

College of St. Scholastica

**Defined Contribution
Retirement Plan
For
Bargaining Unit Employees**

September, 2001

***This Sample Plan Document is to be Used Solely as a
Guide for the Institution's Attorney.***

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Article I: Definitions

- 1.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 **Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(l)(2) and 419A(d)(2) of the Code, if any.
- 1.3 **Beneficiary(ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 **Board** means the Institution's Board of Trustees.
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 **Compensation** means the amount reported as wages on the Participant's W-2, excluding bonuses or overtime, plus compensation not currently includable because of the application of Code Sections 125 or 403(b).

In addition to other applicable limitations stated in the plan, and notwithstanding any other provision of the Plan to the contrary, for Plan years beginning on or after January 1, 1994, the annual compensation of each employee taken into account under the plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For plan years beginning on or after January 1, 1994, any reference in this plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit stated in this provision.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

For limitation years beginning on and after January 1, 2001 for purposes of applying the limitations described in this section of the Plan, compensation shall include elective amounts that are not includible in the gross income of the Participant by reason of Code Section 132(f)(4).

Notwithstanding any provision in this document to the contrary, Compensation for a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the Compensation such Participant would have received for the limitation year if the Participant had been paid at the rate of Compensation paid immediately before becoming permanently and totally disabled.

- 1.7 **Date of Employment or Reemployment** is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the Institution.

1.8 **Elective Deferrals** means any contributions made to the Plan at the election of the Participant pursuant to a salary reduction agreement that complies with the requirements of Internal Revenue Code Section 403(b). This also includes any contributions for a Participant pursuant to an election to defer compensation under any Code Section 401(k), 408(k) (Simplified Employee Pension), 457(b) or 403(b) plan.

1.9 **Eligible Employee** means any bargaining unit employee.

No individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole discretion, or individual performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer, shall be an Eligible Employee for purposes of this plan.

If an individual is classified as an independent contractor during any period of providing services to the institution, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation. Notwithstanding the above, if the failure to cover such reclassified individual would prevent the Plan from satisfying the minimum coverage requirement under Code Section 410(b) for a Plan year, the minimum number of such individuals necessary for the plan to fulfill such minimum coverage requirements will be included as eligible employees for the plan year, with preference given to those reclassified individuals with the smallest amount of compensation.

1.10 **Eligible Employer** means any educational organizations .

1.11 **Excess Elective Deferrals** means those Elective Deferrals that are includable in a Participant's gross income under section 402(g) of the Code to the extent the Participant's Elective Deferrals for a taxable year exceed the dollar limitation under such Code Section.

1.12 **Fund Sponsor** means an insurance, variable annuity or investment company that provides Funding Vehicles available to Participants under this Plan.

1.13 **Funding Vehicles** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

1.14 **Hours of Service means:**

(a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.

(b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is directly or indirectly paid, or entitled to payment by the Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Institution is a member, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the regulations thereunder. Hours of Service also will be credited for any person considered an employee for this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

Hours of Service will be determined on the basis of actual hours that an employee is paid or entitled to payment.

- 1.15 **Institution** means College of St. Scholastica.
- 1.16 **Institution Plan Contributions** means contributions made by the Institution under this Plan.
- 1.17 **Limitation Year** means a calendar year.
- 1.18 **Normal Retirement Age** means age 65.
- 1.19 **Participant** means any Eligible Employee of the Institution participating in this Plan.
- 1.20 **Participant Plan Contributions** means the contributions made by a Participant under this Plan.
- 1.21 **Plan** means the Institution's Defined Contribution Retirement Plan as set forth in this document.
- 1.22 **Plan Contributions** means contributions made under this Plan by the Institution and Participant.
- 1.23 **Plan Entry Date** means the first of the month beginning after the date that the employee has met the participation requirements set forth in Article III.
- 1.24 **Plan Year** means January 1 through December 31.
- 1.25 **Qualified Election** means a waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity shall not be effective unless: (a) the Participant's spouse consents in writing to the election; (b) the election designates a specific Beneficiary(ies), including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (unless the spouse expressly permits designations by the Participant without any further spousal consent); (c) the spouse's consent acknowledges the effect of the election; and (d) the spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment that may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that there is no spouse or that the spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary(ies), and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Article VI.

- 1.26 **Qualified Joint and Survivor Annuity** means an immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse that is not less than 50 percent (and not more than 100 percent) of the amount payable during the joint lives of the Participant and the spouse that can be purchased with the Participant's vested Accumulation Account. The percentage of the survivor annuity under the Plan shall be 50 percent.
- 1.27 **Qualified Pre-retirement Survivor Annuity** means an annuity for the life of the surviving spouse of a deceased Participant the actuarial equivalent of which is not less than 50 percent of the Participant's Accumulation Account(s) at the date of death.
- 1.28 **Year of Service** means a 12-month period (computation period) during which the Eligible Employee completes 1,000 or more Hours of Service. For purposes of eligibility for participation, Year(s) of Service with an Eligible Employer during the period immediately preceding the Eligible Employees' Date of Employment with the Institution will be counted.

Article II: Establishment of Plan

- 2.1 **Establishment of Plan.** The Board of College of St. Scholastica (the "Institution") established the Plan as of April 1, 1993.

This plan document sets forth the provisions of this Code Section 403(b) Plan. The Plan was restated as of September, 2001. Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants.

A Code Section 403(b) Defined Contribution Retirement Plan is a plan that provides for a separate account(s) for each Participant that meets the requirements of Code Section 403(b). Benefits are based solely on the amounts of Plan Contributions to the Participant's Accumulation Account(s) and earnings, if any. All benefits under the Plan are fully funded and provided through the Funding Vehicle(s) selected by the Participant. Benefits are not subject to, nor covered by, federal plan termination insurance.

Article III: Eligibility for Participation

- 3.1 **Eligibility.** An Eligible Employee may, on a voluntary basis, begin participation in this Plan on the Plan Entry Date following fulfillment of the following requirement(s):

- ✓ The completion of 1 Year of Service at the Institution.
- ✓ The attainment of age 26.

Year(s) of Service with an Eligible Employer will be counted for meeting the eligibility requirements.

- 3.2 **Notification.** The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.

- 3.3 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.
- 3.4 **Reemployment.** A former employee who is reemployed by the Institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.
- 3.5 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:
- ✓ his or her contributions under the Plan are terminated;
 - ✓ he or she ceases to be an Eligible Employee;
 - ✓ the Plan is terminated.
- Furthermore, if a Participant begins to receive retirement benefits from the Accumulation Account(s) arising from Plan Contributions under this Plan before termination of employment, he or she will cease to be eligible and no further Institution Plan Contributions will be made on his or her behalf.
- 3.6 **Computation Period.** For purposes of determining Year of Service for purposes of eligibility for participation, the initial computation period is the 12-consecutive month period beginning with the day the employee first performs an Hour of Service. Any subsequent computation period will begin on the anniversary of the day the employee first performed an Hour of Service.

Article IV: Plan Contributions

- 4.1 **Plan Contributions.** Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III in accordance with the schedule below.

Institution Plan Contributions will only be made for Participants who are making the required Participant Plan Contribution.

Plan Contributions as a Percentage of Compensation

<u>By the Institution</u>	<u>By You</u>
5% of base earnings to a maximum of monthly base earnings as designated in the current bargaining unit contract	0%
1 – 2%	1-2% Voluntary contribution of base earnings to a maximum of the amount designated in the current bargaining unit contract, matched by Institution

Participant Plan Contributions will be made on a tax-deferred basis pursuant to a salary reduction agreement in accordance with the requirements of Code Section 403(b) and the regulations thereunder. Under the salary reduction agreement, the employee's salary (paid after the agreement is signed) is reduced and the amount of the reduction is

applied as premiums to the Funding Vehicles available under this Plan. An election to make Participant Plan contributions under this Section may not be made retroactively and shall remain in effect until modified or terminated. A Participant may terminate his or her salary reduction agreement at any time. Subject to any reasonable rules established by the Plan Administrator, a Participant may modify his or her salary reduction agreement during a Plan Year by filing an appropriate form with the Plan Administrator. Such rules may include the number and frequency of such modifications during any Plan Year, but a Participant shall be permitted to make a modification at least once each Plan Year.

- 4.2 ***When Contributions Are Made.*** Plan Contributions will begin when the Institution has determined that the Participant has met or will meet the requirements of Article III. Any part of a year's Plan Contributions not contributed before this determination will be included in contributions made for that year after the determination. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor(s) at least annually. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor(s) as soon as it is administratively feasible for the Institution to segregate contributions, but in any event, within the time required by law.
- 4.3 ***Allocation of Contributions.*** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) at any time.
- 4.4 ***Leave of Absence.*** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave of absence.
- 4.5 ***Disability.*** The Institution will make contributions for Participants who are totally disabled (as defined in the Institution's long-term disability policy) on the basis of the compensation each such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming totally disabled, to the extent permitted by Code Section 415 or 403(b).
- 4.6 ***Transfer of Funds from Another Plan.*** The Fund Sponsor shall accept contributions that are transferred directly from any other plan described in section 403(b) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.
- 4.7 ***Acceptance of Rollover Contributions.*** If a Participant is entitled to receive a distribution from another plan described in section 403(b) of the Code that is an eligible rollover distribution under section 402 of the Code, the Fund Sponsor will accept such amount under this Plan provided the rollover to this Plan is made 1) directly from another plan; or 2) by the Participant within 60 days of the receipt of the distribution.
- 4.8 ***Uniformed Services.*** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with §414(u) of the Code.
- 4.9 ***Maximum Plan Contributions.*** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

For the purpose of calculating the limits of Code Section 415, compensation means a Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan and excluding the following: (a) employer contributions to a plan of deferred compensation that are not includible in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation; and (2) other amount that received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement towards the purchase of an annuity described in Code Section 403(b) (whether or not the

amounts are actually excludible from the gross income of the employee). For years beginning after December 31, 1997, compensation shall include any elective deferral (as defined in Code §402(g)(3)) and any amount which is contributed or deferred by the Institution at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code §125 or 457. Notwithstanding any provision in this document to the contrary, Compensation for a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the Compensation such Participant would have received for the limitation year if the Participant had been paid at the rate of Compensation paid immediately before becoming permanently and totally disabled.

Notwithstanding the preceding paragraph, Compensation for a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.

To the extent permitted by Code Section 415 and the regulations promulgated thereunder, if the Annual Additions exceed the Section 415 limitations, the excess amounts will be disposed of as follows: (a) any Participant Plan Contributions (plus any gain attributable to the excess), to the extent they would reduce the excess amount, will be returned to the Participant; and, to the extent necessary, (b) if, after the application of (a) an excess still exists, the excess will be held unallocated in a suspense account and will be applied to reduce Institution Plan Contributions in succeeding limitation years.

If the limitations are exceeded because the Participant is also participating in another Plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

The amount of Plan Contributions will also be subject to the limitations of Code Section 403(b). The limitations of Code Section 403(b) are hereby incorporated by reference.

The amount of Plan Contributions will also be subject to the Average Contribution Percentage (“ACP”) test of Code Section 401(m). The ACP for a Plan Year for Participants who are Highly Compensated Employees for each Plan Year and the prior year’s ACP for participants who were Non-highly Compensated Employees for the prior Plan Year must satisfy one of the following tests:

1. The ACP for a Plan Year for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the prior year’s ACP for Participants who were Non-highly Compensated Employees for the prior Plan Year multiplied by 1.25; or
2. The ACP for a Plan Year for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the prior year’s ACP for Participants who were Non-highly Compensated Employees for the prior Plan Year multiplied by 2, provided that the ACP for participants who are Highly Compensated Employees does not exceed the ACP for participants who were Non-highly Compensated Employees in the prior Plan Year by more than 2 percentage points.

For the first Plan Year this Plan permits any Participant to make Employee Contributions, provides for Matching Contributions, or both, and this is not a successor plan, for purposes of the foregoing tests, the prior year’s Non-highly Compensated Employee ACP shall be 3 percent unless the institution has elected to use the Plan Year’s ACP for these Participants.

Plan Contributions that exceed the limitations of Code Section 401(m) are Excess Aggregate Contributions. Notwithstanding any other provisions of this Plan, to the extent needed to meet the limitations of Code Section 401(m), the Institution may:

- (a) Forfeit Excess Aggregate Contributions if forfeitable, or, if not forfeitable, distribute Excess Aggregate Contributions to the Participant no later than 12 months following the end of the Plan Year after the year in

which the Excess Aggregate Contributions arose. Excess Aggregate Contributions will be adjusted to reflect investment experience up to the date of distribution. Excess Aggregate Contributions are allocated to the Highly Compensated Employees with the largest contribution amounts taken into account in calculating the ACP test for the year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount and continuing in descending order until all the Excess Aggregate Contributions have been allocated. For purposes of the preceding sentence, the “largest amount” is determined after distribution of any Excess Aggregate Contributions. Forfeitures of Excess Aggregate Contributions will be applied to reduce employer contributions. Excess Aggregate Contributions shall be treated as Annual Additions under the Plan.

- (b) Make Qualified Nonelective Contributions.
- (c) Include Qualified Nonelective Contributions under this Plan or any other plan of the Institution in computing the contribution percentage under Code Section 401(m)(3).
- (d) Discontinue contributions for Highly Compensated Employees, if it is determined that continuation of contributions in accordance with the provisions of this Plan will cause the Plan to exceed the limitations of Code Section 401(m).
- (e) Require forfeiture of an Institution Plan Contribution to the extent it relates to a Participant Plan Contribution that is an Excess Elective Deferral or Excess Aggregate Contribution to avoid a violation of Code Section 401(a)(4).
- (f) Definitions: The following definitions shall apply for this section:

Employee Contribution shall mean any contribution made to the Plan by or on behalf of a Participant that is included in the Participant’s gross income in the year in which made.

Excess Aggregate Contributions shall mean the amount described in Code Section 401(m)(6)(B).

Highly Compensated Employee (HCE) shall mean an employee who meets the Code Section 414(q) definition of HCE in effect for that Plan Year.

Matching Contribution shall mean an institution Plan Contribution made to this or any other defined contribution plan on behalf of a Participant on account of a Participant Plan Contribution made by such Participant, or on account of a Participant Plan made by such Participant, or on account of a Participant’s Elective Deferral, under a plan maintained by the institution.

Non-highly Compensated Employee (NHCE) shall mean an Employee who does not meet the Code Section 414(q) definition of HCE in effect for that Plan Year.

Qualified Nonelective Contributions shall have the meaning as defined in Code Section 401(m)(4)(c).

Furthermore, the total Elective Deferrals made by the Institution on behalf of a Participant for any taxable year under this Plan and all other plans, contracts or arrangements of the Institution shall not exceed the dollar limit in effect under Code Section 402(g) at the beginning of such taxable year. If a Participant has Excess Elective Deferrals, he or she may designate Elective Deferrals made during a taxable year to this Plan as Excess Elective Deferrals by notifying the Plan Administrator by March 1 of the amount of the Excess Elective Deferrals. Notwithstanding any other provision of the Plan, Excess Elective Deferrals, adjusted to reflect any credited investment experience up to the date of distribution, will be distributed no later than April 15 to any Participant who designates Elective Deferrals as Excess Elective Deferrals for such taxable year.

Article V: Funding Vehicles

5.1 **Funding Vehicles.** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors and their Funding Vehicles are:

A. Teachers Insurance and Annuity Association (TIAA)

TIAA Retirement Annuity (RA):

Traditional Annuity
Real Estate Account

B. College Retirement Equities Fund (CREF)

CREF Retirement Unit-Annuity (RA):

Stock Account
Money Market Account
Bond Market Account
Social Choice Account
Global Equities Account
Growth Account
Equity Index Account
Inflation-Linked Bond Account

The Institution's current selection of Fund Sponsors and Funding Vehicles isn't intended to limit future additions or deletions of Fund Sponsors and Funding Vehicles. Any additional accounts offered by a Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Institution and the Fund Sponsor.

5.2 **Fund Transfers.** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles.

For a Participant who has terminated employment with the Institution, this Plan's transfer rules will continue to govern vested amounts accumulated under the Plan.

Article VI: Vesting

6.1 **Plan Contributions.** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

Article VII: Benefits

7.1 **Retirement Benefits.** A Participant may elect to receive retirement benefits under any of the forms of benefit available under the relevant Funding Vehicle. However, notwithstanding any other provision in this plan, distributions of amounts attributable to Participant Plan Contributions made by salary reduction and any earnings accrued in an annuity contract after December 31, 1988, and any Qualified Nonelective Contributions as defined in Code §401(m), may be paid only when a Participant attains age 59 1/2, separates from service, dies or becomes disabled.

Forms of Benefit. The forms of benefit are the benefit forms offered by the Funding Vehicles available under this Plan. These forms are equally available to all Participants choosing the Funding Vehicle. The forms of benefit available under this Plan include:

- ✓ Single life annuities as provided under the Funding Vehicle contract.
- ✓ Joint and survivor annuities as provided under the Funding Vehicle contract.
- ✓ Cash withdrawals (to the extent the Funding Vehicle permits) and subject to the limitations in the "Cash Withdrawals" section of this Article.
- ✓ Fixed period annuities, to the extent the Funding Vehicle permits.
- ✓ Retirement Transition Benefit.
- ✓ Repurchase, subject to the limitations in the "Repurchase" section of this Article.
- ✓ Such other annuity and withdrawal options as provided under the Funding Vehicle Contract.

7.2 **Cash Withdrawals.** A Participant may receive a cash withdrawal as permitted by the Funding Vehicle.

Cash withdrawals may not be received while the Participant is employed by the Institution.

7.3 **Retirement Transition Benefit.** Unless the Minimum Distribution Annuity, or the Limited Periodic Withdrawal Option is elected, a Participant may elect to receive a one time lump-sum payment of up to 10 percent of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.

7.4 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary(ies) under the options offered by the Funding Sponsors. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

7.5 **Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary(ies) by the Fund Sponsor.

7.6 **Minimum Distribution Requirements.** The requirements of this section shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan except as otherwise provided in the "Joint and Survivor Annuity Requirements" section of Article VII. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the proposed regulations.

With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code in accordance

with the regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provisions of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

(a) Limits on Settlement Options. Distributions may only be made over one of the following periods (or a combination thereof):

- i) the life of the Participant;
- ii) the life of the Participant and a designated Beneficiary(ies);
- iii) a period certain not extending beyond the life expectancy of the Participant; or
- iv) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary(ies).

(b) Required Beginning Date. The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date. The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70-1/2 or, if later, April 1 following the calendar year that the Participant retires.

- i) Any Participant attaining age 70½ in years after 1995 may elect by April 1 of the calendar year following the year in which the Participant attained age 70½ (or by December 31, 1997 in the case of a Participant attaining age 70½ in 1996) to defer distributions until the calendar year following the calendar year in which the Participant retires. If no such election is made, the Participant will begin receiving distributions by the April 1 of the calendar year in which the Participant attained age 70½ (or December 31, 1997 in the case of a Participant attaining age 70½ in 1996).
- ii) Any Participant attaining Age 70½ in years prior to 1997 may elect to stop distributions and recommence by the April 1 of the calendar year in which the Participant retires. There is no new annuity starting date upon recommencement.
- iii) The preretirement age 70½ distribution date is eliminated with respect to Participants who reach age 70½ after December 31, 1998. The preretirement age 70½ distribution option is an optional distribution form of benefit under which benefits payable in a particular distribution form (including any modification that may be elected after benefit commencement) commence at a time during the period that begins on or after January 1, of the calendar year in which a Participant attains age 70½ and ends April 1 of the immediately following calendar year.

(c) Death Distribution Provisions. Upon the death of the Participant, the following distribution provisions will take effect:

- i) If the Participant dies after distribution of his or her vested Accumulation Account has begun, the remaining portion of the vested Accumulation Account(s) will continue to be distributed at least as rapidly as under the method of distribution being used before the Participant's death;
- ii) If the Participant dies before distribution of his or her vested Accumulation Account(s) begins, distribution of the Participant's entire vested Accumulation Account(s) shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except where an election is made to receive distributions in accordance with (1) or (2) below:
 - (1) If any portion of the Participant's vested Accumulation Account is payable to a designated Beneficiary(ies), distributions may be made over a period certain not greater than the life expectancy of the designated Beneficiary(ies) commencing by December 31 of the calendar year immediately following the calendar year in which the Participant died;

(2) If the designated Beneficiary(ies) is the Participant's surviving spouse, the date distributions are required to begin in accordance with (1) above must not be earlier than the later of

- (a) December 31 of the calendar year immediately following the calendar year in which the Participant died and
- (b) December 31 of the calendar year in which the Participant would have attained age 70 1/2.

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

7.7 **Commencement of Benefits.** Unless the Participant elects otherwise, distribution of benefits will begin no later than the 60th day after the latest of the close of the Plan Year in which:

- i) the Participant attains age 65 (or Normal Retirement Age, if earlier);
- ii) occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan; or,
- iii) the Participant terminates service with the Institution.

Notwithstanding the foregoing, the failure of a Participant and spouse to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

A Participant who elects to defer receipt of benefits may not do so to the extent that he or she is creating a death benefit that is more than incidental.

7.8 **Joint and Survivor Annuity Requirements.** The provisions of this section shall apply to any Participant who is credited with one Hour of Service at the Institution on or after August 23, 1984. However, any Participant in this Plan not receiving benefits as of August 23, 1984 may elect to have benefits paid in a manner described herein.

Pre-retirement Spousal Entitlement. Unless a Qualified Election is made, if a married Participant dies before the date benefits commence, the Participant's vested Accumulation Account shall be applied toward the purchase of a Qualified Pre-retirement Survivor Annuity. The surviving spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

Notification of Pre-retirement Spousal Entitlement. In the case of a Qualified Pre-retirement Survivor Annuity, the Institution shall provide each Participant, within the applicable period for such Participant, a written explanation of the Qualified Pre-retirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements for notification of a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (a) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (b) a reasonable period after an Eligible Employee becomes a Participant; or (c) a reasonable period ending after this section first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation of service in the case of a Participant who separates from service before attaining age 35.

For applying the preceding paragraph, a reasonable period ending after the enumerated events is the end of the two-year period beginning one year before the date the applicable event occurs, and ending one year after that date. For a Participant who separates from service before the Plan Year in which age 35 is attained, notice should be provided within the two-year period beginning one year before separation and ending one year after separation. If such a

Participant thereafter returns to employment with the Institution, the applicable period for such Participant shall be redetermined.

Post-retirement Spousal Entitlement. Unless a Qualified Election is made within the 90-day period ending on the date benefits commence, a married Participant's vested Accumulation Account will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's vested Accumulation Account will be paid in the form of a single life annuity.

Notification of Post-retirement Spousal Entitlement. In the case of a Qualified Joint and Survivor Annuity, the Institution shall no less than 30 days and no more than 90 days before the date benefits commence provide each Participant a written explanation of: (a) the terms and conditions of a Qualified Joint and Survivor Annuity; (b) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (c) the rights of a Participant's spouse; and (d) the right to waive a Qualified Joint and Survivor Annuity.

If the Participant, after receiving the explanation, elects a form of benefit and the spouse consents to the benefit (if necessary), the Plan will not fail to satisfy the requirements of this paragraph merely because the annuity starting date is less than 30 days after the written explanation is given to the Participant provided (1) the explanation is provided prior to the annuity starting date; (2) the distribution does not commence before the expiration of the 7-day period that begins the day after the explanation is provided to the Participant; and (3) prior to the expiration of the 7-day period, or the annuity starting date, if later, the Participant may revoke the distribution election.

7.9 **Repurchase.** A Participant's accumulations in TIAA-CREF Retirement Annuities may be received in a single sum through "repurchase" if certain conditions are met. If a Participant in this Plan terminates employment with the Institution and requests that TIAA-CREF repurchase his or her Retirement Annuities, the Institution will approve such repurchase if, at the time of the request, all of the following conditions apply:

- (a) The total TIAA Traditional Annuity accumulation in all Retirement Annuities owned by the Participant is not over \$2,000.
- (b) The Participant does not have a TIAA Transfer Payout Annuity (TPA) in effect.

Amounts paid to the Participant on repurchase will be in full satisfaction of the Participant's and his or her spouse's rights to retirement or survivor benefits from TIAA-CREF attributable to such amounts.

7.10 **Direct Rollovers.** This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

For this section, the following definitions apply:

1) **Eligible rollover distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and, for any distributions after 12/31/99, any hardship distributions described in Code Section 401(k)(2)(b)(i)(iv).

2) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in section 408(b) of the Code, or a tax-sheltered annuity plan described in Code Section 403(b), that accepts the distributee's eligible rollover distribution. However, in the

case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

3) **Distributee:** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

4) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

Article VIII: Administration

- 8.1 **Plan Administrator.** The Institution, located at 1200 Kenwood Avenue, Duluth, Minnesota 55811, (218) 723-6000, is the administrator of this Plan and is responsible for enrolling Participants, sending Plan Contributions for each Participant to the Fund Sponsors, and for performing other duties required for the operation of the Plan.
- 8.2 **Authority of the Institution.** The Institution has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Institution shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Institution will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Institution may employ attorneys, agents, and accountants as it finds necessary or advisable to assist it in carrying out its duties. The Institution will be a "named fiduciary" as that term is defined in section 402(a)(2) of the Employee Retirement Income Security Act for determining eligibility and computing and making Plan Contributions. The Institution, by action of its Board, may designate a person or persons other than the Institution to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 8.3 **Action of the Institution.** Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance with the "Authority of the Institution" section of Article VIII, may be taken by a majority of the members of the Board, either by vote at a meeting, or in writing without a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Institution under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by an instrument in writing, signed by all members, as having authority to execute the documents on its behalf, or ii) a person who becomes authorized to act for the Institution in accordance with the provisions of the "Authority of the Institution" section of Article VIII. Any action taken by the Institution that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Institution, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Institution.
- 8.4 **Indemnification.** The Institution will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Institution is delegated pursuant to the "Authority of the Institution" section of Article VIII (other than the Fund Sponsors). These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement.

- 8.5 **Investment Manager.** To the extent that Participants allocate contributions to the TIAA Real Estate Account, TIAA will be the investment manager (within the meaning of Section 3(38) of ERISA) with respect to the account balance in the TIAA Real Estate Account. TIAA acknowledges that it is a fiduciary with respect to such assets.
- 8.6 **No Reversion.** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made.
- 8.7 **Statements.** The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution's payment.
- 8.8 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.

Article IX: Amendment and Termination

- 9.1 **Amendment and Termination.** While it is expected that this Plan will continue indefinitely, the Institution reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of its Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Institution will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 **Limitation.** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made.
 - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

Article X: Miscellaneous

- 10.1 **Plan Non-Contractual.** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for

any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.

- 10.2 **Claims of Other Persons.** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 **Merger, Consolidation, or Transfers of Plan Assets.** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.
- 10.4 **Finality of Determination.** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.
- 10.5 **Contracts - Incorporation by Reference.** The terms of each Funding Vehicle issued to a Participant in accordance with the provisions of Article V are a part of the Plan as if fully set forth in the plan document and the provisions of each are incorporated by reference into the Plan. The terms of the Funding Vehicle control in any case where there is any inconsistency or ambiguity between the terms of the Plan and the terms of the Funding Vehicle.
- 10.6 **Non-Alienation of Retirement Rights or Benefits.** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.

Employer Identification Number: 41-0698301
Plan Number: 003

(Signature of Plan Administrator)