plan described in Code Section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of such distribution which is not so includible;

(ii) to a qualified defined benefit plan described in Code Section 401(a) or to an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(iii) to a Roth IRA described in Code Section 408A;

(4) any distribution which is made upon the financial hardship of the Participant; and

(5) other items designated by regulations, or by the Commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

Section 10.02. Direct Transfer of Eligible Rollover Distribution. A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Vendor. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 457, or 408.

DRAFT**November 25, 2019****Section 10.03. Mandatory Withholding of Eligible Rollover Distributions.**

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory 20% federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e), and only to the extent such amount would otherwise be includible in the Distributee's taxable gross income.

(a) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the 60th day following the day on which the Distributee received the distribution.

(b) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

Section 10.04. Explanation of Plan Distribution and Withholding Requirements.

Each Distributee shall be provided, within a reasonable period of time Not fewer than 30 days nor more than 180 days before making an Eligible Rollover Distribution, the Vendor shall provide each Distributee a written explanation as required under Code Section 402(f), which explains: (i) the direct rollover rules, (ii):

(a) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

(b) that require the mandatory income tax withholding of tax on distributions an Eligible Rollover Distribution if it is not directly paid in a Direct Rollover to an Eligible Retirement Plan;

(c) that provide that a distribution shall not be subject to tax if the distribution is rolled over, (iii) the tax treatment of distributions not rolled over (including to an Eligible Retirement Plan within 60 days after the special tax treatment available for date the Distributee receives the distribution; and

(d) if applicable, certain lump sum distributions), and (iv) when distributions may be subject to different restrictions special rules regarding taxation of the distribution as described in Code Sections 402(d) and tax consequences after being rolled over (e).

9.03. Notwithstanding the above, a distribution may begin fewer than 30 days after the notice discussed in the preceding sentence is given, provided that the Vendor clearly informs the Participant that he or she has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution and the Participant, after receiving a notice, affirmatively elects a distribution.

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ARTICLE X.ARTICLE XI.
ELIGIBLE ROLLOVERS TO THIS PLAN

Section 11.01. Participant Rollovers.

~~10.01.(a)~~ At any time, a Participant who is an Employee and who is entitled to receive an ~~eligible rollover distribution~~Eligible Rollover Distribution, as defined under Code Section 402(c)(4) ~~of the Code~~ and Section ~~910.02(a)~~ of the Plan, from another eligible retirement plan may contribute to the Plan in cash as a rollover contribution, a qualified rollover amount from a qualified plan under Code Section 401(a) ~~of the Code~~, an annuity plan under Code Section 403(a) ~~of the Code~~, an individual retirement account under Code Section 408(a) ~~of the Code~~ or individual retirement annuity under Code Section 408(b) ~~of the Code~~, an eligible governmental deferred compensation plan under Code Section 457(b) ~~of the Code~~, or a tax-sheltered annuity under Code Section 403(b) ~~of the Code, provided that the Administrator~~. Any Rollover Contribution (i) shall be subject to the Administrator's determination, in its discretion, determines that the contribution Rollover Contribution satisfies all applicable requirements of the Code. A rollover contribution and (ii) shall be allocated made directly from such prior plan, or if such amount was distributed to the Rollover Account of the Participant as of the date of the contribution. The Participant's Rollover Account shall be invested in the same manner as the Participant's Regular Account., such Rollover Contribution shall be made within 60 days after the Participant receives the rollover amount.

(b) The Plan shall accept a Rollover Contribution to a Roth Contribution Account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(c) A Rollover Contribution shall be allocated to the Rollover Contribution Account of the Participant as of the date of the contribution. Before a Rollover Contribution is made, the Participant shall designate on the Applicable Form the Investment Options in which the Vendor should invest the Participant's Rollover Contribution.

10.02.Section 11.02. Administrator Requirements. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 ~~of the Code~~ and to confirm that such plan is an eligible retirement plan within the meaning of Code Section 402(c)(8)(B) ~~of the Code~~. With respect to receipt or transfer of Account Balances under this Article the Vendor may rely upon representations made by either the Participant or other plan (made through those having apparent authority to make them).

10.03.Section 11.03. Separate Accounts for Rollovers. The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under Code Section 457(b) ~~of the Code~~. In addition, the Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under Code Section 457(b) ~~of the Code~~.

Section 11.04. In-Plan Roth Rollovers.

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(a) Any portion or all of a Participant's Vested Account Balance (other than a Roth Contribution Account) is eligible for direct rollover to the Participant's Roth Contribution Account under the Plan, even if the Vested Account Balance is not otherwise distributable (pursuant to Code Section 402A(c)(4)(E)) under Article IX of the Plan, and the transfer shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)) to the Participant's Roth Contribution Account.

(b) A Participant's election under this Section shall be subject to the reasonable administrative procedures established by the Administrator, Code Section 402A(c)(4) and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(c) The taxable portion of the Participant's Account directly rolled over to a Roth Contribution Account under this Section shall be included in the Participant's gross income in the tax year in which the transfer occurs.

(d) To the extent required by Code Section 402(f), the Administrator shall provide written information regarding in-Plan Roth rollovers under this Section, for amounts that are otherwise distributable under Article IX.

ARTICLE XI **ARTICLE XII.**
PLAN-TO-PLAN TRANSFERS

11.01**Section 12.01. Direct Transfers Among Plans of the Same Employing Institution-Employer.** A transfer from this Plan to another eligible governmental plan of the same ~~Employing Institution~~Employer and a transfer to this Plan from another eligible governmental plan of the same ~~Employing Institution~~Employer is permitted under the following conditions:

~~(i)~~(1) The transfer is from an eligible governmental plan to another eligible governmental plan of the same ~~Employing Institution~~Employer (and, for this purpose, the ~~Employing Institution~~Employer is not treated as the same employer if the Participant's compensation is paid by a different entity);

~~(ii)~~(2) The transferor plan provides for transfers;

~~(iii)~~(3) The receiving plan provides for the receipt of transfers;

~~(iv)~~(4) The Participant or Beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer; and

~~(v)~~(5) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the Participant or Beneficiary is performing services for the entity maintaining the receiving plan.

DRAFT**November 25, 2019****11.02. Section 12.02. Plan-to-Plan Transfers from the Plan to ~~the another Plan of Another Employer.~~**

(a) Requirements for Transfer. At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of Code Section 457(b) ~~of the Code~~ and Treasury Regulation Section 1.457-2(f) ~~of the Treasury Regulations.~~ A transfer is permitted under this Section ~~11.02(a)~~ for a Participant only if the Participant has had a Severance from Employment with the ~~Employing Institution~~ Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section ~~11.02(a)~~ only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers and if each Participant and Beneficiary has an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section ~~11.02~~ (for example, to confirm that the receiving plan is an eligible governmental plan and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation Section 1.457-10(b) ~~of the Treasury Regulations.~~

(b) Effect of Transfer. Upon the transfer of assets under this Section ~~11.02~~, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary.

11.03. Section 12.03. Plan-to-Plan Transfers to the Plan. At the direction of the ~~Employing Institution~~ Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under Code Section 457(b) ~~of the Code~~ to transfer assets to the Plan as provided in this Section. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator and Vendor may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) ~~of the Code~~ and Treasury Regulation Section 1.457-10(b) ~~of the Treasury Regulations~~ and to confirm that the other plan is an eligible governmental plan as defined in Treasury Regulation Section 1.457-2(f) ~~of the Treasury Regulations.~~ The amount so transferred shall be credited to the Participant's Transfer Account and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Article ~~IV~~V.

Section 12.04. Permissive Service Credit Transfers.

11.04.(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d) ~~of the Code~~) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section ~~11.04~~ may be made before the Participant has had a Severance from Employment. ~~A transfer may be made under Section 11.04 only if the transfer is either for the purchase of permissive service credit (as defined in Section 415(n)(3)(A))~~

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~~of the Code) under the receiving defined benefit governmental plan or a repayment to which Section 415 of the Code does not apply by reason of Section 415(k)(3) of the Code.~~

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

11.05.Section 12.05. Direct Transfers to this Plan. Subject to the approval of the Administrator, this Plan shall accept cash transfers of Participants' accounts maintained under an eligible Section 457 plan directly to this Plan.

11.06.Section 12.06. Representations. With respect to receipt or transfer of account balances under this Article, the Board, Administrator and Vendor may rely upon representations made by either the Participant or the other Section 457 plan (made through those having apparent authority to make them) with respect to matters relevant for the transfer.

11.07.Section 12.07. Plan Charges. An Employee who has become a Participant through a transfer allowed by this Section shall be liable for Plan charges and expenses in the same manner and to the same extent as any other Participant notwithstanding the fact that all or part of his or her existing Account Balance may have been derived from contributions and earnings attributable to another plan. In addition, the ~~Board Administrator~~ may from time to time impose charges on said transfers to be deducted directly from the Participant's Transfer Account in this Plan once the transfer has occurred.

11.08.Section 12.08. Effect of Elections. Neither this Plan nor a new Participant making such a transfer shall be bound by any elections or designations (whether of a commencement date of distributions, or manner of distributions, designation of retirement age or beneficiaries) made under such other plan, but, instead, shall make and be bound by such elections and designations as are required under this Plan.

ARTICLE XI~~ARTICLE XIII~~ **DOMESTIC RELATIONS ORDERS**

12.01.Section 13.01. General Provisions. If authorized by the Administrator, domestic relations orders which satisfy the requirements of ~~Code Sections 414(p)(1)(A)(i) and 414(p)(1)(B) of the Code,~~ this Article, and the procedures established by the Administrator for such orders may be considered Plan-Approved Domestic Relations Orders ("PADROs") and may be honored by the Plan. If the Administrator determines to honor PADROs, this Article will apply to those PADROs. If the Administrator determines that certain PADROs will not be honored, then this Article shall not be interpreted as requiring that those PADROs be honored. The Administrator is authorized to establish and amend procedures for the determination of PADROs (including procedures for the resolution of disputes) consistent with the above-referenced Code provisions and this Article.

12.02.Section 13.02. Administration of Covered PADROs. In administration of this Plan, the Administrator or the Vendors, as appropriate, may establish such procedures as enable any discrete interest of an alternate payee established under a PADRO to be separately accounted for and distributed. Any funds held under such a separate account shall not be distributed in any

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form or manner that would cause the Plan to become an ineligible plan under Code Section 457. This Article shall not be construed as requiring the Administrator or Vendors to recognize or make distributions under any PADRO whose validity is in doubt.

12.03.Section 13.03. Investments of Covered PADROs. During any period that the issue of whether an order satisfies the applicable requirements of the Code and the procedures established by the Administrator is under consideration, the investment direction of the Participant with respect to the Participant's Accounts shall remain in effect, subject to a determination by the Administrator that such investment direction would be contrary to a final court order. After a determination has been made that a domestic relations order satisfies the applicable requirements of the Code and the procedures established by the Administrator and a separate Plan Account has been established for the alternate payee, the alternate payee shall direct the investment of his or her Plan Account. The Administrator shall direct the investment of an alternate payee's Account to a default investment pursuant to Section ~~78~~.04 when there is no valid investment direction on file. The alternative payee's Account shall be assessed administrative fees in the same amount and in the same manner as a Participant's Account.

12.04.Section 13.04. Distributions to Alternate Payees of Covered PADROs. Distribution of benefits to the alternate payee shall commence as soon as administratively practicable after (i) a determination is made that the order satisfies the applicable requirements of the Code and the procedures established by the Administrator, and (ii) receipt by the Administrator of the Applicable Forms for the election of benefits. In the event of an alternative payee's death, any remaining benefits shall be payable solely to the alternate payee's estate, via the duly-appointed and then-currently serving executor of the alternative payee's estate.

ARTICLE XIII. ARTICLE XIV. **LOANS**

13.01.Section 14.01. Loans. A Participant who is an Employee may apply for and receive a loan from his or her ~~Account Balance~~Vested Accounts as provided in this Section. Any such loan may not be for an amount less than the minimum amount specified by the Vendor in accordance with the applicable law.

Section 14.02. Maximum Loan Amount.

~~13.02.(a)~~ No loan to a Participant ~~hereunder~~under the Plan may exceed the lesser of:

~~(i)(1)~~ \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Vendor (not taking into account any payments made during such one-~~year period~~); or

~~(ii)(2)~~ ~~one~~One-half ~~or a lesser percentage as determined by the Vendor~~ of the value of the Participant's ~~vested~~Vested Account Balance (as of the ~~Valuation Date~~valuation date immediately preceding the date on which such loan is approved by the ~~Administrator~~Vendor).

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

13.03. Section 14.03. Terms of Loan. The terms of the loan shall:

(i)(a) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on an bona fide unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of Code Section 414(u) ~~of the Code~~ or for the duration of a leave which is due to qualified military service;

(ii)(b) require that the loan be repaid within five years unless the Participant certifies in writing to the Administrator that the loan is to be used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant; and

(iii)(c) provide for a reasonable interest rate established by the Vendor in accordance with the applicable law.

13.04. Section 14.04. Security for Loan; Default.

(a) Security. Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.

(b) Default. In the event that a Participant fails to make a loan payment under this Section within ~~ninety (90)~~ days after the date such payment is due, a default on the loan shall occur. In the event of such default, (i) all remaining payments on the loan shall be immediately due and payable, (ii) effective as of the first day of the calendar month next following the month in which any such loan default occurs, the interest rate for such loan shall be (if higher than the rate otherwise applicable) the rate being charged on loans from the Plan that are approved by the Administrator in the month in which such default occurs, (iii) no contributions shall be made on such Participant's behalf prior to the first payroll period that follows by ~~twelve (12)~~ calendar months the date of repayment in full of such loan, and (iv) the Participant shall be permanently ineligible for any future loans from the Plan.

In the case of any default on a loan to a Participant, the Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment. In addition, the Administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Account Balance of the Participant.

Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her

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Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

13.05.Section 14.05. Repayment. Repayment of a loan may be made by payroll deduction, by direct payment to the Plan, by direct debit of the ~~Participant's~~Participant's checking account, or may such other means as the Vendor may permit. A Vendor may require the Participant, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the ~~Employing Institution~~Employer to make payroll deductions from his or her Compensation as long as the Participant is an Employee and to transfer such payroll deduction amounts to the Trustee in payment of such loan plus interest. Repayments of a loan shall be made in equal installments (comprised of both principal and interest) each due date, with the first such repayment to be made as soon as practicable after the loan funds are disbursed; provided however, that a Participant may prepay the entire outstanding balance of his or her loan at any time; and provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which in which the amount would have been deducted.

13.06.Section 14.06. Special Relief for Loans. Notwithstanding any other Sections of this Article, the Administrator may authorize the Vendors to observe the terms of any Internal Revenue Service guidance or Act of Congress regarding plan loans, which guidance or Act was issued or enacted in response to a natural disaster.

ARTICLE XIV.ARTICLE XV.
PLAN ADMINISTRATION OF PLAN AND TRUST

~~**Section 14.01. Compliance with Code Section 457.**~~ At all times, the Plan shall be administered in accordance and construed to be consistent with Section 457 of the Code and its accompanying regulations.

~~**Section 14.02. Parties to Plan and Trust.**~~ Any private entity or company with which the Board may from time to time contract, whether for purposes of maintaining an investment option for Participants, or for any other purpose, shall not be a party to the Plan, unless the contract specifically provides to the contrary; and any rights or claims against such private entities or companies shall be enforced, adjusted or settled by, and only by, the Board, which may enforce, settle or adjust said claim, or decide not to do so, solely in its own discretion. The Board may delegate its power under this Section to the Administrator.

~~**Section 14.03. Board Responsibility.**~~ The Board shall have authority and responsibility for:

- ~~(1) ——— appointing, removing and replacing the agents, Administrator, employees, Trustees and others to act on its behalf in executing the terms and purposes of this Plan and any trust agreement;~~
- ~~(2) ——— amending this Plan and any trust agreement made or insurance contract purchased under this Plan;~~

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- ~~(3) — terminating this Plan and any trust agreement or insurance contract under the Plan;~~
- ~~(4) — determining the existence, nature and extent of the rights and interests of any Participant or Beneficiary in this Plan;~~
- ~~(5) — designating a means to determine the amount of benefits payable to Participants or their Beneficiaries and determining the time and manner in which such benefits are to be paid;~~
- ~~(6) — establishing and maintaining Participant Accounts and making all allocations thereto in accordance with the provisions of the Plan;~~
- ~~(7) — authorizing disbursements and distributions from the Plan;~~
- ~~(8) — maintaining all records of the Plan, and preparing and filing all reports and other information concerning the Plan that might be required with any agency of the federal or State government;~~
- ~~(9) — complying with all disclosure requirements imposed by State or federal law; and~~
- ~~(10) — all other acts permitted or required to be performed by the State under the Plan.~~

~~Notwithstanding the preceding, the Board may delegate and transfer such of these powers as it specifies to the Administrator (or entity or body designated by the Board) of the Plan, or to a Trustee designated to hold Plan assets. The Administrator, in turn, may delegate any such power received from the Board to another entity or body. The Board and the Administrator may also delegate ministerial tasks associated with these responsibilities to such agents as it may choose to use, including the Trustee designated to hold Plan assets.~~

~~**Section 14.04. Reliance On Communications.** The Board may rely upon a certification of the Administrator with respect to any instruction, direction or approval of such Administrator and may continue to rely upon such certification until a subsequent certification is filed with the Board. The Board shall have no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Administrator.~~

~~**Section 14.05. Administrative Powers.** The Board, or its designee, in performing its duties under this Plan, may:~~

- ~~(1) — make contracts with private entities or companies to offer investment options for Participant's Accounts under the Plan, enforce any right or claim under said contracts, and/or resolve any claim or dispute through negotiation and agreement with such private entity or company;~~
- ~~(2) — make contracts with Vendors and private entities or companies to perform administrative functions under the Plan;~~

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~~(3) — contract for such advisory services as may be necessary to perform its functions, including legal, accounting, actuarial and employee benefit consulting services, or investment advice.~~

~~In making any such contracts relating to investment options the Board shall act pursuant to the authority granted by the State Pers. & Pens. Art.~~

Section 14.06. Charges.

~~(a) — **Charges Against Participants.** The Board is authorized to assess such charges against Participant's Accounts as may be necessary to pay for the expenses of the Plan. The Board may delegate its powers under this Section to the Administrator.~~

~~(b) — **Methods.** In assessing said charges, the Board or its delegate may calculate same as a percentage of a Participant's deferred salary or Account Balance in or at the end of any period or year (including assessment as part of any daily valuation system) or as a sum in dollars assessed upon the status and/or value of an Participant's Account as of the closing date for statements of such Account. In assessing such charges, the Board or its delegate need not assess the same charge or type of charge against every Participant, but may establish different charges based on the size of the account, the investment option the Participant has selected, or the type and number of transactions with respect to an individual Participant.~~

~~(c) — **Effective Date.** Such charges or assessments will be effective thirty (30) days after they are set by the Board or its delegate and may be amended from time to time upon thirty (30) days notice to the Participant, which shall be given in the same manner as the notice of Plan amendment under Article XVI.~~

~~(d) — **Reserve Allowed.** In setting the amount of such charges the Board or its delegate may not only consider expenditures already incurred, but may set charges at such a level as to fund a reserve for future expenditures.~~

~~(e) — **Accounts for Expense Funds.** The Board or its delegate is authorized to establish and maintain bank accounts and short term investments for funds coming into its hands for administration expense or reserves thereof. Records of any such accounts, income and expenditures shall be available on reasonable notice to Participants or their authorized representatives for inspection and any such income and expenditure shall be accounted for in the annual financial statement of the Plan.~~

~~(f) — **Direct Payment of Plan Expense.** The Board or its delegate, in its discretion, may adopt methods under which Participants can elect to pay directly (rather than through reduction of account values or by deferral of salary) their proportionate share of administration expense.~~

~~**Section 15.01. Authority of the Administrator.** The Administrator shall have the authority to control and manage the operation and administration of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. The Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time amend or~~

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rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan

Section 15.02. Powers of the Administrator. The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claim procedures, the Administrator shall be the sole and final judge of such expediency. Benefits are payable under the Plan only if the Administrator, in its sole and absolute discretion, determines the benefits are payable under the provisions the Plan.

Section 15.03. Delegation by Administrator.

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

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

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

14.07.Section 15.04. Fiduciary Insurance. ~~The~~Subject to State law, the Board may require the purchase of fiduciary liability insurance for any ~~of its Plan~~ fiduciary or fiduciaries to cover liability or losses occurring by reason of the act or omission of a fiduciary.

~~Section 14.08. Binding Provisions.~~ This Plan and any properly adopted amendment shall be binding on the parties hereto and their respective heirs, administrators, trustees, successors, and assigns, and on all designated Beneficiaries **Employment of** the Participant.

~~14.09.Section 15.05. Limitation on Recovery.~~ Participants and Beneficiaries may not seek recovery against the State of Maryland, Board or **Consultants.** The Administrator, or any member, employee, contractor or agent of the Board or Administrator, for any loss sustained by any Participant or Beneficiary due to the nonperformance of their duties, negligence or any other misconduct of the above named may employ one or more persons. ~~Neither the State, the Board,~~

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~~nor the Administrator waives any immunity available to render advice with regard to their responsibilities under the laws of the State of Maryland Plan.~~

~~**ARTICLE XV. ARTICLE XVI.**~~
~~**CLAIMS PROCEDURE**~~

~~**Section 15.01. Claims Procedure.** Any person who believes that he or she is entitled to any benefit under the Plan, other than a benefit under Section 8.09 (unforeseeable emergency distribution), shall present such claim in writing to the Administrator.~~

~~(a) The Administrator shall within ninety (90) days provide adequate notice in writing to any claimant as to the decision of any such claim. Such notice shall be written in a manner calculated to be understood by the Participant. If such claim has been denied, in whole or in part, such notice shall set forth:~~

~~(1) the specific reasons for such denial,~~

~~(2) specific reference to any pertinent provisions of the Plan on which denial is based,~~

~~(3) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary and~~

~~(4) an explanation of the review procedure for the Plan.~~

~~(b) The Administrator shall act as a fiduciary in making a full and fair review of such claim.~~

~~**Section 15.02. Appeals Procedure.**~~

~~(a) Within sixty (60) days after receipt by the claimant of notification of denial, the claimant shall have the right to present a written appeal, including any additional material to the Administrator. If such appeal is not filed within said sixty (60) day period, the decision of the Administrator shall be final and binding.~~

~~(b) The Administrator, in its discretion, may make a decision on appeal without a hearing, in which case a decision by the Administrator shall be made no later than sixty (60) days after its receipt of the appeal. However, if the Administrator decides a hearing at which the claimant or his or her duly authorized representative may be present is necessary and such a hearing is held, such decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after its receipt of the appeal. Any such decision of the Administrator shall be in writing and shall provide adequate notice to the claimant setting forth the specific reasons for any denial and written in a manner calculated to be understood by a Participant. Any such decision by the Administrator shall be final.~~

~~**Section 15.03. Report to Board Concerning Claims and Appeals.** The Administrator shall present a report to the Board concerning any such claim or appeal.~~

~~**Section 16.01. Requests for Information Concerning Eligibility, Participation and**~~

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

Section 16.02. Requests for Information Concerning Investment Arrangements. Requests for information concerning the Trust and the terms, conditions, and interpretations thereof, claims thereunder, any requests for review of such claims, and service of legal process, should be in writing and directed to the Vendor. If a written request is denied, the Vendor shall, within a reasonable period of time, provide a written denial to the Participant. A Participant may request in writing a review of a claim denied by the Vendor and may submit issues and comments in writing to the Vendor. The Vendor shall provide to the Participant a written decision upon such request for review of a denied claim.

ARTICLE XVI.ARTICLE XVII.
AMENDMENT OF THE PLAN

16.01.Section 17.01. Right to AmendAmendment and Termination of Plan. The Board may at any time amend, ~~modify, or terminate~~ this Plan with or without consent of the Participant (or any Beneficiary thereof). No amendment may be effected, however, if it removes Plan assets from the Trust hereunder, or causes Plan assets to be used for a purpose other than the exclusive benefit of Participants and their Beneficiaries. Any modification, alteration, or amendment of the Plan, ~~made in accordance with this Section,~~ may be made retroactively if deemed necessary or appropriate by the Board.

16.02.Section 17.02. Right to Suspend Deferrals. Suspension or termination of additional deferral of salary under the Plan generally, or under one or more ~~investment options~~Investment Options maintained by the Plan, shall not otherwise restrict or affect other provisions of this Plan. The Board, in its sole discretion, may suspend or terminate additional deferral of salary for (i) all Participants, or (ii) a class of Participants, or (iii) for one or more ~~investment options~~Investment Options maintained under the Plan.

16.03.Section 17.03. Amendment for Eligible Plan Status. It is the intent of the Board that the Plan shall be and remain an eligible plan under the provisions of Code Section 457 ~~of the Code~~ and that the Trust be exempt from tax under Code Section 457 ~~of the Code~~. The ~~Trustees~~Board may make any modifications, alterations, or amendments to the Plan necessary to obtain and retain approval of the Secretary of the Treasury or his or her delegate as may be necessary to establish and maintain the status of the Plan as an eligible plan under the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. Any modification, alteration, or amendment of the Plan, made in accordance with this Section, may be made retroactively, if necessary or appropriate.

16.04.Section 17.04. Effective Date of Amendments. All amendments shall become effective on the date established by the ~~Employing Institution.~~Board. No amendments shall deprive any Participant of any of the benefits to which the Participant is entitled under this Plan with respect to amounts credited prior to the effective date of the amendment.

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ARTICLE XVII.ARTICLE XVIII.
TERMINATION OF THE PLAN

~~This The Board may terminate the Plan may be completely terminated~~ at any time. In such an event, the ~~Employing Institution~~**Employer** shall be responsible for directing distribution of all assets of the Trust to Participants, Beneficiaries or to a successor plan, as soon as administratively practicable after the termination of the Plan.

ARTICLE XVIII.
NON-ASSIGNABILITY

~~Section 18.01. Non-Assignability.~~ Except as provided in Article XII and Section 18.02, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

~~Section 18.02. IRS Levy.~~ Notwithstanding Section 18.01, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

ARTICLE XIX.
MISCELLANEOUS

~~Section 19.01. Non-Assignability. No Tax Warranty.~~ Neither the State of Maryland nor the Board guarantees that any particular Federal or State income, payroll, estate or inheritance, or other tax consequence will occur because of the Participant's participation in this Plan, or elections made under this Plan.

~~Section 19.02. Dispute Resolution.~~ The Board shall be authorized to resolve any questions of fact necessary to decide the Participant's rights under this Plan and such decision shall be binding on the Participant and any Beneficiary thereof. The Board may delegate this power to the Administrator.

~~Section 19.03. Contract.~~ This Plan and the Participation Agreement, including any properly adopted or executed amendments thereof, shall constitute the total agreement or contract between the Employing Institution and any Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by any Participant or other person.

~~Section 19.04. Conflicts.~~ In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (i) causes the Plan to constitute an eligible plan under the provisions of Section 457 of the Code and the Trust to be exempt from tax under Section 457 of the Code, (ii) causes the Plan to comply with all applicable requirements of the Code, and (iii) causes the Plan to comply with all applicable Maryland statutes and rules, shall prevail over any different interpretation.

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~~**Section 19.05, Limitation on Rights.** Neither the establishment nor maintenance of the Plan, nor any amendment thereof nor any act or omission under the Plan (or resulting from the operation of the Plan) shall be construed:~~

~~(1) as conferring upon any Participant, Beneficiary or any other person a right or claim against the Trust, Trustees or Administrator, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;~~

~~(2) as creating any responsibility or liability of the Employing Institution for the validity or effect of the Plan;~~

~~(3) as a contract between the Employing Institution and any Participant or other person; or~~

~~**Section 19.01.** as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employing Institution or any Participant or other person to continue or terminate the employment relationship at any time~~

~~(a) Except as provided in Article XIII, a Participant's Account under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.~~

~~(b) Notwithstanding subsection (a), the Plan shall offset from the benefit otherwise payable to a Participant or his or her Beneficiary such amounts as are permitted to be offset under a court order, civil judgment, or settlement agreement in accordance with Code Section 401(a)(13)(C).~~

~~(iv) **Section 1.01, Military.**~~

~~**Section 19.06, Erroneous Payments.** If the Board, Administrator or Vendor makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Board, Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Board, Administrator or Vendor, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Board, Administrator or Vendor may deduct it when making any future payments directly to that Participant.~~

~~**Section 19.07, Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.~~

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~~**Section 19.08. Gender References.** Whenever used herein, the masculine gender shall include the feminine and the singular shall include the plural unless the provisions of the Plan specifically require a different construction.~~

~~**Section 19.09. Applicable Law.** The law of the State of Maryland shall apply in determining the construction and validity of this Plan and the Trust.~~

~~**Section 19.10. Construction.** The Board shall be authorized to construe the Plan and to resolve any ambiguity in the Plan. The Board may delegate this power to the Administrator.~~

~~**Section 19.11. Right to File Action.** The Board (or its agents) if in doubt concerning the correctness of its action in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the person to receive the payment, or allow the filing in any state court of competent jurisdiction a suit in such form as considered appropriate for legal determination of the benefits to be paid and the persons to receive them. The Board shall comply with the final orders of the court in any such suit and the Participant, for him/herself and his or her Beneficiary, consents to be bound thereby insofar as it affects the benefits payable under this Plan or the method or manner of payment.~~

~~**Section 19.12. Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employing Institution.~~

~~**19.13. Section 19.02. Protection of Persons Who Serve in a Uniformed Service.**~~

~~(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"); HEART, Code Section 414(u) of the Code; and, effective January 1, 2007, and Code Section 401(a)(37) of the Code, as amended from time to time.~~

~~(b)(a) . For purposes of this section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.~~

~~(c)(b) A Participant, whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service who timely resumes employment with their Employing Institution in accordance with USERRA, may elect to make up Annual Deferrals upon resumption of employment with the Employer up to the Plan in accordance with Section 414(u) of the Code reduced by maximum Annual Deferrals under Section 457(b) of the Code that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Participant during the period of such the interruption or leave. Except to the extent otherwise provided under Code Section 414(u) of the Code, this right applies for the lesser of (i) five years following such the resumption of employment (or, if shorter, for (ii) a period equal to three times the period of the~~

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interruption or leave). Such ~~contribution~~Annual Deferrals by the Participant may only be made during such period and while the Participant is ~~employed~~reemployed by the ~~Employing Institution~~Employer.

~~(d)(c) To~~Effective January 1, 2007, to the extent provided under Code Section 401(a)(37) ~~of the Code~~, in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

(d) Effective January 1, 2009, differential wage payments within the meaning of Code Section 414(u)(12)(D) shall be treated as Compensation and Includible Compensation under the Plan.

Section 19.03. Limitation of Rights and Obligations. Neither the establishment nor maintenance of the Plan, nor any amendment thereof nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) as conferring upon any Participant, Beneficiary or any other person a right or claim against the Administrator or Employer, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Board, the Employer, or the Administrator for the validity or effect of the Plan;

(c) as a contract or agreement between the Board, Employer, or the Administrator and any Participant or other person;

(d) as an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Employee to continue or terminate the employment relationship at any time, except as otherwise provided under any applicable collective bargaining agreement; or

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

Section 19.04. Federal and State Taxes. It is intended that Annual Deferrals other than Roth Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries, and that Roth Contributions and earnings thereunder are excludable from gross income for federal and state income tax purposes when paid to Participants or Beneficiaries to the extent that they are Qualified Distributions. However, the Administrator does not guarantee that any particular federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

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~~(e) — **Erroneous Payments.** Effective January 1, 2009, a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Section 414(u)(12)(D) of the Code from the Employing Institution, shall be treated as a Participant who is eligible to make Annual Deferrals under Section 457(b) of the Code and the differential wage payment shall be treated as Compensation and Includible Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner. However, such individual shall be treated as having a Severance from Employment during any period the individual is performing qualified military service for purposes of electing to take a distribution from the Plan. An individual who elects to take a distribution on account of qualified military service may not make an Annual Deferral with respect to differential wage payments during the six month period beginning on the date of the distribution.~~

~~**Section 19.14. Lost Participants.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (i) the mailing by certified mail of a notice to the last known address shown on the Employing Institution's or the Administrator's records, (ii) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (iii) the payee has not responded within six (6) months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.~~

~~**Section 19.05.** If the Administrator or Vendor makes any payment that, according to the terms of the Plan and the benefits provided hereunder, should not have been made, the Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or Vendor may deduct it when making any future payments directly to that Participant.~~

~~**Section 19.06. Benefit Payment Issue Resolution.** The Administrator, or its designee, if in doubt regarding the correctness of its action with respect to a benefit payment, may direct suspension of payment until satisfied as to the correctness of the payment or the person to receive the payment. Alternatively, the Administrator, or its designee, may file, in any state court of competent jurisdiction, a suit, in the form it deems appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator, or its designee, may also bring a suit, or take other action as it deems appropriate, to resolve questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and Participants and the Administrator shall be bound by such an order, insofar as it affects the benefits payable under this Plan, or the method or manner of payment.~~

~~**19.15. Section 19.07. Release.** Any ~~payment~~payments to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Trustees or Administrator may condition payment thereof on the delivery by the Participant of the duly executed receipt and release in such form as may be determined by the Trustees or Administrator.~~

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19.16.Section 19.08. Liability. The Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the ~~Board and~~ Administrator to be genuine or to be executed or sent by an authorized person.

Section 19.09. Necessary Parties Information Provided by the Participant. Each Participant should provide to ~~Disputes.~~ Necessary parties to the Administrator at the time of initial enrollment, and later if there are any ~~accounting, litigation~~ changes, any information necessary or ~~other proceedings relating~~ advisable for the Administrator to administer the Plan.

Section 19.10. Family Medical Leave Act. Notwithstanding any provisions of this Plan to the ~~Plan~~ contrary, Contributions and benefits with respect to qualified leave will be provided in accordance with the Family Medical Leave Act of 1993, 29 U.S.C. Section 2601 et. seq.

Section 19.11. Payments to Minors or Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is determined to be legally incapable of giving valid receipt and discharge for such benefits by a court or by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to the Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

Section 19.12. Missing or Lost Participants. In the event that the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary under the Plan, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. A reasonable attempt to locate a missing or lost Participant or Beneficiary shall include ~~only~~ (i) providing notice to the Participant at the Participant's last known address via certified mail; (ii) determining whether the Employer's records or the records of another plan maintained by the Employer has a more current address for the Participant; (iii) attempting to contact any named Beneficiary of the Participant; and (iv) searching for the missing Participant via free electronic search tools, such as Internet search engines, public record databases, obituaries, and social media. If such search methods are unsuccessful, based on the facts and circumstances, the Administrator may use other search methods, including using Internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases, and analogous services that may involve charges. The Administrator may charge missing Participants and Beneficiaries reasonable expenses for efforts to find them.

Section 19.13. Indemnification. The Employer shall satisfy any liability actually and reasonably incurred by any members of the Board and the Administrator. ~~The settlement or judgment in any such case or any person to whom any power, authority or responsibility of the Administrator is delegated pursuant to Section 15.03, except a Vendor or other service provider. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in which the Board are duly served shall be binding upon all affected Participants~~ connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is ~~in the Plan,~~ addition to whatever rights of indemnification exist under the regulations or by-laws of the Employer, under any provision of law, or under any other

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agreement; provided, however, that the Employer will not satisfy any such liability to the extent that the person did not act in good faith.

Section 19.14. No Reversion. Under no circumstances or conditions will any Annual Deferrals revert to, be paid to, or inure to the benefit of, directly or indirectly, the Employer, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries, ~~estates and upon~~ and defraying the reasonable expenses of administering the Plan. However, if Annual Deferrals are made by the Employer by a good faith mistake of fact, such amount may be returned to the Employer within one year of the date that they were made to the Plan.

~~19.17.~~**Section 19.15. Finality of Determination.** All determinations with respect to crediting of service under the Plan are made on the basis of the records of the Employer, and all determinations made are final and conclusive upon Employees, former Employees, and all other persons claiming ~~by, through or a~~ benefit under ~~them~~the Plan.

~~Section 19.18. Severability. If~~**Counterparts.** The Plan may be executed in any ~~provision~~number of the Plan counterparts, each of which shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall ~~continue~~deemed to be fully effective.

~~19.19.~~**Section 19.16. Supersession.** The terms of the Plan ~~an~~ original. All counterparts shall constitute but one and the same instrument and shall ~~supersede~~ be evidenced by any previous agreement between the parties pertaining to the Plan ~~one~~ counterpart.

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IN WITNESS WHEREOF, the Board ~~of Regents of the University System of Maryland~~ has caused this amended and restated Plan to be ~~affixed the signature of~~ executed by its duly authorized ~~Representative~~ representative as of the date written below, but effective as of January 1, 2020.

UNIVERSITY SYSTEM OF MARYLAND
BOARD OF REGENTS

Signature

Printed

Title

Date On behalf of the
~~Board of Regents of the University System of~~
~~Maryland~~

Date

Chancellor

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***December 17, 2015* December 2, 2019**

APPENDIX A

APPROVED VENDORS

The current selection of Vendor(s) is not intended to limit future additions or deletions of Vendor(s). The Administrator from time to time may add or delete Vendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in a revised Appendix A.

1.1 Approved Vendors

As of January 1, 2020, the Board has approved the following Vendors under the Plan:

- TIAA
- Fidelity Investments

1.2 Former Vendors

As of January 1, 2008, the Former Vendor under the Plan is AIG VALIC.



TOPIC: University of Baltimore: Proposed Voluntary Separation Program

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: The University of Baltimore (UB or University) seeks approval to implement an incentivized Voluntary Separation Program (VSP or Program) for its faculty and staff employees. UB's proposed VSP is a "window" program, as described in the "University System of Maryland Retirement and Incentives Plan" approved by the Board of Regents on June 17, 2014.

Goals of the VSP are to make meaningful progress in:

- Right-sizing and aligning faculty and staff positions with UB's student enrollment and profile
- Reducing the cost structure of the University

The VSP will offer a financial incentive for eligible employees to separate from employment with UB. Participation in the Program is voluntary. Employees must elect to participate during a defined period of approximately 45 days and will separate from employment with UB by June 30, 2020. Upon approval of the VSP by the Board of Regents, existing incentivized retirement opportunities will be suspended indefinitely.

Eligibility

The VSP will be available to tenured/tenure-track/non-tenure track instructional faculty (excluding adjunct, temporary and visiting faculty), librarians, and regular exempt and non-exempt staff who have a minimum of twenty (20) years of service at UB as of January 1, 2020. Senior leadership and employees in grant-funded positions will be excluded from participation.

Financial incentive to employees

Following their separation, UB will make pre-tax contribution(s) into the retirement plans for eligible employees who opt into the VSP. The contribution amounts are listed below and may be made by UB in successive calendar years to conform to maximum annual deferral amounts as specified in the Internal Revenue Code.

- Faculty: the greater of \$52,000 or 50% of the employee's base salary as of January 1, 2020
- Staff: the greater of \$30,000 or 50% of the employee's base salary as of January 1, 2020

Potential outcomes

Base budget savings and one-time cash payout amounts will be clear following the opt-in period for employees. The University estimates that 15-20% of eligible employees will participate in the VSP.

Forty-nine (49) faculty members (24% of faculty) will be eligible to participate, with combined eligible faculty salaries of \$6.9M. Fifty-five (55) staff members (14% of staff) will be eligible to participate, with combined eligible staff salaries of \$3.5M.

ALTERNATIVE(S): The Committee could choose to recommend that the Board not approve the proposed plan or could recommend alternatives.

FISCAL IMPACT: The anticipated structural savings are \$1,000,000 depending on participation levels and associated salaries. The University will cover the payouts.

CHANCELLOR'S RECOMMENDATION: That the Finance Committee recommend that the Board of Regents approve the proposed University of Baltimore Voluntary Separation Program as presented.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Ellen Herbst (301) 445-1923



TOPIC: Collaborative Planning Activities – End of Year Status Report

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: At the June, 2019 Board of Regents meeting, a Statement of Values and Expectations on Collaboration and Cooperative Efforts was approved. That statement can be found at <https://www.usmd.edu/usm/adminfinance/>. All USM institutions provided updates on collaborative planning activities per the Statement of Values and Expectations. The USM Office synthesized those reports into the attached summary for review and discussion. The summary report was presented and discussed during a recent meeting of the E&E Workgroup. The campus collaboration roadmap development will be completed in May and presented to the Board at its June, 2020 meeting.

The attached update on collaborative planning efforts includes two major aspects. First, institutions reported on their current highest priorities and initiatives. These priorities and initiatives include the following:

- Increasing enrollment and improving processes for doing so
- Improving overall campus student experience
- Enhancing budget and planning functions campus-wide
- Funding and managing capital projects supporting campus needs
- Various internal administrative process and system improvements

For the most part, institutions identified similar near-term critical efforts, such as increasing enrollment, improving processes and technology particularly around budget planning and student experience, and funding/managing growth in new facilities to support enhanced programs.

The second aspect of the report discusses current and planned collaboration efforts related to administrative processes, technology and data at each campus. These efforts include the following:

- Pursuing collaborative purchasing agreements for technology and services
- Consolidation of enterprise technology instances for clusters of institutions
- Administrative process alignment across similar institutions
- Building standard data definitions and translation tools for reporting and decision making

These initiatives were reviewed and categorized into various deliverable timeframes. Of note, a few of the collaborative partnerships discussed in more detail include the University of Maryland, Baltimore together with University of Maryland, College Park; and a consortium of six institutions. The Consortium members are Bowie State University, Coppin State University, Frostburg State University, Salisbury University, University of Baltimore, and University of Maryland Eastern Shore. Under the Strategic Partnership Act, UMCP and UMB continue to make great progress in partnering on IT and administrative functions. The Consortium has begun detailed program planning efforts to identify the possible outcomes and business benefits of working collaboratively on processes and systems.

Some potential areas include:

- Enterprise technology and process consolidation
- Administrative data enhancements
- Sharing resources for administrative functions

University of Baltimore and Coppin State University, along with BCCC, have created the B-Power initiative to enable Baltimore City K-12 students to more easily pursue higher education.

ALTERNATIVE(S): This item is presented for information purposes

FISCAL IMPACT: This item is presented for information purposes

CHANCELLOR'S RECOMMENDATION: This item is presented for information purposes.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Ellen Herbst (301) 445-1923

University System of Maryland
Update on Institutional Collaboration Planning Efforts
November 22, 2019

Introduction

At its June 12, 2019 meeting, the BOR unanimously approved a Statement of Values and Expectations on Collaboration and Cooperative Efforts wherein USM institutions are expected to *pursue opportunities to cooperate, collaborate, and establish common solutions to business process needs*. As required by the Statement of Values and Expectations, each institution provided an update on collaboration planning activities to the USM Office. Specifically, institutions were asked to provide information in three areas:

1. Top priorities and initiatives that may or may not support pursuing collaboration efforts
2. Plans for achieving current top priorities and initiatives
3. Collaboration planning status

The following is a high-level summary of all responses.

Overview of current priorities

All USM campuses are engaged in many significant activities to address priorities relative to areas including strategic goals, risk mitigation and academic and operational excellence. Many campuses cited similar priorities relative to increasing enrollment, improving processes and technology particularly around budget planning and student experience, and funding/managing growth in new facilities to support enhanced programs. Many of the individual campus priorities provide areas for new exploration into ways in which institutions could partner either in small groups or systemwide. Several partnerships are already in process.

Collaborative partnerships in process

Partnerships and collaborations of note:

- University of Maryland College Park and Baltimore under the auspice of the MPower Strategic Partnership Act, developed a strategic plan for consolidating process, technology and data for many administrative functions. To date, technology collaboration has occurred which allows administrators and researchers at both institutions to log in with their home university credentials through one portal to access the shared Quali Research Pre-Award System. UMCP and UMB share the same instance of this grants management system, which went live in 2018. Also, both institutions are pursuing leveraged contracts for systems needed by both including buying and implementing the same job market pricing comparison tool for the hiring function. In process are leveraged contracts for multifunction copiers/printers and potentially joint HR ERP contracting.

- A Consortium of 6 USM institutions has been developing over the course of several years and has begun to formalize. Leaders from Frostburg State, Bowie State, University of Baltimore, Coppin State, Salisbury and UM Eastern Shore have been meeting several times monthly, often facilitated by USM Office leadership, since June. Discussions have revolved around developing expectations for the partnership, breadth and depth of scope, governance and proper resourcing and timing for moving forward individually and collectively. Towson University has led discussions on key business process frameworks and standards based best practices. They have offered to establish a governance structure to facilitate information sharing and collaboration between participating USM institutions including sharing of interfaces, Chart of Accounts structure, integrations and conversions developed throughout the project. A team of three dedicated project resources will be procured to by the USM Office and will continue to evolve the program. Also, a readiness assessment and roadmap engagement will soon begin to identify how each institution is aligned and what steps need to be taken by each and collectively to achieve desired outcomes of shared process, data and technology.
- BPower - University of Baltimore and Coppin State University, along with BCCC, have created the B-Power initiative to enable Baltimore City K-12 students to more easily pursue higher education. Both UB and Coppin have college readiness and dual enrollment programs in place to prepare Baltimore City youth to continue their education after high school. This Baltimore educational partnership is creating a pipeline of leaders to help further enhance the city’s current culture and is evolving into a workforce development model for other urban areas to emulate.

Expected Outcomes for USM Collaboration Efforts

In an effort to help define a vision for what the Board of Regents intends by issuing the Statement of Values and Expectations, a set of high-level expected outcomes were identified by USM leadership. Below are those expected outcomes and the remainder of the summary report which discusses collaboration efforts at each institution through that lens.

Expected Outcomes for USM Collaboration Efforts:

Present-2020

- Each institution clearly positioned on a lifecycle roadmap
- Institutions aligned on plans for technology and process collaboration
- Governance structure working and roles clearly defined

2021-2022

- Data needs and models converged on USM standards
- Clusters of schools have developed common processes

2023-2028

- 3-4 shared instances of ERP (Finance, HR) technology system-wide
- Agreement on collaborative Student Information System strategy
- Comprehensive data available to answer emergent and strategic needs
- Shared services are in place
- Technology and data available anywhere on any device
 - Underlying infrastructure in place (e.g. network, security, identity management, etc.)

Progress on short term (Present – 2020) expected outcomes

A continual cycle of improvement and collaboration has been developed and will be the basis for development of campus collaboration planning and roadmap reports due in May to the Board of Regents. The USM Office is also developing governance models for discussion across the USM, to develop decision making bodies to direct collaboration efforts long term.

University	Summary of Collaboration Planning Efforts (as of December 2019)
Bowie State	<ul style="list-style-type: none"> - Campuses all part of Consortium of 6 - Currently engaged in planning and readiness assessment collectively - Collaboratively defining governance structure and process - UMES involved in UMCP’s ERP selection process as they are currently supported by UMCP’s ERP systems and are evaluating this relationship as a continued option
Coppin State	
Frostburg State	
Salisbury	
University of Baltimore	
UM Eastern Shore	
Towson	<ul style="list-style-type: none"> - Recently selected cloud HR and Finance ERP solution and implementation partner - Negotiated a new Oracle contract that improves on UMB pricing with an additional 10% discount and ensured availability to all other USM institutions - Implementation underway in early 2020 - Partnering with UMB on lessons learned in implementing the same ERP tool - Worked with Consortium of 6 to evaluate opportunities for being service provider more broadly. No clear option emerged.
UM Baltimore	<ul style="list-style-type: none"> - Under SB1052, several initiatives complete or under-way with UMCP related to administrative processes and tools - Cloud financial ERP implemented on October 2, 2019 - Sharing lessons learned with Towson - UMB will incorporate the Oracle Human Capital Management (HR) application into the existing UMB Oracle platform for achieving the most cost-effective, optimal integration solution with the new Quantum (Oracle) financial system. - Selection process for HR ERP underway. Involved with UMCP

	in their selection process for HR ERP
UMBC	<ul style="list-style-type: none"> - Plan to remain with current on-premise ERP technology - Investing resources in other campus priorities
UM College Park	<ul style="list-style-type: none"> - Under SB1052, several initiatives complete or under-way with UMCP related to administrative processes and tools - Currently evaluating cloud ERP vendors for HR and Student Systems. Plan to continue to support UMES, UMCES and USM - Have offered participation in their procurement to greater USM
UMCES	<ul style="list-style-type: none"> - UMCES continues to successfully partner with the other UM's on various initiatives, which they plan on continuing as is
UM Global Campus	<ul style="list-style-type: none"> - Fully implemented cloud HR and Financial ERP Systems through AccelerEd - Recently selected new cloud Student Information System Implementation underway
USM Office	<ul style="list-style-type: none"> - Coordinating planning and assessment efforts with Consortium of 6 - Developing governance frameworks with Consortium and greater USM - Absorbing cost of providing consulting assistance to Consortium of 6 - Monthly hosting various constituent group collaboration discussions for CIOs, VP's, IT security leads and campus project managers

Progress on mid-term (2021 – 2022) expected outcomes

As institutions continue to migrate to cloud based ERP and other modern technology systems, an opportunity for converged data models emerges. This will provide improved consistency in data sharing between designated stakeholders and facilitate enhanced analytics and data-driven decision making. Likewise, as institutions begin to decide on modernizing technology, process improvement and convergence opportunities also increase.

University	Summary of Collaboration Planning Efforts (as of December 2019)
Bowie State	<ul style="list-style-type: none"> - As part of Consortium of 6 readiness assessment, business processes will be evaluated and a roadmap to converge will be created
Coppin State	
Frostburg State	
Salisbury	<ul style="list-style-type: none"> - Each campus undergoing business process evaluation in various areas, which will inform the Consortium assessment
University of Baltimore	
UM Eastern Shore	<ul style="list-style-type: none"> - Working with USM Office on various data consolidation initiatives (e.g. common chart of accounts, HR data, etc.)
Towson	<ul style="list-style-type: none"> - Implementation of Budget and Planning and Financials Cloud

	<p>will be completed for FY22 go-live</p> <ul style="list-style-type: none"> - Engaged in process evaluation and redesign in preparation for implementing new HR and Payroll Cloud product - Continues to lead in a shared service of aggregating payroll data from all Comprehensives and forwarding to State of MD Central Payroll Bureau
UM Baltimore	<ul style="list-style-type: none"> - With UMCP, developed common processes and standardized on same technology for grant management (Kuali) - Working with UMCP to find areas of commonality in both data and process, across administrative functions with several areas identified (e.g. travel administration, HR onboarding, IT functions, etc.) and are in discussion on how to converge - Underwent internal process improvement for finance function with move to cloud Financial ERP - Undergoing internal process improvement for Human Resources functions with move to cloud to HR ERP.
UMBC	<ul style="list-style-type: none"> - Purchased and implemented eProcurement System and extended contract and pricing to all USM - Currently undergoing internal campus-wide student facing process and data enhancements - Expanding internal shared services efforts providing administrative support
UM College Park	<ul style="list-style-type: none"> - With UMB, developed common processes and standardized on same technology for grant management (Kuali) - Working with UMB to find areas of commonality in both data and process, across administrative functions with several areas identified (e.g. travel administration, HR onboarding, IT functions, etc.) and are in discussion on how to converge
UMCES	<ul style="list-style-type: none"> - UMCES has been participating in the UMCP ERP evaluation process and intends to continue to have UMCP be their service provider for HR and Financial systems.
UM Global Campus	<ul style="list-style-type: none"> - Working with several campuses to implement HelioCampus, a higher-ed specific data analytics platform and service offering - HelioCampus helps normalize and coalesce various campus data sources into a format and toolset that allows campuses to make more informed decisions
USM Office	<ul style="list-style-type: none"> - USM Institutional Research and IT continue to build common data structures for ingesting campus data to create institutional profile data and for mandatory reporting - USM Office is providing the Consortium of 6, funding to perform a process readiness assessment for moving to cloud ERP as well as adjunct staff to lead process improvement efforts

Progress on long-term (2023 – 2028) expected outcomes

While some institutions have begun or even completed modernization to cloud ERP technology, several are still in process or planning for migration after other priorities are addressed. While 3-4 instances of ERP technology are possible in the foreseeable future, it is more likely that a 10-15 year window is more likely for consolidation to one instance of ERP technology that services all 12 institutions. With the first-round, migration will still bring consolidated data modeling and ability for campuses and clusters to do more with analytics and data-driven decision making. It should be noted that cloud-based ERP systems do not allow the same flexibility to customize the system to the current process. As processes converge around best practice as defined by cloud ERP technology, opportunities for efficiency through shared services become more prevalent. Likewise, cloud ERP and integrated technology are built from the beginning, with ubiquitous access by all digital devices in mind. This provides opportunities for faculty, staff and students to do their work anywhere they are.

University	Summary of Collaboration Planning Efforts (as of December 2019)
Bowie State Coppin State Frostburg State Salisbury UM Eastern Shore University of Baltimore	<ul style="list-style-type: none"> - As part of the Consortium of 6, the intent is to pursue one shared instance of cloud ERP systems (HR, Finance and possibly Student) among all 6 - Cloud ERP and integrated technologies are built to provide support for access to systems and data from traditional computing and mobile devices through any browser - Sharing one instance of the ERP technology and common processes will provide the ability for any of the 6 campuses to fulfill administrative needs for each other as needed
Towson	<ul style="list-style-type: none"> - After completion of Financials implementation, will begin the HR Cloud implementation - Procured their Finance and HR cloud ERP using UMB’s contract pricing - Continues to be a service center for aggregation payroll data to the Comprehensives - Discussions about expanding services to Consortium of 6 is ongoing
UM Baltimore	<ul style="list-style-type: none"> - With UMCP, developed common system login capability to access the Kual Research Pre-Award System that is shared and used by both campuses - Implemented same Financial ERP that Towson plans to and sharing lessons learned in development. Potential for additional consolidation - Various administrative procedures and technology in the evaluation stage of converging with UMCP’s procedures

UMBC	<ul style="list-style-type: none"> - UMBC currently has not communicated plans to migrate to cloud ERP, collaborative data schema and processes - Various convergence options will be in place when they do - Developing internal shared service centers, the model for which could be promulgated across other USM institutions
UM College Park	<ul style="list-style-type: none"> - With UMB, developed common system login capability to access systems shared by both campuses - Potential to purchase and implement same cloud ERP vendor as UMB and Towson (Oracle for Financials and HR) - Aggregating payroll data and serving as procurement service lead for UMES, UMCES and the USM Office - Various administrative procedures and technology in the evaluation stage of converging with UMB's procedures
UMCES	<ul style="list-style-type: none"> - Continue to partner with UMs on various technology and associated systems as is currently the case
UM Global Campus	<ul style="list-style-type: none"> - AccelerEd and UMGC are in discussions with several USM schools to provide IT and process transformation services - HelioCampus desires to become the standard bearer for analytics across USM institutions
USM Office	<ul style="list-style-type: none"> - Funding an assessment that will show which processes or activities might best benefit from shared technology and services across the Consortium of 6 - Funding three consulting resources to help with project planning, assessment and change/communication management - Continuing to build and enhance USM-wide systems and services providing efficiency across the System (e.g. tuition remission, articulation system, charitable giving, campus data aggregation, common security services and leveraged contracting)



BOARD OF REGENTS

SUMMARY OF ITEM FOR ACTION,
INFORMATION OR DISCUSSION

TOPIC: University System of Maryland: Report on FY 2019 Procurement Contracts

COMMITTEE: Finance

DATE OF COMMITTEE MEETING: December 12, 2019

SUMMARY: The USM Policy on Approval of Procurement Contracts requires that contracts of \$1 million to \$5 million, and emergency and expedited procurement contracts of \$5 million or more, shall be reported to the Committee on Finance.

Attached is the report of the procurement contracts awarded during Fiscal Year 2019 (July 1, 2018 - June 30, 2019). As provided in the policy, the report does not include construction contracts for capital projects approved by the Board of Regents, sponsored research/education contracts and grants, and contracts pertaining to interests in real property.

Thirty-four (34) contracts have been awarded that meet the reporting requirements totaling \$113 million. There were not any emergency or expedited procurement contracts of \$5 million or more during the reporting period. Of the total dollars awarded, 38% of the contracts were awarded to Maryland firms. The MBE participation on these contract awards was 6%.

ALTERNATIVES: This is an information item.

FISCAL IMPACT: This is an information item.

CHANCELLOR’S RECOMMENDATION: This is an information item.

COMMITTEE RECOMMENDATION:

DATE:

BOARD ACTION:

DATE:

SUBMITTED BY: Ellen Herbst (301) 445-1923

BOR Finance Committee - Public Session

USM Procurements Between \$1 million and \$5 million
For Fiscal Year 2019

<u>Inst.</u>	<u>Description of Procurement</u>	<u>Category</u>	<u>Method</u>	<u>Award</u>	<u>Amount</u>	<u>Fund Source</u>	<u>In- State</u>	<u>% MBE</u>
BSU	Thurgood Marshall Library HVAC Renovation	Maintenance	Competitive Sealed Proposal	Rich Moe Enterprises	\$4,886,184	Institutional Funds	Yes	30%
CSU	Housekeeping Services	Maintenance	Competitive Sealed Proposals	WFF Facilities Services	\$1,703,577	Current Unrestricted	No	20%
SU	Commons Refrigeration Replacement	Maintenance	Competitive Sealed Proposal	Harper and Sons	\$2,079,900	Auxiliary/Self Support	Yes	3%
SU	Henson Hall Exhaust System Retrofit	Maintenance	Competitive Sealed Proposal	Whiting Turner	\$1,834,000	General/State Support	Yes	0%
TU	Oracle Cloud Financial Software	IT Services	UMB Contract	Oracle America Inc.	\$2,001,818	Plant Funds	No	0%
TU	Prettyman and Scarborough Restroom Renovations	Maintenance	SBR-Competitive Bids	Rocchi Construction, Inc.	\$1,295,245	Plant Funds	Yes	39%
TU	7800 York Rd. 1st & 2nd floor Renovation	Maintenance	SBR-Competitive Bids	Oakmont Contracting LLC	\$3,017,983	Plant Funds	Yes	29%
UMB	Glacios Cryo Transmission Electron Microscope	Commodity	Sole Source	FEI Company	\$1,926,095	MCCBL 2018	No	0%
UMB	Cisco Enterprise Webex Cloud Subscription	Commodity	Cooperative Contract	DISYS Solutions	\$1,253,251	Current Unrestricted	No	0%
UMB	Upright HD MP Microscope System	Commodity	Sole Source	Nikon Instruments	\$1,919,093	Current Unrestricted	No	0%
UMBC	Engineering Building Roof Replacement	Maintenance	University Contract	Citiroof	\$1,250,490	Various	Yes	10%
UMBC	Bruker Scientific equipment for ILSB	Commodity	Sole Source	Bruker Scientific	\$1,312,894	MCCBL	No	0%
UMBC	Cisco Equipment for ILSB	IT Supplies	University Contract	DISYS Solutions	\$1,994,206	Current Unrestricted	No	0%
UMBC	Natural gas and electricity	Services	Sole Source	Baltimore Gas & Electric	\$2,800,000	Current Unrestricted	Yes	0%
UMBC	Journal Subscriptions for the library	Commodity	Exempt/Excluded	Ebsco Information Services	\$3,350,000	Current Unrestricted	No	0%
UMES	FY19 through FY23 Crowd Management Services	Services	Competitive Sealed Proposal	Contemporary Services Corp.	\$2,350,000	Auxiliary	Yes	0%
UMCP	5 Year Vehicles Lease with Motor Transportation Services	Supplies & Equipment	Cooperative Contract	Enterprise Fleet Mgmt. Trust	\$1,971,675	State Operating	No	0%
UMCP	1.0 - Flex Public Sector- 07/01/19- 06/30/24	IT Software/Hardware	Purchase off of State Contract	DISYS Solutions	\$1,918,240	State Operating	No	0%
UMCP	Replace AHU System & components at John Toll Bldg	Maintenance	Competitive Sealed Proposal	W.L. Gary Co.	\$3,682,309	Plant Funds-Non Capital	No	20%
UMCP	Main Electrical Service Upgrade at the LPS Building.	Maintenance	Competitive Sealed Proposal	Electrico Inc.	\$1,267,788	Plant Funds-Non Capital	Yes	25%
UMCP	Microsoft Enterprise for UMCP	IT Software/Hardware	Cooperative Contract	Bell Technologix Inc.	\$1,373,653	State Operating	No	0%
UMES	Management of Food Dining Services Systems	Services	Competitive Sealed Proposal	Thompson Hospitality	\$5,000,000	Self Support	No	0%
UMCP	Application Software for General Orders FY19.	IT Software/Hardware	Cooperative Contract	Bell Technologix Inc.	\$1,423,653	State Operating	No	0%
UMCP	Sports Ticketing Services - 1/1/19 to 6/30/19 and 7/1/19 to 6/30/20	Services	Sole Source	The Aspire Group, Inc.	\$1,100,000	Auxiliary	No	0%
UMCES	AWS Services	IT Software/Hardware	Purchase off of State Contract	Amazon Web Services	\$2,789,800	Federal C&G	No	0%
UMCP	Replace FCU's & convectors at Frat 1	Maintenance	Competitive Sealed Proposal	W.L. Gary Co.	\$1,035,800	Auxiliary	No	20%
UMCP	Structural, mechanical & elect repairs - Union Lane Garage	Maintenance	Competitive Sealed Proposal	Coakley Williams Construction	\$1,793,487	Plant Funds-Capital	Yes	0%
UMCP	Replace the low-slope roof at Biology-Psychology	Maintenance	Competitive Sealed Proposal	Plano Cloudon Inc.	\$2,372,414	Plant Funds-Capital	Yes	20%
UMES	Renovations to Trigg Hall	Maintenance	Competitive Sealed Bid	PWC Builders	\$1,170,416	Plant-Facility Renewal	Yes	0%
USMO	Indefeasible Right-to-Use (IRU) for Fiber	IT Services	Competitive Sealed Proposal	Shentel Communications	\$1,508,400	Self Support	No	0%
UMCP	Replace 74,000 SF of Synthetic Turf for the Field Hockey Stadium	Maintenance	Cooperative Contract	Astroturf Corporation	\$1,612,263	Auxiliary	No	0%
UMCP	Tesla high field MR instrument for pre-clinical research.	Supplies & Equipment	Cooperative Contract	Bruker Biospin Corporation	\$3,660,000	Plant Funds-Capital	No	0%
UMCP	FY20 Media Lump Sum - Advertising from July 2019 to June 2020	Services	Competitive Sealed Proposal	Red House Communications	\$1,184,000	State Operating	No	0%
UMCP	Furniture for Biomedical Bldg at USG	Supplies & Equipment	Purchase off of State Contract	Maryland Correctional Enterprise:	\$2,372,736	Plant Funds-Non Capital	Yes	0%