

**Fifth**  
**Amended and Restated**  
**UTSAVER**  
**Deferred Compensation Plan**  
**Effective June 16, 2005**  
**Fifth Amended and Restated Effective January 1, 2022**

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## INTRODUCTION

WHEREAS, The University of Texas System (“U.T. System”) is an institution of higher education within the meaning of Section 609.001, *Texas Government Code*;

WHEREAS, Section 609.702, *Texas Government Code*, authorizes an institution of higher education to establish a deferred compensation plan as provided by Section 457 of the *Internal Revenue Code* of 1986, as amended, the regulations issued thereunder and other applicable law;

WHEREAS, the purpose of the deferred compensation plan, known as UTSaver Deferred Compensation Plan (“Original UTSaver DCP”), adopted effective June 16, 2005, is to provide deferred compensation for employees of U.T. System covered under the Plan;

WHEREAS, effective July 22, 2005 U.T. System executed an amended and restated Original UTSaver DCP (“Amended and Restated Plan”) in its entirety to include provisions regarding the implementation date of the Original UTSaver DCP and correct miscellaneous scrivener errors;

WHEREAS, effective October 1, 2007, U.T. System executed a First Amendment to the Amended and Restated Plan to accommodate the transfer of deferred compensation assets from the TexaSaver 457 Plan to the Amended and Restated Plan;

WHEREAS, effective January 1, 2008, U.T. System executed a second amended and restated Original UTSaver DCP (“Second Amended and Restated Plan”) to allow the elective deferral by Participant of unused annual leave upon termination of employment and to incorporate provisions authorized by the Pension Protection Act of 2006;

WHEREAS, effective January 1, 2009, U.T. System executed a First Amendment to the Second Amended and Restated Plan to comply with the Worker, Retiree and Employer Recovery Act of 2008 (“WREA”) and effective January 25, 2011 to authorize elective deferrals of fixed percentages in addition to fixed amounts and to change the minimum monthly pay period elective deferral amount.

WHEREAS, U.T. System amended and restated the Second Amended and Restated Plan effective January 1, 2011 (“Third Amended and Restated Plan”) to comply with the Heroes Earnings Assistance and Relief Tax Act of 2008 (the “**HEART** Act”), incorporate the First Amendment to the Second Amended and Restated Plan, authorize Roth Elective Deferrals and in-Plan Roth rollovers at a later effective date as provided by the Plan Administrator and make certain administrative changes to the Plan;

WHEREAS, pursuant to authority granted in The University of Texas System Rules and Regulations of the Board of Regents, Series 30202, Section 6.1, the Vice Chancellor for Business Affairs on behalf of U.T. System amended the Third Amended and Restated Plan, effective January 1, 2021, to incorporate changes under the Setting Every Community Up for Retirement Enhancement Act of 2019, the Coronavirus Aid, Relief and Economic Security Act and the Bipartisan American Miners Act of 2019 and to clarify that in-service deferral of unused annual leave is permitted in accordance with Treasury Regulations § 1.457-4(d)(1);

WHEREAS, U.T. System retains the right in Section 9.1 to amend the Amended and Restated Plan at any time;

WHEREAS, the Plan is intended to constitute an eligible deferred compensation plan within the meaning of Section 457 of the *Internal Revenue Code* of 1986, as amended, regulations issued thereunder and other applicable law; and

WHEREAS, pursuant to authority granted in The University of Texas System Rules and Regulations of the Board of Regents, Series 30202, Section 6.1, the Vice Chancellor for Business Affairs on behalf of U.T. System wishes to amend the Fourth Amended and Restated Plan, (1) effective January 1, 2022, to incorporate changes under the Setting Every Community Up for Retirement Enhancement Act of 2019 relating to required minimum distribution payments to beneficiaries, effective for participant deaths occurring after December 31, 2021 and (2) effective as of the execution of this Fifth Amended and Restated Plan, to update the beneficiary designation procedures.

NOW, THEREFORE, U.T. System hereby amends and restates in its entirety and adopts the Fifth Amended and Restated UTSaver Deferred Compensation Plan effective January 1, 2022, unless a different effective date is expressly stated herein for any particular provision or provisions, as set forth in this document.

## GENERAL PROVISIONS

Except as noted herein, the Fifth Amended and Restated UTSaver Deferred Compensation Plan shall operate in accordance with the Deferred Compensation Plan provisions set forth in Chapter 609, Subchapter D, *Texas Government Code*, and the policies and procedures adopted thereunder.

### ARTICLE I – DEFINITIONS

Where the following words and phrases appear in the Plan, they shall have the meanings specified below unless a different meaning is clearly required by the context. Capitalized terms used but not defined in this Plan shall have the meanings given to them by Chapter 609, *Texas Government Code*, and rules promulgated thereunder.

- 1.1 **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 Elective Deferrals, the earnings or loss of the Fund (net of 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 Section 3.10 for rollover contributions and 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 Section 414(p)(8) of the Code).
- 1.2 **Beneficiary** means the designated individual, trustee, estate or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death. If more than one Beneficiary survives the Participant, payments shall be made to surviving beneficiaries.
- 1.3 **Code** means the Internal Revenue Code of 1986, as amended and regulations issued thereunder. Reference to a specific section of the Code includes not only the section but any comparable section or sections of any future legislation that amends, supplements or supersedes the section.
- 1.4 **Compensation** means the total amount of cash remuneration earned by an Employee for personal services rendered to the Employer for the calendar year. In all cases, Compensation shall include amounts deferred under this Plan, any reductions pursuant to a salary reduction agreement with the Employer with regard to any plan established under Code Sections 457(b), 403(b), 401(k), 125 or 132(f)(4) and 415(m), 457(f), and any military differential wage payments as defined under Code Section 3401(h) paid by the Employer.
- 1.5 **Coronavirus-Affected Participant** means a Participant that meets one of the following requirements (a) who is diagnosed with SARS-CoV-2 or coronavirus disease 2019 ("COVID-19") by a test approved by the Centers for Disease Control and Prevention; (b) whose spouse or dependent is diagnosed with the virus or disease; (c) who experiences



adverse financial consequences due to the virus or disease as a result of being quarantined; being furloughed, laid off, or having work hours reduced; being unable to work due to the lack of childcare; or the closing or reduction in hours of a business that the individual owns or operates; (d) who experiences an adverse financial consequence as a result of the individual having a reduction in pay (or self-employment Income) due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19; (e) who experiences an adverse financial consequence as a result of the individual's spouse or member of the individual's household being quarantined, being furloughed or laid off, having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or (f) who experiences an adverse financial consequence as a result of closing or reducing hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19.

- 1.6 ***Deferred Compensation Trust Agreement*** means, collectively, the written agreement(s) between the U.T. System and the trustee(s) or Investment Sponsor(s) under which the Deferred Compensation Trust Fund is maintained, and the individual custodial accounts and annuity contracts described in Code section 401(f) that satisfy the requirements of Treas. Reg. §1.457-8(a)(3) between a Participant and an Investment Sponsor.
- 1.7 ***Deferred Compensation Trust Fund*** means the trust fund created under and subject to the Deferred Compensation Trust Agreement.
- 1.8 ***Effective Date*** means June 16, 2005 for the Original UT Saver DCP and January 1, 2022 for this Fifth Amended and Restated Plan.
- 1.9 ***Elective Deferral*** means the annual amount of Compensation that a Participant elects to defer under this Plan pursuant to a properly executed Voluntary Salary Deferral Agreement and/or the deferral of unused annual leave by a Participant pursuant to a properly executed Unused Annual Leave Elective Deferral Agreement. The Plan Administrator at any time upon notice to Participants may authorize Elective Deferrals to be in the form of a percentage of Compensation as well as a fixed dollar amount. If such occurs, reference in this Plan to Elective Deferral shall include both a fixed dollar amount and a fixed percentage of Compensation. Elective Deferrals will include Roth Elective Deferrals unless otherwise provided.
- 1.10 ***Eligible Deferred Compensation Plan or Eligible Plan*** means a plan that constitutes an eligible plan within the meaning of Section 457 of the Code.
- 1.11 ***Eligible Employee*** means any person who performs services as an Employee for Employer and who is eligible to participate in this Plan. Eligible Employee shall not include any individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole and absolute discretion, or a trustee of Employer. Eligible Employee shall not include any individual who is performing services for Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in this Plan or other benefit plans of Employer. If any individual is not classified

as an Eligible Employee by Employer and is subsequently reclassified as an Eligible Employee by any overriding governmental or regulatory authority, such individual shall nevertheless be deemed to have become an Eligible Employee prospectively only, effective as of the date of such reclassification (and not retroactive to the date on which he or she was found to have first become eligible for any other purposes), and then only if he or she otherwise satisfies the requirements of this Plan. In addition, Eligible Employee means a former Employee who had voluntary deferred compensation assets transferred from the TexaSaver 457 Plan administered by the Board of Trustees of the Employees Retirement System of Texas and such former Employee shall be classified as an Eligible Employee on the date of such transfer.

- 1.12 **Employee** means any person who performs services, as a common law employee, for the Employer to whom Compensation is paid on a regular basis, but shall not include any individual who is deemed to be an independent contractor as determined by the Plan Administrator in its sole and absolute discretion or a trustee of the Employer even if such individual is later reclassified either by the Internal Revenue Service or any court of competent jurisdiction as a common-law employee. An Employee will include any individual receiving military differential wage payments as defined in Code Section 3401(h) from the Employer.
- 1.13 **Employer** means The University of Texas System comprised of The University of Texas System and U.T. System institutions as described in Texas Education Code Section 65.02.
- 1.14 **Government Code** means the Texas Government Code as enacted and amended from time to time by the Legislature of the State of Texas.
- 1.15 **Implementation Date** means that date selected by each U.T. System Institution and The University of Texas System to allow their respective employees to begin making Elective Deferrals to the Plan.
- 1.16 **Includible Compensation** means an Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$210,000 (or such higher maximum as may apply under Section 401(a)(17) of the Code (\$305,000 in 2022)) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f)(4), 401(k), 403(b), 457(b) or 457(f) of the Code (including an election to defer Compensation under Article III).
- 1.17 **Investment Options** means a fixed or variable rate annuity, mutual fund, money market account, stock, bond, or exchange traded fund, and any other investment product not prohibited under Section 457 of the Code.
- 1.18 **Investment Sponsor(s)** means the vendor(s) that has satisfied the requirements for participation as an investment sponsor in the Plan, has been qualified by the Plan Administrator to offer the Investment Options, and has executed a written contract with the Plan Administrator to participate as an investment sponsor in the Plan. Each Investment Sponsor shall be a Trustee as to all funds or contracts held by such Investment Sponsor under this Plan.

- 1.19 **Normal Retirement Age** means the range of ages beginning with the earliest age at which an Eligible Employee has the right to receive retirement benefits under the Employees Retirement System of Texas/Teacher Retirement System of Texas basic pension plan, without actuarially reduced (early) retirement, and effective January 1, 2020, ending at age 72. Each Participant is allowed to designate his/her Normal Retirement Age within this range of ages.
- 1.20 **Participant** means an Eligible Employee or former Eligible Employee who has become a Participant in the Plan in accordance with Article II hereof. An Employee shall cease to be a Participant at such time as he or she no longer has any interest in contracts or accounts under the Plan. An “**Active Participant**” means a Participant who is an Employee other than one who is no longer an Eligible Employee.
- 1.21 **Plan** means the Fifth Amended and Restated UTSaver Deferred Compensation Plan set forth herein, as amended from time to time.
- 1.22 **Plan Administrator** means the employee, nonprofit corporation, individual, trustee, private entity, institution of higher education or association of institutions of higher education designated by the U.T. System to administer the Plan. If the U.T. System fails to make such appointment, the U.T. System shall be the Plan Administrator.
- 1.23 **Plan Year** means the twelve consecutive month period beginning on January 1st and ending on the following December 31st.
- 1.24 **Regulation or Regulations** means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.
- 1.25 **Severance from Employment is defined in Section 4.1(a).**
- 1.26 **Trustee** means the initial trustee(s) and Investment Sponsor(s), or any successor trustee(s) or Investment Sponsor(s), at any time appointed and acting under this Plan or any written agreement constituting part of the Deferred Compensation Trust Agreement. Each Trustee shall be responsible for, and shall have sole and absolute discretion of, the management of all assets held by it under this Plan and the Deferred Compensation Trust Agreement.
- 1.27 **Unused Annual Leave Elective Deferral Agreement** means the agreement between a Participant and the Plan Administrator to defer receipt by the Participant of unused annual leave payable during Employment or upon Severance from Employment. The agreement must be entered into before the beginning of the month in which the unused annual leave would otherwise be paid or made available and the Participant is an Employee in that month. In the case of unused annual leave that is payable before the Participant has a Severance from Employment, the requirements of the preceding sentence are deemed to be satisfied if the agreement providing for the deferral is entered into before the unused annual leave is currently available for payment. This Section 1.267 is intended to comply with Treas. Reg. § 1.457-4(d)(1). To the extent that there is any conflict between such regulation and any other provisions of this Plan, the provisions of such regulation will control.

- 1.28 **Valuation Date** means the day specified in the contract between the Investment Sponsor and the Participant, if any, otherwise the last day of the calendar month.
- 1.29 **Voluntary Salary Deferral Agreement** means the agreement between a Participant and the Plan Administrator to defer receipt by the Participant of Compensation not yet paid or otherwise made available. Except for new Employees, such agreement shall state the Elective Deferral amount to be withheld from a Participant's Compensation and shall become effective no earlier than the first day of the month following execution of such agreement that is on or after the Implementation Date. A new Employee may defer the receipt of Compensation payable in the calendar month during which the Participant first becomes an Employee if such agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer and such date is on or after the Implementation Date. Once executed, the Voluntary Salary Deferral Agreement shall be legally binding and irrevocable with regard to amounts paid or otherwise made available while in effect and shall remain in effect until modified or terminated as provided in Article III.

## ARTICLE II – PARTICIPATION IN THE PLAN

### 2.1 **Eligibility.**

- (a) Any Employee who is classified as an Eligible Employee as of the Implementation Date shall be eligible to participate in the Plan on the implementation Date.
- (b) Any Employee, who is not eligible to participate in the Plan as of the Implementation Date pursuant to paragraph (a) above, shall be eligible to participate in the Plan upon classification as an Eligible Employee.

2.2 **Enrollment in the Plan.** To participate in the Plan, each Eligible Employee shall execute a Voluntary Salary Deferral Agreement either by filing it electronically through utilization of the UT Retirement Manager system or by filing the paper documents with the benefits office at the U.T. System Institution at which the Employee is employed. The Employee must also complete the account application forms with the Investment Sponsor. Except for new Employees, enrollment in the Plan shall be effective on or after the first day of the month following the date the enrollment forms are properly completed by the Eligible Employee and accepted by the Plan Administrator that is on or after the Implementation Date. For a new Employee, enrollment shall be effective on the first day on which the Eligible Employee performs services for the Employer if such enrollment forms are properly completed by the new Eligible Employee and accepted by the Plan Administrator on or before the first day on which the Eligible Employee performs services for the Employer and such date is on or after the Implementation Date.

2.3 **Commencement of Participation.** An Eligible Employee shall become a Participant as soon as administratively practicable following the date the Eligible Employee executes a Voluntary Salary Deferral Agreement and delivers the other

required documents pursuant to Section 2.2. Such election shall become effective no earlier than the first day of the calendar month following the month in which the election is made that is on or after the Implementation Date. A new Eligible Employee may defer Compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer and such date is on or after the Implementation Date.

- 2.4 ***Information Provided by the Participant.*** Each Eligible Employee enrolling in the Plan shall provide to the Plan Administrator at the time of initial Enrollment, and later if there are any changes, any information necessary or advisable for the Plan Administrator to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code Section 457(b).
- 2.5 ***Contributions Made Promptly.*** Elective Deferrals by the Participant under the Plan shall be transferred to the Deferred Compensation Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Elective 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 Deferred Compensation Trust Fund within fifteen (15) business days following the end of the month in which the amount would otherwise have been paid to the Participant.
- 2.6 ***Leave of Absence.*** Unless a Voluntary Salary Deferral Agreement is otherwise revised, if a Participant is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.
- 2.7 ***Disability.*** A disabled Participant may elect Elective 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.

### **ARTICLE III – DEFERRAL OF COMPENSATION**

- 3.1 ***Elective Deferrals by Voluntary Salary Deferral Agreement.*** An Eligible Employee may make Elective Deferrals to the Plan pursuant to a Voluntary Salary Deferral Agreement completed either electronically through utilization of the UT Retirement Manager system or by filing the paper document with the benefit office at the U.T. System Institution at which the employee works. Any such Elective Deferrals may be made up to the maximum amount permitted under the Elective Deferral limits set forth in Section 3.7. Each Eligible Employee who elects to contribute to the Plan pursuant to a Voluntary Salary Deferral Agreement must agree to voluntarily defer a minimum of fifteen dollars (\$15) per monthly pay period. In completing the Voluntary Salary Deferral Agreement, the Participant elects to participate in the Plan and consents to the Employer deferring the amount specified in the Voluntary Salary Deferral Agreement from the Participant's

Compensation for each pay period. The amount specified shall continue until modified or terminated as provided in Sections 3.2 and 3.3 respectively.

- 3.2 ***Modifications to Amount Deferred.*** A Participant may change the amount of his or her Elective Deferral by completing a new Voluntary Salary Deferral Agreement either electronically through utilization of the UT Retirement Manager system or by filing the paper document with the benefit office at the U.T. System Institution at which the employee works. Unless the Voluntary Salary Deferral Agreement specifies a later effective date, such change shall take effect as soon as administratively practicable but not earlier than the first pay period commencing with or during the first month following receipt by the Plan Administrator of such Voluntary Salary Deferral Agreement.
- 3.3 ***Termination of Deferral.*** A Participant may terminate his or her Elective Deferral by completing a new Voluntary Salary Deferral Agreement either electronically through utilization of the UT Retirement Manager system or by filing the paper document with the benefit office at the U.T. System Institution at which the employee works. Such termination shall take effect as soon as administratively practicable, but not earlier than the first pay period commencing with or during the first month following receipt by the Plan Administrator of such notice.
- 3.4 ***Elective Deferral by Unused Annual Leave Elective Deferral Agreement.*** A Participant may make an Elective Deferral to the Plan pursuant to an Unused Annual Leave Elective Deferral Agreement with the Plan Administrator. Any such Elective Deferrals may be made up to the maximum amount permitted under the Elective Deferral limits set forth in Section 3.7.
- 3.5 ***Employer Non-Elective Contributions.*** Employer will not make any non-elective contributions to the Plan.
- 3.6 ***Employer Matching Contributions.*** Employer will not make any matching contributions to the Plan.
- 3.7 ***Maximum Deferral.***
- (a) Elective Deferral Limits — Except as provided by Section 3.7(b), the maximum amount that a Participant may defer for any Plan Year, other than by means of a rollover or transfer, shall not exceed the lesser of:
- (1) The Applicable Dollar Amount, as set forth in Code Section 457(e)(15) (i.e., \$20,500 for 2022), or
- (2) 100% of the Participant's Includible Compensation for the Plan Year.

(b) “Catch-Up Provisions.”

- (1) Special Catch-Up Limitation. (Three years before Normal Retirement Age). For one or more of the last three Plan Years ending before the year a Participant attains Normal Retirement Age and if the amount determined under this Section 3.7(b)(1) exceeds the amount computed under Sections 3.7(a) and 3.7(b)(3), then, the maximum amount that a Participant may defer for any Plan Year, other than by means of a rollover or transfer, shall be the lesser of:
  - (A) Twice the Applicable Dollar Amount under 457(b)(2)(A) (i.e., 2 times the Section 3.7(a)(1) Applicable Dollar Amount); or
  - (B) The sum of:
    - (i) The Elective Deferral limit amount in 3.7(a) above; plus
    - (ii) The portion of the Participant’s Elective Deferral limitation amount for any prior Plan Year that the Participant has not previously used under Section 3.7(a) above.
- (2) For purposes of subsection 3.7(b)(1)(B)(ii) of this section, a prior Plan Year shall be taken into account only if:
  - (A) It begins after December 31, 1978;
  - (B) The Participant was eligible to participate in the Plan during any portion of the Plan Year, or eligible to participate in an eligible 457 plan sponsored by another entity; and
  - (C) Compensation deferred under the Plan during the Plan Year (if any) was subject to a deferral limit under Section 3.7(a) above.
- (3) Catch-Up Limitation for Individuals Age 50 or Over. A Participant may defer a higher amount during any Plan Year in which the Participant will attain age fifty or older (50 or older). The maximum amount a Participant may defer in each such Plan Year shall be the sum of:
  - (A) The Elective Deferral amount in Section 3.7(a) for the current Plan Year; and

(B) The lesser of:

- (i) Compensation available for deferral; or
- (ii) The maximum age 50 catch-up dollar amount as set forth in Section 414 (v) of the Code (i.e., \$6,500 for 2022).

The age fifty catch-up limit described in this Section 3.7(b)(3) does not apply for any Plan Year for which a higher limit applies under the special catch-up under Section 3.7(b)(1).

- (c) **Coordination with Other Plans.** If a Participant participates in more than one Code Section 457(b) plan during the Plan Year, the maximum deferral under all such plans shall not exceed the applicable limit described in Section 3.7(a) above (subject to modification by the catch-up limitations described in Section 3.7(b) above). For this purpose, the Plan Administrator shall take into account any such other Code Section 457(b) plan maintained by the Employer and shall also take into account any such other Code Section 457(b) plan for which the Plan Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- (d) **Correction of Excess Deferrals.** To the extent that any amount deferred hereunder for any Plan Year exceeds the limitations of this Section 3.7, such excess shall be distributed to the Participant, with allocable net income, as soon as administratively practicable after the Plan Administrator determines that the amount is an Excess Deferral.
- (e) **Disregard Excess Deferral.** For purposes of Sections 3.7(a) and (b), 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 3.7(d).
- (f) Notwithstanding the foregoing, Participants may defer amounts up to the maximum amounts permitted by law.

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

3.9 ***Transfers of Funds from Another Plan.*** A Participant may elect to make, and each Trustee shall accept, subject to the rules of such Trustee, contributions to the Plan that are transferred directly from any other eligible governmental plan (as defined in Treas. Reg. § 1.457-2). Notwithstanding the foregoing, transfers shall be permitted only to the extent permitted by law. Such funds and the accumulation generated from them shall be fully vested and non-forfeitable at all times.



- 3.10 ***Acceptance of Rollover Contributions.*** If a Participant is an Eligible Employee and is entitled to receive, and elects to receive, a distribution from another eligible deferred compensation plan maintained by a State, political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State, or from a plan qualified under Section 401(a) or 403(a) of the Code, or a plan described in Section 403(b) of the Code, that is in each case an eligible rollover distribution under the Code, each Investment Sponsor shall, subject to the rules of such Investment Sponsor, accept such amount under this Plan, provided that the rollover to this Plan is made either directly from another such plan or by the Participant within sixty days of the receipt of the distribution. Any such amounts rolled over from any such plan shall be accounted for separately upon acceptance as a rollover under this Plan. Such funds and the accumulation generated from them shall be fully vested and non-forfeitable at all times. However, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in Section 401A(e)(1) of the Code or a Roth IRA described in Section 408A of the Code unless the Plan Administrator implements Roth Elective Deferrals under Article XIII of this Plan in which case such rollovers will be permitted pursuant to Section 13.3(b).
- 3.11 ***Uniformed Services.*** An Eligible 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 equal to the maximum Elective Deferral that the Eligible Employee could have elected during that period if the Eligible Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Eligible Employee during the period of interruption or leave. 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).

#### **ARTICLE IV – DISTRIBUTIONS**

- 4.1 ***Eligibility for Payment.*** Distribution of benefits from the Plan is governed by Code Sections 401(a)(9) and 457(d) and the terms of the Plan to the extent not inconsistent with the Code. Except as otherwise provided in this Plan, distributions of benefits shall be made to a Participant or Beneficiary no earlier than: (i) Severance from Employment or (ii) effective January 1, 2020, the calendar year in which the Participant attains age 59½ .
- (a) “Severance from Employment” means the termination of a Participant’s employment with the Employer for any reason including the Participant’s death, disability or retirement.
- (b) Voluntary In-Service Distribution. A Participant may elect to receive a lump sum in-service distribution of all or a part of the Participant’s benefit under the Plan if the following requirements are met:

- (1) The total amount of the Participant's benefit, including any rollover contribution amounts, under the Plan does not exceed \$5,000 (or the dollar limit under Section 411(a)(11) of the Code, if greater),
  - (2) The Participant has not previously received an in-service distribution of any portion of the Participant's benefit under the Plan, and
  - (3) No amounts have been deferred under the Plan with respect to the Participant during the preceding two-year period ending on the date of the in-service distribution.
- (c) **Distribution of Rollover Amounts.** A Participant may elect to receive a lump-sum in-service distribution of amounts previously contributed to this Plan as a rollover, but such distribution must consist of the Participant's entire rollover balance.
- (d) **Special Rule for Distributions During Military Service.** Effective January 1, 2009, pursuant to Section 414(u)(12)(B) of the Code, an Employee will be treated as having a Severance from Employment for distribution purposes during any period the Employee is performing service in the uniformed services described in Section 3401(h)(2)(A) of the Code. If a Participant elects to receive a distribution by way of this Section 4.1(c), then the Participant is suspended from making deferrals to the Plan for six months following the date of the distribution.

4.2 ***Distribution Due to Unforeseeable Emergency.*** A Participant may receive a distribution due to an Unforeseeable Emergency prior to Severance from Employment. The amount of a distribution due to an Unforeseeable Emergency shall be limited strictly to that 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. For purpose of this Plan, an Unforeseeable Emergency shall be severe financial hardship to the Participant resulting from:

- (a) A sudden and unexpected illness or accident of the Participant, the Participant's spouse, the Participant's dependent (as defined in Section 152(a) of the Code without regard to Sections 152(b)(1), (b)(2) and (d)(1)(B) of the Code) or the Participant's Beneficiary,
- (b) Loss of the Participant's property due to casualty, or
- (c) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but, in any case, distribution shall not be made to the extent that such hardship is or may be relieved:

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

Applications for Review. All applications for review of decisions or requests for distributions due to Unforeseeable Emergency are to be submitted by the Participant to the Plan Administrator, or its designee, for approval. If the request is approved, distribution shall be made within sixty days following such an approval. Elective Deferrals to the Plan will be suspended for six months and will be automatically restarted unless the Participant files the appropriate form to terminate participation in the Plan.

#### 4.3 *Commencement of Distributions.*

- (a) A Participant may commence distribution of benefits at any time following Severance from Employment.
- (b) Notwithstanding the provisions of Section 4.3(a) above:
  - (1) Distribution to a Participant must begin on or before April 1st of the calendar year following the later of: (i) the calendar year in which the Participant reaches age seventy-two (72) (effective for distributions made after December 31, 2019 for Participants who reach age 70½ beginning on and after January 1, 2020); or (ii) the calendar year in which the Participant retires (the Participant's "Required Beginning Date").
  - (2) Distribution to a Beneficiary must begin as follows: (i) if payable to an Eligible Designated Beneficiary (as defined in Section [X]), December 31 of the calendar year immediately following the calendar year of the Participant's date of death, (ii) if not payable to a Designated Beneficiary, December 31 of the calendar year that contains the fifth anniversary of the Participant's date of death, (iii) if payable to a Designated Beneficiary who is not an Eligible Designated Beneficiary, December 31 of the calendar year that contains the tenth anniversary of the Participant's death or (iv) if payable to the Participant's spouse, the later of (A) December 31 of the calendar year immediately following the calendar year of the Participant's date of death or (B) December 31 of the calendar year in which such Participant would have attained the age of seventy two (or the calendar year in which the participant would have attained age 70½ in the case of a Participant born before July 1, 1949) unless such surviving spouse dies before the payment is made, in which case this paragraph shall be applied as if the surviving spouse were the Participant.

#### 4.4 *Distribution Requirements.*

- (a) **General Rule.** This Section 4.4 is intended to comply with Code Section 457(d) and the regulations issued thereunder. To the extent that there is any conflict between the provisions of Code Section 457(d) and the regulations issued thereunder and any other provision in this Plan, the provisions of Code Section 457(d) and the regulations issued thereunder will control.
- (b) **Limits on Income Options.** Distributions, if not made in a single lump sum, shall be made over a period that does not exceed:
  - (1) the life of the Participant;
  - (2) the lives of the Participant and his or her Designated Beneficiary;
  - (3) a period certain not extending beyond the Life Expectancy of the Participant; or
  - (4) a period certain not extending beyond the life expectancies of the Participant and his or her Designated Beneficiary.
- (c) **Minimum Amounts to be Distributed.** The Plan and each custodial account, annuity contract or other agreement of the Investment Sponsor for each Participant shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the Regulations thereunder in both form and operation. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each custodial account, annuity contract and other agreements with the Investment Sponsor is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Section 1.408-8 of the Regulations, except as provided in Section 1.403(b)-6(e) of the Regulations.
- (d) **Death Distribution Provisions.** In the case of a Participant who dies while performing service in the uniformed services (as defined in Section 3401(h)(2)(A) of the Code) under Section 414(u) of the Code, the Beneficiaries of the Participant, shall to the extent required by Section 401(a)(37) of the Code, be entitled to any additional benefits (other than benefit accruals relating to the period of service in the uniformed services) that would be provided under the Plan had the Participant resumed then terminated employment on account of death.
  - (1) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed no later than as follows:
    - (A) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving

spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72 (or the calendar year in which the Participant would have attained age 70½ in the case of a Participant born before July 1, 1949), if later.

- (B) If the Participant's Designated Beneficiary is an Eligible Designated Beneficiary, then distributions to the Eligible Designated Beneficiary must begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (C) If the Participant's Designated Beneficiary is not an Eligible Designated Beneficiary, then the Participant's entire interest must be distributed by December 31 of the calendar year containing the tenth anniversary of the Participant's death.
  - (D) If the Participant does not have a Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (E) If the Participant's surviving spouse is the Participant's sole Eligible Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 4.4(d)(1), other than Section 4.4(d)(1)(A), will apply as if the surviving spouse were the Participant.
- (2) Commencement of Distributions. For purposes of this Section 4.4(d) and Section 4.4(f)(1), unless Section 4.4(d)(1)(E) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 4.4(d)(1)(E) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.4(d)(1)(A). 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 4.4(d)(1)(A)), the date distributions are considered to begin is the date distributions actually commence.
- (3) Forms of Distribution. 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 4.4(e) and 4.4(f) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Regulations.

- (4) **Special Rules.** If a Participant has more than one Designated Beneficiary and at least one of those beneficiaries is not an Eligible Designated Beneficiary, then the Participant is treated as not having an Eligible Designated Beneficiary; provided, however, that (1) if the Participant's Designated Beneficiary is an Eligible Designated Beneficiary because the Designated Beneficiary is a minor child of the Participant, then the Participant is treated as having an Eligible Designated Beneficiary, even if the Participant has other Designated Beneficiaries who are not Eligible Designated Beneficiaries; (2) if the Participant's Designated Beneficiary is a Type II Applicable Multi-Beneficiary Trust, then the beneficiaries of the trust are treated as Eligible Designated Beneficiaries without regard to whether any of the other trust beneficiaries are not Eligible Designated Beneficiaries; and (3) if the Participant's Designated Beneficiary is a Type I Applicable Multi-Beneficiary Trust, section 401(a)(9) of the Code may be applied separately with respect to the separate interests of the beneficiaries reflected in the separate trust of each beneficiary provided that the separate accounting rules of Section 1.401(a)(9)-8(a)(2) of the proposed Regulations are satisfied.

(e) **Required Minimum Distributions During Participant's Lifetime**

- (1) **Amount of Required Minimum Distribution For Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
- (A) 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 Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
  - (B) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse who is more than ten years younger than the Participant, 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 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) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 4.4(e) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.
- (f) Required Minimum Distributions After Participant's Death
- (1) Death On or After Date Distributions Begin.
    - (A) Participant Survived by Designated Beneficiary. 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 greater of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary using the Single Life Table set forth in Section 1.401(a)(9)-9 of the Regulations, determined as follows:
      - (i) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
      - (ii) If the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving Spouse is recalculated for each Distribution Calendar Year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
      - (iii) If the Participant's surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy

is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

- (B) No Designated Beneficiary. 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.

- (A) Participant Survived by Eligible Designated Beneficiary. If the Participant dies before the date distributions begin and there is an Eligible 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 Eligible Designated Beneficiary as described in Section 4.4(f)(1)(A).

- (B) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. 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 4.4(d)(1), this Section 4.4(f)(2) will apply as if the surviving Spouse were the Participant.

(3) Special Rules.

- (A) Determination of Applicable Denominator.

- (i) Except as provided in (ii), if the Participant has more than one Designated Beneficiary, then the applicable denominator for purposes of this Section 4.4(f) is determined using the Participant's oldest Designated Beneficiary.

- (ii) If the Participant's Designated Beneficiary is a Type II Applicable Multi-Beneficiary Trust, then only the



trust beneficiaries described in Section 1.401(a)(9)-4(g)(3)(i)(A) of the proposed Regulations are taken into account in determining the Participant's oldest Designated Beneficiary.

(B) Distribution of Participant's Entire Interest Required.

- (i) If a Participant's Designated Beneficiary is not an Eligible Designated Beneficiary, then the Participant's entire interest must be distributed by December 31 of the tenth calendar year following the calendar year of the Participant's death.
- (ii) If there is no Designated Beneficiary under Section 4.4(f)(1)(B), then the Participant's entire interest must be distributed by December 31 of the fifth calendar year following the calendar year of the Participant's death.
- (iii) If an Eligible Designated Beneficiary dies before the Participant's entire interest is distributed to such Eligible Designated Beneficiary, then any remaining amounts payable with respect to such Eligible Designated Beneficiary must be distributed to such beneficiary by December 31 of the tenth calendar year following the calendar year of such Eligible Designated Beneficiary's death.
- (iv) If an Eligible Designated Beneficiary is a minor child who reaches the age of majority before the Participant's entire interest is distributed to such Eligible Designated Beneficiary, then any remaining amounts payable to Eligible Designated Beneficiary must be distributed by December 31 of the tenth calendar year following the calendar year in which such Eligible Designated Beneficiary reaches the age of majority.
- (v) If an Designated Beneficiary is an Eligible Designated Beneficiary and the applicable denominator is determined under Section 4.4(f)(1)(A)(i), then the Participant's entire interest must be distributed to such Eligible Designated Beneficiary by December 31 of the calendar year in which the applicable denominator would have been less than or equal to one if it was determined under Section 4.4(f)(1)(A)(ii) or (iii).

- (vi) Except as provided in Section 4.4(f)(3)(B)(viii) and Section 4.4(f)(3)(B)(ix) and with respect to Type I Applicable Multi-Beneficiary Trust that satisfies the separate accounting rules of Section 1.401(a)(9)-8(a)(2) of the proposed Regulations, if the Participant has more than one Designated Beneficiary, then Section 4.4(f)(3)(B)(i), (iii), (iv) and (v) above shall be applied using the Participant's oldest Designated Beneficiary.
- (vii) If any of the Participant's Designated Beneficiaries is an Eligible Designated Beneficiary who is a minor child, then Section 4.4(f)(3)(B)(iii) and (iv) are applied using the oldest of the Participant's Eligible Designated Beneficiaries who is a minor child, and Section 4.4(f)(3)(B)(i) and (v) do not apply.
- (viii) If a Participant's Designated Beneficiary is a Type II Applicable Multi-Beneficiary Trust, then only the trust beneficiaries described in Section 1.401(a)(9)-4(g)(3)(i)(A) of the proposed Regulations are taken into account in determining the Participant's oldest Designated Beneficiary.
- (ix) If a Participant's Designated Beneficiary is a Type II Applicable Multi-Beneficiary Trust, then Section 4.4(f)(3)(B)(iii) applies as if the death of the Participant's Eligible Designated Beneficiary does not occur until the death of the last trust beneficiary who is described in Section 1.401(a)(9)-4(g)(3)(i)(A) of the proposed Regulations, and Section 4.4(f)(3)(B)(v) does not apply.
- (x) In the event the Participant dies before the Required Beginning Date and the Participant's entire interest must be distributed by December 31 of either the fifth or the tenth calendar year following the calendar year of the Participant's death in accordance with subsection (3)(B)(i) or (ii) above, distributions may be delayed until the end of the applicable period.

(g) Definitions

- (1) Designated Beneficiary. The individual who is designated as the beneficiary under Section 7.1 of the Plan and is the Designated Beneficiary under Section 401(a)(9)(E) of the Code and Section 1.401(a)(9)-4(a) of the proposed Regulations.

- (2) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year 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 4.4(d)(1). 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) **Eligible Designated Beneficiary.** A Designated Beneficiary who is a surviving spouse or minor child of the Participant, a disabled or chronically ill individual or any other individual not more than ten years younger than the Participant at the time of the Participant's death pursuant under section 401(a)(9)(E) of the Code and Section 1.401(a)(9)-4(e) of the proposed Regulations.
- (4) **Life Expectancy.** Life expectancy as computed by use of the applicable table in Section 1.401(a)(9)-9 of the Regulations.
- (5) **Participant's Account Balance.** The account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.
- (6) **Required Beginning Date.** The date specified in Section 4.3(b)(1) of the Plan.
- (7) **Type I Applicable Multi-Beneficiary Trust.** A trust described in Section 1.401(a)(9)-4(g)(2) of the proposed Regulations.
- (8) **Type II Applicable Multi-Beneficiary Trust.** A trust described in Section 1.401(a)(9)-4(g)(3)(i) of the proposed Regulations.

(h) Waiver of Required Minimum Distributions

- (1) Notwithstanding Section 4.4(c) of the Plan, a Participant or Designated Beneficiary who would have been required to receive required minimum distributions in 2009 but for the enactment of section 401(a)(9)(H) of the Code shall receive or waive such distributions subject to any direct rollover provisions as specified in the terms of each custodial contract, annuity or other agreement with the Investment Sponsor.
- (2) Notwithstanding Section 4.4(c) of the Plan, a Participant or Designated Beneficiary who would have been required to receive required minimum distributions in 2020 but for the enactment of Section 401(a)(9)(I) of the Code shall receive or waive such distributions subject to any direct rollover provisions as specified in the terms of each custodial contract, annuity or other agreement with the Investment Sponsor.

4.5 ***Plan-to-Plan Transfers/Direct Rollovers.***

- (a) Notwithstanding any provision of the Plan to the contrary, to the extent permitted by law, all or any part of the Account Balance of a Participant in the Plan shall be transferred to another eligible governmental plan (as defined in Treas. Reg. § 1.457-2) in which the former Participant has become a participant, if:
  - (1) the plan receiving such amounts provides for acceptance of such transfers and for each participant to have an amount deferred under its plan immediately after the transfer at least equal to the amount transferred from the Plan;
  - (2) the Participant gives written direction to the Plan Administrator in a satisfactory form to make such transfer; and
  - (3) the Participant has had a Severance from Employment with Employer and is performing services for the entity maintaining the receiving plan.
- (b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Participant's election under this Section 4.5(b), 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 Section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in Section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in Section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover in accordance with Code Sections 457(b)(1)(c) and 401(a)(31). An

eligible rollover distribution to a Roth IRA applies only to qualified rollover distributions (as defined in Section 408A(e)(2) of the Code) on or after January 1, 2008, in case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse of the Participant 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 Section 408(d)(3)(C) of the Code). Each Investment Sponsor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the recipient of the eligible rollover distribution of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

- (c) Any Participant who participates in a defined benefit governmental plan (as defined in Code Section 414(d)) may request a direct transfer from this Plan to the defined benefit governmental plan if the transferred assets are used for the following purposes:
- (1) the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the defined benefit governmental plan; or
  - (2) the repayment of contributions and earnings related to a previous forfeiture of service credit under the defined benefit governmental plan. Such transfer may be made before Severance from Employment. An in-service transfer is permitted under this Section 4.5 only if the Participant is transferred to another eligible governmental plan maintained by the Employer or within the same State.

4.6 ***Amount of Account Balance.*** Except as provided in Section 4.4, the amount of any payment under this Article IV shall be based on the amount of the Account Balance on the preceding Valuation Date.

4.7 ***Coronavirus-Related Distributions.*** Coronavirus-Affected Participants may designate all or a portion of a qualifying distribution as a Coronavirus-Related Distribution. The Administrator may rely upon the Participant's certification that the Participant satisfies the conditions to be a Coronavirus-Affected Participant in determining whether any distribution is a Coronavirus-Related Distribution.

- (a) A Coronavirus-Related Distribution must be made in accordance with the distribution provisions of the Plan, except that:

- (1) A Coronavirus-Related Distribution shall be deemed to be made after the occurrence of any distributable events otherwise applicable under Code Section 457(d)(1)(A).
  - (2) The requirements of Code Sections 457(d)(1), 402(f), and 3405 shall not apply.
- (b) A “Coronavirus-Related Distribution” means any distribution made from January 1, 2020 to December 30, 2020, to a Coronavirus-Affected Participant, to the extent that such distribution, when aggregated with all other Coronavirus-Related Distributions to the Coronavirus-Affected Participant (including the aggregate amount of such distributions from all plans maintained by the employer and any member of any controlled group which includes the employer), does not exceed \$100,000.
- (c) A Participant who received a Coronavirus-Related Distribution may repay to the Plan in one or more contributions, provided such Coronavirus-Related Distribution is eligible for tax-free rollover treatment. Any such re-contribution:
- (1) Will be treated as having been made in a direct rollover to the Plan;
  - (2) Must be made during the three-year period beginning on the day after the date on which such distribution was received;
  - (3) If made in three payments, must be made ratable over a three-year period, starting in the year in which the Coronavirus-Related Distribution was received; and
  - (4) Cannot exceed the amount of such distribution.

4.8 ***Qualified Birth or Adoption Distributions.*** Effective January 1, 2020, Qualified Birth or Adoption Distributions in an amount up to \$5,000 for each child or eligible adoptee will be permitted from the Plan. The Administrator may rely upon the Participant’s certification that the request satisfies the conditions to be a Qualified Birth or Adoption Distribution.

- (a) Definitions.
- (1) A “Qualified Birth or Adoption Distribution” is any withdrawal from the Plan during the one-year period beginning on the date the Participant’s child is born or eligible adoptee’s legal adoption is finalized.
  - (2) An “eligible adoptee” is any individual who has not attained age 18 or is “physically or mentally incapable of self-support,” other than a child of the Participant’s spouse.

- (3) For purposes of Code Section 72(t)(2)(H)(iii)(II), the determination of whether an individual is physically or mentally incapable of self-support is made in the same manner as the determination of whether an individual is disabled under Code Section 72(m)(7), which defines when an individual is disabled for purposes of the exception to the 10% additional tax under Code Section 72(t)(2)(A)(iii). Code Section 72(m)(7) provides that an individual is considered to be disabled if that individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.
- (b) A Participant who received a Qualified Birth or Adoption Distribution may repay to the Plan in one or more contributions, provided such Qualified Birth or Adoption Distribution is eligible for tax-free rollover treatment. Any such re-contribution:
  - (1) Will be treated as having been made in a direct rollover to the Plan;
  - (2) May be made in one or multiple payments; and
  - (3) Cannot exceed the amount of such distribution.

## **ARTICLE V – LOANS**

- 5.1 **Loans.** Loans are available to Participants who are Eligible Employees and have not yet commenced benefit payments, subject to the terms of the Investment Options available under the Plan and as provided in this Article V. Application for a loan should be submitted to the Plan Administrator.
- 5.2 **Maximum Loan Amount.** No loan to a Participant hereunder may exceed the lesser of:
  - (a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Plan Administrator (not taking into account any payments made during such one-year period), or
  - (b) one half of the value of the Participant's vested Account Balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Plan Administrator).

For purposes of this Section 5.2, any loan from any other plan maintained by 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 under this Section 5.2 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

5.3 ***Minimum Loan Amount.*** No loan to a Participant hereunder may be less than \$1,000.

5.4 ***Loan Fee.*** The Plan Administrator or Trustee may assess a loan processing fee.

5.5 ***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 a 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 section 414(u) of the Code 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 Plan 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 interest at a rate equal to:
  - (1) one percentage point above the prime rate as published in the Wall Street Journal on the first business day of the month in which the loan is approved by the Plan Administrator; or
  - (2) a rate approved by the Texas Department of Insurance, established in compliance with Chapter 1110, Texas Insurance Code, or such other applicable regulatory agency, in effect on the first business day of the month in which the loan is approved by the Plan Administrator.

5.6 ***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 Article V 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 next calendar month 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 Plan 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.

(2) In the case of any default on a loan to a Participant, the Plan 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 Plan 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.

(3) 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).

5.7 **Repayment.** The Participant may be required, 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 by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction 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 loan at any time (but may not make a partial prepayment); and provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or is no longer employed by a participating employer (that has consented to make payroll deductions for this purpose) 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.

5.8 ***Loans to Coronavirus-Affected Participants.***

(a) Notwithstanding the provisions of this Article V, for a loan made from the Plan to a Coronavirus-Affected Participant during the 180-day period beginning on March 27, 2020, the maximum loan percentage in this Section

shall be applied by substituting “100%” for “50%” and the maximum loan amount in this Section shall be determined by substituting “\$100,000” for “\$50,000”.

- (b) Notwithstanding loan repayment terms under the Plan, loan repayments that are due for a Coronavirus-Affected Participant during the period beginning on March 27, 2020 and ending not later than December 31, 2020 (“eligible repayment period”) may be suspended, provided that such suspension period shall not last beyond one year (“suspension period”). The loan repayments must resume after the end of the suspension period, and the term of the loan will be extended by the duration of the suspension period. Interest accruing during the suspension period will be added to the remaining principal of the loan. The Coronavirus-Affected Participant shall repay the loan thereafter by amortization in substantially level installments over the remaining period of the loan.

## ARTICLE VI – FORMS OF PAYMENTS

- 6.1 **Election.** Subject to the rules of the Investment Sponsor, a Participant or Beneficiary may elect the form of distribution of his or her benefits and may revoke that election, with or without a new election, at any time at least thirty (30) days before his or her benefits begin, or such other time as permitted by the Plan Administrator, by notifying the Plan Administrator in writing of his or her election.
- 6.2 **Forms of Payments.** The forms of benefit payments shall include:
- (a) Lump Sum. A lump sum payment of all or a part of the balance credited to a Participant’s account.
  - (b) Single Life Annuity. An annuity payable in equal installments for the life of the Participant that terminates upon the Participant’s death.
  - (c) Joint Life Annuity. An annuity payable in equal installments for the joint lives of the Participant and his or her Beneficiary.
  - (d) Fixed Period Payments. Payments for a fixed period of not less than five years and not more than thirty years.
  - (e) Such other annuity and withdrawal options as provided under the Investment Options available under this Plan.

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

- 6.3 **Failure to Make Election.** If a Participant or Beneficiary fails to elect a form of payment in a timely manner, benefits shall be paid in a lump sum.

- 6.4 ***Account Balances of \$1,000 or Less.*** Notwithstanding Sections 6.1 and 6.2, if the amount of a Participant's Account Balance is not in excess of \$1,000 (or, if greater, the dollar limit under Section 401(a)(31)(B) of the Code, for mandatory distributions which would trigger the requirement thereunder that the distribution be transferred to an individual retirement plan if the distributee does not make an election to receive the distribution directly) on the date that payments commence under Section 4.3 or on the date of the Participant's death, then payment shall be made to the Participant (or to the Beneficiary if the Participant is deceased) in a lump sum equal to the Participant's Account Balance as soon as practicable following the Participant's retirement, death, or other Severance from Employment.

## **ARTICLE VII – BENEFICIARY INFORMATION**

- 7.1 ***Beneficiary Designation.*** A Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time prior to commencement of benefits, in writing, in a form approved by the Investment Sponsor. Such designation, amendment or revocation shall be effective upon satisfactory receipt by the Investment Sponsor.
- 7.2 ***Failure to Designate a Beneficiary.*** Benefits shall be paid to the Participant's estate if, prior to the date a Participant commences to receive payment of benefits under the Plan, the Participant has not designated a Beneficiary or no designated Beneficiary survives the Participant and benefits are payable following the Participant's death.

## **ARTICLE VIII – PLAN ADMINISTRATION**

- 8.1 ***Plan Administration.*** Employer shall be responsible for appointing a Plan Administrator to administer the Plan. The Plan Administrator shall have sole discretionary responsibility for the interpretation of the Plan, enrolling Participants in the Plan, sending contributions on behalf of each Participant to the applicable Investment Sponsor, and for performing other duties required for the operation of the Plan. Any action taken on any matter within the discretion of the Plan Administrator shall be made in its sole and absolute discretion based on this Plan document and shall be final, conclusive, and binding on all parties. In order to discharge its duties hereunder, the Plan Administrator shall have the power and authority to delegate ministerial duties and to employ such outside professionals as may be required or appropriate for prudent administration of the Plan. Employer shall pay the compensation of such outside professionals and any other expenses incurred by the Plan Administrator in the administration of the Plan. The Plan Administrator shall also have authority to enter into agreements, in accordance with Regents' Rules and Regulations and established U.T. System policy, on behalf of the Employer necessary to implement this Plan, subject to any prior approval required by the Employer.
- (a) Plan Administrator may delegate its functions to be performed under this Plan to any designee with legal authority to perform such functions.

- (b) Oversight Committee. Employer may direct and supervise the activities of the Plan Administrator through an Oversight Committee, established in the manner and with the authority as determined by Employer.
- 8.2 ***Contracts with Investment Sponsors.*** Plan Administrator shall execute a written contract with each Investment Sponsor that has satisfied the requirements for participation as an Investment Sponsor in the Plan. Notwithstanding the contract with the Investment Sponsor, Plan Administrator may immediately transfer to the Deferred Compensation Trust Fund all deferred amounts and investment income from an Investment Sponsor who fails to satisfy the requirements of Chapter 609, Subchapter D, Government Code, or the Plan Administrator.
- 8.3 ***Accounts and Expenses.*** The Plan Administrator shall establish and maintain contracts with each Investment Sponsor and each Investment Sponsor shall establish and maintain accounts on behalf of each Participant who has selected the Investment Sponsor. Such Participant's contracts and/or accounts shall be valued in accordance with the rules of the Investment Option. Each Participant shall receive a written notice from the Investment Sponsor(s) he or she has selected, of his or her contract value or account balance with that Investment Sponsor following such valuation or valuations, provided that such notice shall not be required to be given more than one time per calendar quarter. Each Participant's contract value and Account Balance shall reflect the aggregate of his or her aggregate Elective Deferrals, transfers and rollovers, if any, and shall also reflect investment experience credited to such contracts and/or accounts and shall reflect expense charges applied to, and distributions made from, such contract and/or account.
- 8.4 ***Investments.*** A Participant must request that amounts contributed to the Plan on his or her behalf be allocated among the Investment Options available through the Investment Sponsor selected by the Participant and otherwise established under the Plan. The initial allocation request must be made at the time of enrollment. Once made, an investment allocation request shall remain in effect for all subsequent contributions until changed by the Participant. A Participant may change his or her investment allocation by submitting a request to the Plan Administrator in such manner as may be required. Such changes shall become effective as soon as administratively feasible after receipt of properly completed change instructions.
- 8.5 ***Administration Fees.*** Employer may assess a fee for the administration of the Plan against each Participant.
- 8.6 ***Forms.*** Any forms required or permitted to be submitted by the Plan may be completed in a written or electronic format.

## **ARTICLE IX – AMENDMENT OR TERMINATION OF PLAN**

- 9.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, Employer reserves the right at any time to amend, otherwise modify, or terminate the Plan without any liability for such action, with the provision of 90

days' notice of cancellation. No amendment shall increase the duties or responsibilities of the Trustee or any Investment Sponsor without its prior consent thereto in writing. In the event of a termination of the Plan, the Plan Administrator shall notify Participants of the termination. Termination shall not affect the amount of benefit which at the time of termination has accrued for any Participant. Upon termination, all amounts deferred under the Plan will be distributed to Participants as soon as administratively practicable after the date of termination.

#### **ARTICLE X – TRUST FUNDS**

- 10.1 ***Trust Fund.*** All amounts of Elective Deferrals and other contributions to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Deferred Compensation Trust Fund in accordance with this Plan and the Deferred Compensation Trust Agreement. The Trustee shall ensure that all investments, amounts, property, and rights held under the Deferred Compensation Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Deferred Compensation Trust Fund shall be held in trust pursuant to the Deferred Compensation Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Deferred Compensation Trust Fund. It shall not be possible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Deferred Compensation Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

#### **ARTICLE XI – MISCELLANEOUS**

- 11.1 ***Plan Non-Contractual.*** Nothing contained in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with Employer, and nothing contained in this Plan will be construed as a commitment on the part of Employer to continue the employment or the rate of compensation of any person for any period, and all Employees of Employer will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 11.2 ***Claims of Other Persons.*** The provisions of the Plan will in no event be construed as giving any Participant or any other person, firm, corporation or other legal entity, any legal or equitable right against Employer, Plan Administrator, or the officers, employees, directors or trustees of either, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 11.3 ***Assignments.*** No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily, other than as provided under Section 401(a)(13) of the Code. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with

respect to a Participant pursuant to a domestic relations order, unless, effective with respect to distributions made on or after January 1, 2002, such order is determined to be a qualified domestic relations order, as defined in Section 414(p) of the Code, and the requirements of any rules adopted by the Plan Administrator. In the event that such an order is determined to be a qualified domestic relations order, benefits shall be payable in accordance with such qualified domestic relations order and with Code Section 414(p), and distribution to an alternate payee may be made if authorized by the qualified domestic relations order, even if the affected Participant has not reached the earliest retirement age (as defined in Code Section 414(p)) under the Plan.

- 11.4 ***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 Plan 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 Plan Administrator, to the Employer.
- 11.5 ***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 Plan Administrator, benefits will be paid to such person as the Plan 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.
- 11.6 ***Procedure When Distributee Cannot Be Located.*** The Plan 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 (a) the mailing by certified mail of a notice to the last known address shown on Employer's or the Plan Administrator's records, (b) notification sent to the Social Security Administration, and (c) the payee has not responded within 6 months. If the Plan Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Deferred Compensation Trust Fund shall continue to hold the benefits due such person.
- 11.7 ***Contracts.*** The terms of each arrangement pursuant to which an Investment Option is offered hereunder, the terms of a trust in which an Investment Option may be held, and any contract issued on behalf of a Participant or certificate issued to a Participant, are a part of the Plan as if fully set forth in the Plan Document and the provisions of which are hereby incorporated by reference into the Plan. In the case where there is any inconsistency or ambiguity between the terms of the Plan and those of any contract, certificate or trust, if any, funding the Plan, the terms of the Plan control.

- 11.8 **Withholding.** To the extent required by the laws in effect at the time payments are made hereunder, Trustee shall withhold from such payments, any taxes required to be withheld for federal, state or local government purposes.
- 11.9 **Representations.** Plan Administrator and Employer do not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will result from participation in this Plan or assume any liability for a Participant's compliance with the Code. Participant is responsible for monitoring the financial status of the Investment Sponsor(s) selected by Participant, market conditions, and the amount of the Participant's Elective Deferrals and investment income that is invested in the Investment Sponsor(s) Investment Option(s). Participant should consult with his or her own representative regarding all questions of any consequences arising from participation in this Plan. Furthermore, Plan Administrator and Employer do not represent or guarantee investment returns with respect to any Investment Options and shall not be required to restore any loss which may result from such investment or lack of investment.
- 11.10 **Severability.** Any provision of this Plan prohibited by the law of any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.
- 11.11 **Governing Law.** Except to the extent superseded by federal law, the laws of the State of Texas shall be controlling in all matters relating to the Plan, including the construction and performance hereof, notwithstanding principles of conflicts of laws.
- 11.12 **Captions.** The captions of Articles and Sections of this Plan are for convenience of reference only and shall not control or affect the meaning or construction of any of its provisions.
- 11.13 **Pronouns.** Whenever used herein, the masculine pronoun is deemed to include the feminine. The singular form, whenever used herein, shall mean or include the plural form where applicable, and vice versa.
- 11.14 **Liability.** Except as otherwise expressly provided herein, no member of the Board of Regents of the U.T. System, no delegate of the Plan Administrator, and no officer, employee, representative or agent of Employer or the Plan Administrator (specifically including but not limited to an employee of U.T. System acting at the direction of the Plan Administrator) shall have any liability to any person, firm or corporation based on or arising out of the Plan. Notwithstanding the foregoing, no Trustee shall be construed or deemed to be a delegate or an agent of the Plan Administrator for purposes of this Section 11.14.
- 11.15 **Sovereign Immunity.** This Plan is neither a waiver of U.T. System's sovereign immunity nor a waiver of any other legal or factual defenses to which U.T. System is legally entitled. This Plan does not waive any legal or factual defenses, including but not limited to sovereign immunity and qualified or official immunity, to which

an individual Regent, the Plan Administrator, officer, employee, representative or agent of Employer or the Plan Administrator, is legally entitled.

- 11.16 ***Binding Effect.*** This Plan shall be binding upon and shall inure to the benefit of U.T. System, its successors and assigns and each Participant and his beneficiaries, heirs, executors, administrators and legal representatives.

## **ARTICLE XII – TEXA\$AVER 457 PLAN TRANSFER**

- 12.1 ***Transfer of Funds from the TexaSaver 457 Plan.*** As authorized by Texas Government Code § 609.515 and the Board of Regents, the Plan will receive a transfer of voluntary deferred compensation funds of Eligible Employees from the TexaSaver 457 Plan (the “TexaSaver Plan Transfer”) administered by the Board of Trustees of the Employees Retirement System of Texas.
- 12.2 ***Enrollment in the Plan.*** For Eligible Employees who become Participants in the Plan because of the TexaSaver Plan Transfer, enrollment shall be effective upon receipt of the such Eligible Employee’s transferred assets without filing a Voluntary Salary Deferral Agreement or completion of Investment Sponsor account application forms. For such Eligible Employees who are Employees at the time such Employee’s funds are received because of the TexaSaver Plan Transfer but who were not Participants in the Plan prior to such receipt, Elective Deferrals to the Plan shall be in the same amounts as elected by such Eligible Employees under the TexaSaver 457 Plan immediately before the TexaSaver Plan Transfer. Such an Eligible Employee may change the amount of his or her Elective Deferral pursuant to Section 3.2 or terminate his or her Elective Deferral pursuant to Section 3.3 at any time on or after his or her funds are received by the Plan under the TexaSaver Plan Transfer.
- 12.3 ***Commencement of Participation in the Plan.*** If not already a Participant in the Plan, an Eligible employee, who has funds transferred to the Plan pursuant to the TexaSaver Plan Transfer, shall become a Participant on the date of such transfer.
- 12.4 ***Investment Options.*** With regard to funds received by the Plan for an Eligible Employee pursuant to Elective Deferrals received pursuant to Section 12.2 for an Eligible Employee who is an Employee at the time of such transfer, the Plan Administrator shall hold such funds in the Deferred Compensation Trust Fund and shall invest such funds in Investment Options which, as closely as possible, represent the types and allocation of investments maintained by such Eligible Employee in the TexaSaver 457 Plan immediately before the TexaSaver Plan Transfer. Such an Eligible Employee may change his or her investment allocation pursuant to Section 8.4 at any time on or after his or her funds are received by the Plan under the TexaSaver Plan Transfer.
- 12.5 ***Beneficiary Designation.*** With regard to funds received by the Plan for an Eligible Employee pursuant to Elective Deferrals received pursuant to Section 12.2 for an Eligible Employee and/or pursuant to the TexaSaver Plan Transfer, including the



earnings of such funds, such Eligible Employee must make a beneficiary designation under the Plan (any beneficiary designation under the TexaSaver Plan will no longer apply); provided, however, that, if the Eligible Employee already has a beneficiary designation under the Plan with Investment Sponsor Fidelity at the time of such receipt or transfer, the Fidelity beneficiary designation will automatically apply to such receipts and transfers. Such Eligible Employee may amend or revoke such Beneficiary designation pursuant to Section 7.1 at any time on or after his and her funds are received by the Plan under the TexaSaver Plan Transfer.

### **ARTICLE XIII – ROTH ELECTIVE DEFERRALS**

- 13.1 **General Application.** This Article XIII will apply to contributions as of an effective date specified by the Plan Administrator but in no event before the first day of the first taxable year beginning on or after January 1, 2012. As of the effective date of this Article XIII, the Plan will accept Roth Elective Deferrals made on behalf of Participants. A Participant's Roth Elective Deferrals will be allocated to a separate account maintained for such deferrals as described in Section 13.2 below. Unless otherwise stated, Roth Elective Deferrals will be treated as Elective Deferrals for all purposes under the Plan.
- 13.2 **Separate Accounting.** Contributions and withdrawals of Roth Elective Deferrals will be credited and debited to the Roth Elective Deferral account maintained for each Participant. The Plan will maintain a record of the amount of Roth Elective Deferrals in each Participant's account. Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Elective Deferral account and the Participant's other accounts under the Plan. No contributions other than Roth Elective Deferrals and properly attributable earnings will be credited to each Participant's Roth Elective Deferral account.
- 13.3 **Direct Rollovers.**
- (a) Notwithstanding any provision of the Plan to the contrary, a direct rollover of a distribution from a Roth Elective Deferral account under the Plan will only be made to another Roth elective deferral account under an applicable retirement plan described in Section 402A(e)(1) of the Code or to a Roth IRA described in Section 408A of the Code, and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.
  - (b) Notwithstanding any provision of the Plan to the contrary, the Plan will accept a rollover contribution to a Roth Elective Deferral account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Section 402A(e)(1) of the Code and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.

- (c) Eligible rollover distributions from a Participant's Roth Elective Deferral account are taken into account in determining whether the total amount of the Participant's Account Balance under the Plan exceeds \$1,000 for purposes of mandatory distributions from the Plan.

13.4 ***Correction of Excess Contributions.*** In the case of a distribution of excess contributions, a Participant may designate the extent to which the excess amount is composed of pre-tax Elective Deferrals and Roth Elective Deferrals but only to the extent such types of deferrals were made for the Plan Year. If the Participant does not designate which type of Elective Deferrals is to be distributed, the Plan will distribute pre-tax Elective Deferrals first.

13.5 ***Definitions.***

- (a) Roth Elective Deferrals. A Roth Elective Deferral is an Elective Deferral that is (1) designated irrevocably by the Participant at the time of the cash or deferred election as a Roth Elective Deferral that is being made in lieu of all or a portion of the pre-tax Elective Deferrals the Participant is otherwise eligible to make under the Plan; and (2) treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

13.6 ***Distributions.***

- (a) Qualified Distributions. Distributions of Roth Elective Deferrals will be tax-free for federal income tax purposes if:
  - (1) The amounts are held for a 5-year holding period measured from the first year that initial Roth Deferral Contributions were made on behalf of the Participant, and
  - (2) The distribution is due to a Participant's attainment of age 59 1/2, death, or due to disability.
- (b) Non-Qualified Distributions. The distribution of Roth Elective Deferrals that are not considered "Qualified Distributions" as defined in Section 13.6(a) may be distributed subject to the distribution rules applicable to Elective Deferrals as described in Section 4.1 of the Plan. Non-qualified distributions will be subject to federal income tax to the extent that the amount distributed exceeds the value of the Roth Elective Deferrals.

**ARTICLE XIV – IN-PLAN ROTH ROLLOVERS**

14.1 ***General Application.*** This Article XIV will apply to distributions as of an effective date specified by the Plan Administrator but in no event before the first day of the first taxable year beginning on or after the effective date of Article XIII. As of the

effective date of this Article XIV, the Plan will accept in-plan Roth rollovers. A Participant's in-plan Roth rollover will be allocated to a separate account maintained for such rollovers called the Roth Rollover Account.

14.2 ***In-Plan Direct Roth Rollover.*** Notwithstanding any provision of the Plan to the contrary, with respect to an in-service withdrawal pursuant to Article IV that is an eligible rollover distribution under the Code, a distributee may elect a direct rollover of such withdrawal to a separate Roth Rollover Account established for such purpose.

14.3 ***Definitions.***

- (a) Roth Rollover Account. An individual account for an Eligible Employee or Participant which is credited with either (1) Roth rollover contributions pursuant to Section 13.3(b) or (2) a direct rollover of such Participant pursuant to Section 14.2 and which reflects such account's allocation of net income (or net loss).

IN WITNESS WHEREOF, U.T. System has caused the Amended and Restated UTSaver Deferred Compensation Plan to be effective as of the 1st day of January 2022.

THE UNIVERSITY OF TEXAS SYSTEM

By:  \_\_\_\_\_  
DocuSigned by:  
8697DB42708140B...

Name: Jonathan Pruitt

Title: UT System

Date: 12-27-2022