

**MONTANA UNIVERSITY SYSTEM
RETIREMENT PROGRAM**

(AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2014)

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RETIREMENT PROGRAM**

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**MONTANA UNIVERSITY SYSTEM
RETIREMENT PROGRAM**

(Amended and Restated Effective January 1, 2014)

INTRODUCTION

The Montana University System hereby adopts this amended and restated Montana University System Retirement Program (the "Plan"). The Plan was originally adopted effective January 1, 1988, and was amended and restated from time to time.

This amendment and restatement is effective January 1, 2014, and (1) changes the name of the Plan from "Montana University System Optional Retirement Program" to "Montana University System Retirement Plan; and (2) makes certain necessary and desirable amendments as provided or permitted by certain recent changes in the law,

This Plan is intended to operate within good faith compliance with the requirements of Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and is to be construed in accordance with EGTRRA and guidance issued there under.

The purposes of the Plan are to provide retirement, termination, death, and disability benefits to Employees and their Beneficiaries, and to reward faithful service with the Montana University System Institution.

The Plan was established and shall be maintained for the exclusive benefit of the Institution's Employees and their Beneficiaries. No benefit under the Plan can ever revert to the Institution except as herein provided, or be used for or diverted to purposes other than the exclusive benefit of the Institution's Employees and their Beneficiaries.

This amendment and restatement of the Plan shall not, in any way, affect the rights of former Employees who participated in the Plan prior to the January 1, 2001 and who either retired or otherwise terminated their employment prior to January 1, 2001. The rights, if any, of such former Employees and their Beneficiaries and the amounts of their benefits, if any, shall continue to be governed by the provisions of the Plan as it was in effect on December 31, 2000, or the date, if earlier, of their retirement or termination of employment, unless otherwise specifically provided for herein, or as the result of future amendments to this restated Plan.

ARTICLE 1 DEFINITIONS

- 1.1 **ACCUMULATION ACCOUNT** means the separate account established in the name of each Participant. The value of a Participant's Accumulation Account includes Plan Contributions made on behalf of such Participant, and the income, expenses, gains, and losses allocated thereto.
- 1.2 **ANNUAL ADDITIONS** means the sum of the following amounts credited to a Participant's Accumulation Account during the Plan Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) except as provided in Code Section 415(c)(2), individual medical account amounts described in Code Sections 415(1)(2) and 419A(d)(2), if any. Annual Additions shall not include amounts contributed to the Plan as transfer or rollover contributions pursuant to Section 3.6.
- 1.3 **BENEFICIARY** means the individual(s), institution(s), trustee(s), or estate(s) designated by the Participant to receive the Participant's benefits at his or her death. If there is no designated beneficiary living at the time of a Participant's death, the Plan Administrator shall designate the spouse as the beneficiary. If there is no spouse, the Plan Administrator shall designate as the beneficiary, in order of priority, (i) the Participant's issue, by representation; (ii) the Participant's surviving parents, in equal shares; and (iii) the Participant's estate or a trustee of a trust named as the beneficiary of the residue of the Participant's estate as beneficiary. Persons who are legally adopted shall be treated for all purposes as the children of their adoptive parents. The Plan Administrator's determination of the persons who qualify as beneficiaries under this Plan shall be binding on all interested parties.
- 1.4 **BOARD** means the Institution's Board of Regents.
- 1.5 **CODE** means the Internal Revenue Code of 1986, as amended.
- 1.6 **COMPENSATION** shall have the meaning and shall be limited as provided in this Section 1.6.
- a) ***In General.*** In general, "Compensation" means the amount paid by the Institution to a Participant that must be reported as wages on the Participant's Form W-2. For years beginning after December 31, 1997, "Compensation" shall include compensation that is not currently includable in the Participant's gross income because of the application of Code Sections 402(g)(3), 125 or 457. For Plan Years beginning on and after January 1, 1998, "Compensation" shall include elective amounts that are not includable in the gross income of the Participant by reason of Code Section 132(f)(4).
- b) ***Limitation.*** 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, 1996, the annual compensation of each Employee taken into account under the Plan shall not exceed the limit described

in Code Section 401(a)(17), as such amount may be amended from time to time, and as such amount may be adjusted for increases in the cost of living from time to time in accordance with Code Section 401(a)(17)(B).

The annual compensation limit for the Plan Year beginning January 1, 2014 is \$260,000.

Notwithstanding the above, the annual compensation limit shall not apply with respect to Participants who are considered "eligible participants" within the meaning of Treasury Regulation Section 1.401(a)(17)-l(d)(4).

- c) **Family Aggregation.** This paragraph shall apply only from January 1, 1989 through December 31, 1996. If during a year any Employee who is a Participant is also the spouse, or lineal descendant below age nineteen (19), of an Employee who is a Participant ("Family Member") who is a highly compensated Employee (as defined in Code Section 414(q)) in the group consisting of the ten (10) such highly compensated Employees with the greatest Compensation during such year ("HCE"), then, for purposes of the above dollar limitation, such Family Member's Compensation for such year will be aggregated with such HCE's Compensation for such year. If such aggregated Compensation for a year exceeds the above dollar limit, then the dollar limit applicable to each such Employee's Compensation for such year will be the dollar limit otherwise applicable for such year multiplied by a fraction, the numerator of which is such Employee's unlimited Compensation for such year and the denominator of which is the sum of all such Employee's unlimited Compensation for such year.

1.7 **DATE OF EMPLOYMENT OR REEMPLOYMENT** means the effective date of the appointment for an Employee who is a faculty member. For all other Employees, the 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 **EMPLOYEE** means academic and professional administrative personnel with individual contracts under the authority of the Board, unless such personnel have elected not to participate in the Plan pursuant to Montana Code Annotated (MCA) §19-21-201. Effective July 1, 2002, the term "Employee" shall also include employees of the Institution in positions covered under the public employees' retirement system who elect to participate in the Plan pursuant to §19-3-2112 MCA (2001).

The term Employee shall not include any leased employee as defined in Code Section 414(n).

No individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole discretion, nor any individual performing services for the Institution pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Institution, shall be an Employee for purposes of this Plan. If an individual classified by the Plan Administrator as an independent contractor is determined to be a common law

employee pursuant to a government audit or litigation, such individual shall be prospectively and not retroactively eligible to participate in the Plan.

- 1.9 **FUND SPONSOR** means an insurance, variable annuity or investment company that provides Funding Vehicles available to Participants under this Plan.
- 1.10 **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.
- 1.11 **HOUR OF SERVICE** means each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Institution.
- 1.12 **INSTITUTION** means the Montana University System.
- 1.13 **INSTITUTION PLAN CONTRIBUTIONS** means contributions made by the Institution under this Plan.
- 1.14 **PARTICIPANT** means any Employee of the Institution participating in this Plan.
- 1.15 **PARTICIPANT PLAN CONTRIBUTIONS** means contributions made by a Participant under this Plan Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.
- 1.16 **PLAN** means the Montana University System Retirement Program, formerly called the Montana University System Optional Retirement Plan, as set forth in this document.
- 1.17 **PLAN ADMINISTRATOR** means the entity designated in Section 7.1 as the administrator of the Plan.
- 1.18 **PLAN CONTRIBUTIONS** means Institution Plan Contributions and Participant Plan Contributions.
- 1.19 **PLAN YEAR** means January 1 through December 31.
- 1.20 **ROLLOVER CONTRIBUTIONS ACCOUNT** means that portion of a Participant's interest in this Plan which is attributable to a Participant's rollover contributions as provided in Section 3.6.
- 1.21 **VALUATION DATE** means each date that the Fund Sponsor values the Funding Vehicles.

**ARTICLE 2
PARTICIPATION AND ENROLLMENT**

- 2.1 **NOTIFICATION.** The Institution will notify an Employee when he or she is eligible to become a Participant. An Employee who 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 Vehicles to which Plan Contributions for the Participant have been applied.
- 2.2 **ENROLLMENT IN PLAN.** An Employee must, as a condition of employment, begin participation in this Plan on his or her Date of Employment or Reemployment at the Institution. To participate in this Plan, an Employee must complete the necessary enrollment form(s) and return them to the Institution.
- 2.3 **TERMINATION OF PARTICIPATION.** A Participant will continue participation in the Plan until he or she ceases to be an Employee for any reason or until the Plan is terminated.

Furthermore, if a Participant begins to receive retirement benefits from his or her Accumulation Account 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.

**ARTICLE 3
PLAN CONTRIBUTIONS**

- 3.1 **PARTICIPANT PLAN CONTRIBUTIONS.** Plan Contributions will be made for Employees who have enrolled as provided in Article 2 in accordance with the schedule below.

Plan Contributions as a Percentage of Compensation effective July 1, 2013		
	By the Institution	By the Participant
Faculty	5.956	7.044
Staff	4.49	7.9

- 3.2 **WHEN CONTRIBUTIONS ARE MADE.** Plan Contributions will be forwarded to the Fund Sponsor in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor at least annually, and are considered to be credited to Participants no later than the last day of the Plan Year for which the Plan Contributions are made. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor as soon as it is administratively

feasible for the Institution to segregate contributions, but in any event, within the time required by law.

- 3.3 **WITHDRAWAL OF PLAN CONTRIBUTIONS.** An Employee may not withdraw any part of his or her Plan Contributions prior to termination of employment.
- 3.4 **ALLOCATION OF CONTRIBUTIONS** A Participant may allocate Plan Contributions to the Funding Vehicles in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicles in accordance with procedures established by the Institution and/or the Fund Sponsor. The contributions with respect to a Participant who fails to specify an allocation among Funding Vehicles may be allocated to a default Funding Vehicle(s) selected by the Institution.
- 3.5 **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.
- 3.6 **ROLLOVER/TRANSFER OF FUNDS FROM ANOTHER PLAN** The Plan will accept Participant rollover (and direct rollover) contributions, provided the Fund Sponsor reasonably concludes that the contribution is an eligible rollover distribution from an eligible retirement plan (or an amount distributed from a conduit Individual Retirement Account as provided by Code Section 408) and that such contribution will not affect the qualification of this Plan or create adverse consequences for the Institution or the Plan.

Such rollover (and direct rollover) contributions are subject to the same withdrawal and distribution rules that apply to Institution Plan Contributions for this Plan

If this Plan accepts such contributions, it will allocate them to a Rollover Contributions Account established for such purpose. A Participant shall always be fully vested in his or her Rollover Contributions Account.

Effective January 1, 2002, this Section 3.6 shall be construed to permit rollovers and/or direct transfers of distributions made to participants as surviving spouses, as provided by Code Section 402(c)(9).

If the Fund Sponsor or Plan Administrator later determines that the contribution is not an eligible rollover from an eligible retirement plan (or an amount distributed from a conduit Individual Retirement Account as provided by Code Section 408), or that the contribution did not satisfy the applicable requirements of Code Sections 402 or 408 for treatment as a rollover contribution, a corrective distribution equal to the contribution adjusted by investment gains and losses attributable to the contribution shall be made to the Participant

For purposes of this Section 3.6 "eligible retirement plan" shall mean any other plan qualified under Code Sections 401(a) or 403(a), whether such plans are funded through a trustee arrangement or through an annuity contract. Effective January 1, 2002, "eligible retirement plan" shall also mean an annuity contract described in Code Section 403(b) (excluding after-tax contributions), an eligible plan under Code Section 457(b)

which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is eligible to be rolled over.

3.7 **MAXIMUM PLAN CONTRIBUTIONS** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any Plan Year will not exceed the amount permitted under Code Section 415. The limitations of Code Section 415 are hereby incorporated by reference.

- a. **Excess Allocation.** 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 (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 Plan Years.
- b. **Multiple Plan Limits.** 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.

For Plan Years beginning before January 1, 2000, only, the Plan shall comply with the combined defined benefit / defined contribution limit of Code Section 415(e).

ARTICLE 4 FUNDING VEHICLES

4.1 **FUNDING VEHICLES** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan, As of January 1, 2014, the Fund Sponsors and their Funding Vehicles are:

a. Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)

Guaranteed

- TIAA Traditional Annuity

Equities

Mutual Funds:

- TIAA-CREF International Equity Index Fund
- TIAA-CREF Large Cap Value Index Fund
- TIAA-CREF Mid Cap Growth Fund
- TIAA-CREF Mid Cap Value Fund
- TIAA-CREF Small Cap Blend Fund

Variable Annuity:

- CREF Equity Index Account
- CREF Global Equities Account
- CREF Growth Account
- CREF Stock Account

Real Estate

Variable Annuity:

- TIAA Real Estate Account

Fixed Income

Mutual Fund

- TIAA-CREF High Yield Fund

Variable Annuity

- CREF Bond Market Account
- CREF Inflation Linked Bond Account

Money Market

Variable Annuity

- CREF Money Market Account

Multi Asset

Mutual Fund

- TIAA CREF Lifecycle Funds (Retirement Income through 2055)

Variable Annuity

- CREF Social Choice Account

The Institution's current selection of Fund Sponsors and Funding Vehicles shall not limit future additions or deletions of Fund Sponsors and Funding Vehicles. Any additional

Funding Vehicles offered by a Fund Sponsor will be made available to Participants in accordance with the procedures established by the Institution and the Fund Sponsor.

- 4.2 **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, a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles.
- 4.3 **EXEMPTION FROM TRUST REQUIREMENT.** In accordance with Code Section 401(f) and Treasury Regulation 1.401-9, the assets of the Plan are not held in trust. All contributions shall be applied to purchase Funding Vehicles.
- 4.4 **DUTIES OF THE FUND SPONSOR.** The duties of the Fund Sponsor shall include but shall not be limited to the following:
- a. the Fund Sponsor shall receive all Plan Contributions from the Institution;
 - b. the Fund Sponsor shall receive all of the income from the Funding Vehicles;
 - c. the Fund Sponsor shall make distributions in accordance with the Plan and with the contracts between each Participant and the Fund Sponsor;
 - d. the Fund Sponsor shall invest and reinvest the corpus and income of the Funding Vehicles, subject to the requirements, if any, of the Plan and the contracts between each Participant and the Fund Sponsor;
 - e. the Fund Sponsor shall maintain such records and accounts of the Funding Vehicles, and shall render such financial statements and report thereof, as may be required from time to time by the Institution; and
 - f. the Fund Sponsor shall determine the fair market value of the assets of the Funding Vehicles, and shall determine the fair market value of each Participant's Accumulation Account and Rollover Contributions Account, as of each Valuation Date. The Fund Sponsor shall compare such valuation with the valuation as of the immediately preceding Valuation Date, and shall report the income, expenses, gains, and losses to the Institution and/or the Participants on a regular basis.

ARTICLE 5 VESTING

- 5.1 **PLAN CONTRIBUTIONS.** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

ARTICLE 6 BENEFITS

- 6.1 **RETIREMENT BENEFITS.** A Participant who has terminated employment shall receive a distribution of his or her Accumulation Account in the form of the annuity contract(s) between the Participant and the Fund Sponsor that represents the investment of his or her Accumulation Account. Such a Participant shall cease to be a Participant for purposes of the Plan, and shall be entitled to receive retirement benefits in any of the forms of benefit offered by the Funding Vehicles in which his or her Accumulation Account is invested. These forms are equally available to all Participants choosing the Funding Vehicle.

Notwithstanding the foregoing, the cash withdrawal form of benefit is available only to a Participant who has terminated employment and who has attained age 55. This paragraph shall not apply on or after January 1, 2002.

- 6.2 **RETIREMENT TRANSITION BENEFIT.** Unless the Minimum Distribution Annuity or the Limited Periodic Withdrawal Option (as defined in the Funding Vehicles in which such distribution options are available) is elected, a Participant may elect to receive a onetime lump-sum payment of up to 10 percent of his or her Accumulation Account at the time annuity income begins, provided the one sum payment does not exceed 10 percent of the respective Accumulation Account being converted to retirement income.
- 6.3 **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 or the Beneficiary by the Fund Sponsor.
- 6.4 **MINIMUM DISTRIBUTION REQUIREMENTS.** The requirements of this Section 6.5 shall apply to any distribution of a Participant's vested Accumulation Account and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated there under, 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 Code Section 401(a)(9) in accordance with the regulations 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 Code 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):

- 1) The life of the Participant;
 - 2) The life of the Participant and a designated Beneficiary;
 - 3) A period certain not extending beyond the life expectancy of the Participant; or
 - 4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary.
- b. **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 ½ or, effective January 1, 1997, if later, April 1 following the calendar year that the Participant retires, provided that:
- 1) Any Participant attaining age 70 ½ in years in 1996, 1997 or 1998 may elect by April 1 of the calendar year following the year in which the Participant attained age 70 ½ (or by December 31, 1997 in the case of a Participant attaining age 70 ½ 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 70 ½ (or December 31, 1997 in the case of a Participant attaining age 70 ½ in 1996).
 - 2) Any Participant attaining age 70 ½ 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 commencement.
- c. **Death Distribution Provisions.** Upon the death of the Participant, the following distribution provisions will take effect:
- 1) If the Participant dies after distribution of his or her vested Accumulation Account has begun, the remaining portion of the vested Accumulation Account will continue to be distributed at least as rapidly as under the method of distribution being used before the Participant's death;
 - 2) If the Participant dies before distribution of his or her vested Accumulation Account begins, distribution of the Participant's entire vested accumulation Account 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 (A) or (B) below:

- (A) If any portion of the Participant's vested Accumulation Account is payable to a designated Beneficiary, distributions may be made over a period certain not greater than the life expectancy of the designated Beneficiary commencing by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- 3) If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin 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 ½.

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 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, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire vested Accumulation Account must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

6.5 **VALUATION OF ACCUMULATION ACCOUNTS FOR DISTRIBUTION OF BENEFITS.** The value of a Participant's Accumulation Account and Rollover Contributions Account, if any, for purposes of distribution, shall be the value as determined by the Fund Sponsor as of the Valuation Date which coincides with or immediately follows the date upon which the event occurred which gave the Participant, Beneficiary or Beneficiaries a right to receive the funds in his or her accounts. When distribution of part of or all of an account is deferred or delayed for any reason beyond the Valuation Date immediately following an event giving rise to the right of a Participant, Beneficiary or Beneficiaries to receive funds, the undistributed portion shall be valued as of the Valuation Date which coincides with or immediately precedes the date of distribution.

6.6 **DIRECT ROLLOVER.** 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, and 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:

- a. **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); 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 December 31, 1999, hardship distributions described in Code Section 401(k)(2)(b)(i)(iv).

- b. **Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or a qualified retirement plan described in Code Sections 401(a) or 403(a), that accepts the distributee's eligible rollover distribution. However, for distributions made before January 1, 2002, only, 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. Also, for distributions made on or after January 1, 2002, "eligible retirement plan" shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.
- c. **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 Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.
- d. **Direct rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE 7 ADMINISTRATION

- 7.1 **PLAN ADMINISTRATOR.** Except to the extent it delegates its authority pursuant to Section 7.2, the Montana University System, located at 2500 Broadway Street, Helena, MT 59601; mailing address, PO Box 203201, Helena, MT 59620-3101, is the administrator of this Plan.
- 7.2 **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, 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.

The Institution has designated the Office of the Commissioner of Higher Education as the Plan Administrator, pursuant to Board Policy 803.2, effective July 1, 1993. The Director of Benefits of the Office of the Commissioner of Higher Education shall be 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

- 7.3 **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 Section 7.2. 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 Section 7.2. 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.
- 7.4 **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 in accordance with Section 7.2 (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.
- 7.5 **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.

- 7.6 **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.
- 7.7 **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 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 8 AMENDMENT AND TERMINATION

- 8.1 **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.
- 8.2 **LIMITATION. Notwithstanding Section 8.1.** 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. Also, Plan Contributions made in Contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.
 - b. No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.
- 8.3 **APPROVAL UNDER THE CODE.** The Plan is intended to continue to comply with the requirements of the applicable provisions of Code Section 401(a) as now in effect or hereafter amended, and any modification or amendment of the Plan may be made retroactive, as necessary or appropriate, to establish and maintain such compliance.

ARTICLE 9 MISCELLANEOUS

- 9.1 **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.
- 9.2 **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.
- 9.3 **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.
- 9.4 **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 (including a former spouse) to all or a portion of a Participant's benefit under this Plan to the extent required or permitted under Montana law.
- 9.5 **UNIFORMED SERVICES.** Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).
- 9.6 **GOVERNING LAW.** To the extent not preempted by ERISA or other applicable federal law, the provisions of the Plan shall be construed and administered according to the laws of the State of Montana

MONTANA UNIVERSITY SYSTEM

By Its Delegate

**THE OFFICE OF THE COMMISSIONER OF HIGHER
EDUCATION**

Connie Welsh

Director of Benefits