WITTENBERG UNIVERSITY DEFINED CONTRIBUTION RETIREMENT PLAN

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PART I

DEFINED CONTRIBUTION ACCOUNT PROVISIONS

ARTICLE I

WHEREAS, Wittenberg University previously established the Wittenberg University Defined Contribution Retirement Plan (“Plan”) effective December 1, 1945. The Plan has previously been amended, and amended and restated from time to time.

WHEREAS, Wittenberg University previously established the Wittenberg University Tax Deferred Annuity Plan (“Tax Deferred Annuity Plan”) effective December 1, 1945. The Tax Deferred Annuity Plan has previously been amended, and amended and restated, from time to time.

Effective as of the close of business on December 31, 2010, the Tax Deferred Annuity Plan was merged into Plan and the Plan was amended and restated effective on and after January 1, 2011. Effective on and after July 1, 2011, the Plan was again amended and restated for the purpose of modifying the amount of required Elective Deferrals to be made by Participants, and the corresponding amount of Matching Contributions to be made by the Employer, in Part I of the Plan, and for certain other administrative reasons.

Except as provided in this paragraph, Articles I through VII of Part I and Articles IA thorough VIIA of Part II shall apply separately to participants covered by each part. Sections 4.3(a), 4.3(b) and 7.6 of this Part I shall apply to participants covered by Parts I and II. Articles VIII through IX of Part I shall apply to participants covered by Part I and Part II.

It is intended that the Plan satisfy the requirements of Section 403(b) of the Code and the applicable provisions of ERISA. The Plan is intended to benefit the eligible employees of the Employer and, where applicable, their Beneficiaries.
ARTICLE II
DEFINITIONS

The words and phrases defined in this article shall have the following meanings throughout this Plan document.

“Accumulation Account” shall mean the total of the separate accounts established for each Participant under the terms of this Part I. The current value of a Participant’s Accumulation Account includes: (a) Elective Deferrals and catch-up contributions described in Sections 4.1(a), (b) and (c), which shall be contributed to an Elective Deferral account; (b) Matching Contributions described in Section 4.2, which shall be contributed to a Matching Contribution account; (c) rollover contributions described in Section 4.5, which shall be contributed to a rollover account; and (d) any other account deemed necessary to be established by the Administrator. Such accounts shall be adjusted for expense charges, withdrawals and investment experience.

An Accumulation Account will also be established for a Beneficiary after the death of the Participant.

“Administrator” shall mean the Employer, as described in Article IX of this Part I.

“Annual Additions” shall mean the sum of the Elective Deferrals (excluding catch-up contributions) and Matching Contributions credited to a Participant’s Accumulation Account for the Plan Year, Tax Deferred Annuity Elective Deferrals, and such contributions made to any other plan required to be aggregated with this Plan under Code Section 415 and applicable regulations thereunder.

“Beneficiary,” subject to Article VII and the following sentences of this definition, Beneficiary shall mean the individual, institution, trustee or estate designated by the Participant to receive the Participant’s Accumulation Account under this Plan at the time of his or her death. If the Participant dies prior to the commencement of benefits under the Plan, his or her Beneficiary shall be the Participant’s Spouse unless the Spouse consents to another Beneficiary in accordance with Article VII of the Plan. If the Participant fails to designate a Beneficiary or if all designated beneficiaries predecease the Participant, his or her Beneficiary shall be determined in the following order: (a) the Participant’s Spouse or, (b) if the Spouse is not alive at the time of the Participant’s death, the personal representative of the Participant’s estate. If the Beneficiary dies after the Participant but prior to the complete distribution of the Beneficiary’s Accumulation Account, the remaining portion of the Beneficiary’s Accumulation Account shall be payable to the Beneficiary’s designated beneficiary or, if none, to the personal representative of the designated beneficiary’s estate.

“Code” shall mean the Internal Revenue Code of 1986, as may be amended from time to time.

“Compensation” shall mean base wages and overtime. Compensation shall be determined without regard to any reduction in a Participant’s compensation resulting from his or her participation in a cash or deferred arrangement pursuant to Section 125 or Section 403(b) of the Code or an arrangement pursuant to Section 132(f) of the Code; provided, for the purpose of
Section 4.2 of this Part I, such compensation in any Plan Year may not exceed the limit set forth in Code Section 401(a)(17)(A) for the applicable Plan Year, as adjusted by Code Section 401(a)(17)(B).

With respect to Compensation paid in Plan Years beginning on or after January 1, 2008, Elective Deferrals can only be made with respect to amounts that are treated as compensation under Section 4.3(a). To this end, Compensation shall not include amounts that are not paid to the Participant within 2½ months after the later of “severance from employment” [within the meaning of Treasury Regulation 1.415(a)-1(f)(5)] from the Employer or the end of the limitation year that includes the date of severance from employment from the Employer. Compensation shall also not include severance payments paid after the Participant’s termination of employment.

Effective for amounts paid after December 31, 2008, Compensation shall include Differential Wage Payments. For this purpose, “Differential Wage Payments” means any payment which (a) is made by the Employer to a Participant while the Participant is performing services in the uniformed services while on active duty for a period of more than thirty (30) days; and (b) represents all or a portion of the wages the Participant would have received from the Employer if the Participant was performing services for the Employer.

Compensation for a Participant’s initial Plan Year in which he or she is eligible to receive an allocation pursuant to Section 4.2 of this Part I shall exclude the amounts set forth in this definition for the portion of the year in which such individual was not a Participant.

“Date of Employment” shall mean the first day upon which an Employee is credited with an Hour of Service for the performance of duties during the Employee’s initial period of service with the Employer.

“Date of Reemployment” shall mean the first day upon which an Employee is credited with an Hour of Service for the performance of duties after a Break in Service. For this purpose, a Break in Service is a 12-month period commencing with his or her date of employment in which he or she fails to be credited with at least 500 Hours of Service.

“Effective Date” means, except where separately stated, July 1, 2011.

“Elective Deferrals” shall mean all contributions made to the Plan as a result of the election pursuant to Section 4.1 of this Part I of a Participant to have the Employer defer a portion of his or her future compensation to the Plan in lieu of paying cash compensation to the Participant. A Participant may not elect to contribute to the Plan amounts currently or constructively received by such Participant.

“Employee” shall mean any individual who is treated by the Employer as a common law employee for payroll purposes, excluding employees who are students performing services who are (a) enrolled and regularly attending classes; (b) hired through the student employment system; and (c) paid through the student employment payroll. No individual who is deemed to be an independent contractor, as determined by the Employer 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 Employee for purposes of this Plan, regardless of any determination by a court of law or governmental agency to the contrary.

“Employer” shall mean Wittenberg University.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as may be amended from time to time.

“Fund Sponsor” shall mean an insurance, variable annuity, mutual fund or retirement company that provides Funding Vehicles to Participants or Tax Deferred Annuity Participants under the Plan.

“Funding Vehicles” shall mean the investment options issued for the purpose of funding accrued benefits under this Plan and specifically approved by the Administrator for use under this Plan, as further described in Article V of Part I and Part II. Funding Vehicles shall consist of annuity contracts or custodial accounts. For this purpose, “annuity contract” means a nontransferable contract as defined in Section 403(b)(1) of the Code, established for each Participant or Tax Deferred Annuity Participant by the Employer, or by each Participant or Tax Deferred Annuity Participant individually, that is issued by an insurance company qualified to issue annuities in the state in which the Employer is located, and that includes payment in the form of an annuity; and “custodial account” means the group or individual custodial account or accounts, as defined in Section 403(b)(7) of the Code, established for each Participant or Tax Deferred Annuity Participant by the Employer, or by each Participant or Tax Deferred Annuity Participant individually, to hold assets of the Plan.

“Highly-Compensated Employee” shall have the meaning as set forth in Code Section 414(q), without regard to the “top-paid group” limitation. For the purpose of Section 4.3(c) of this Part I, a Highly-Compensated Employee shall be determined based on compensation earned for the preceding Plan Year.

“Hours of Service” shall have the meaning set forth in Department of Labor Regulation 2530.200b-2.

“Matching Contributions” shall mean the contributions made to the Plan by the Employer pursuant to the provisions of Section 4.2 of this Part I.

“Participant” shall mean an Employee of the Employer participating in this Part I after satisfying the eligibility requirements set forth in Article III, or a former Employee for whom an Accumulation Account is maintained under the Plan.

“Plan” shall mean the Wittenberg University Defined Contribution Retirement Plan, as evidenced by this plan document, including Parts I and II, and any amendments made hereto, and the provisions of the agreements between the Fund Sponsor and the Employer that constitutes or governs a custodial account or an annuity contract.

“Plan Year” shall mean the 12-month period beginning each January 1 and ending on the subsequent December 31.
“Qualified Military Service” shall have the meaning as set forth in Section 4.4(d) of this Part I.

“Related Employer” shall mean the Employer and any other entity which is under common control with the Employer under Section 414(b) or (c) of the Code.

“Spouse” or “Surviving Spouse” shall mean an individual who is legally married to the Participant or Tax Deferred Annuity Participant at the relevant time, provided that an individual who was formerly married to the Participant or Tax Deferred Annuity Participant will be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order, as described in Code Section 414(p).

“Year of Service” shall mean a 12-month period beginning on the Employee’s Date of Employment or Date of Reemployment and any Plan Year thereafter in which the Employee is credited with at least 1,000 Hours of Service. For eligibility purposes, an Employee shall be credited with a Year of Service on the last day of the 12-month period in which he or she satisfied the 1,000 Hours of Service requirement. An Employee who has been credited with at least 1,000 Hours of Service in an eligibility computation period and who is credited with fewer than 1,000 Hours of Service in a subsequent eligibility computation period shall continue to be credited with a Year of Service for eligibility purposes. Hours of Service will be credited as follows: (a) hourly staff will be credited on the basis of actual hours paid or entitled to be paid for an Hour of Service; (b) administrative staff will be credited with forty (40) hours for each week in which the Employee is paid or entitled to payment for an Hour of Service; and (c) faculty members will be credited with eighty-seven (87) Hours of Service for each semester hour that the faculty member teaches. For eligibility purposes, a Participant shall receive credit, on and after his or her Date of Reemployment, for all Years of Service earned prior to his or her Date of Reemployment.

Year of Service shall also include a Participant’s period of Qualified Military Service (as defined in Section 4.4 of this Part I).

“Tax Deferred Annuity Participant”, “Tax Deferred Annuity Elective Deferrals”, “Tax Deferred Annuity Employee”, and “Tax Deferred Annuity Accumulation Account” shall have the meaning as set forth in Article IA of Part II.
ARTICLE III
ELIGIBILITY FOR PARTICIPATION

3.1 Participation

An Employee shall be eligible to make Elective Deferrals and receive Matching Contributions as of the first day of the month following the date he or she is credited with a Year of Service.

An Employee whose immediate prior employment was with another employer that sponsored a tax-sheltered annuity program in accordance with Section 403(b) of the Code shall receive credit for eligibility purposes for all Years of Service with the prior employer (and shall participate in the Plan as of the first day of the month after his or her date of hire), providing such Employee is appointed to a position with the Employer in which the Employee is expected to be credited with at least 1,000 Hours of Service in his or her first 12 months of employment.

An Employee who meets the requirements set forth above shall become a Participant for the purpose of Section 4.1 of this Part I by completing the forms necessary to have Elective Deferrals made pursuant to Section 4.1 of this Part I and returning such forms to the Employer or its designee or by means of Automatic Enrollment as described in Section 4.1(a)(2) of this Part I.

3.2 Termination of Participation

A Participant who ceases to be an Employee shall nevertheless continue to be eligible to direct the investment of his or her Accumulation Account and designate a Beneficiary of such account until his or her Accumulation Account has been completely distributed.

3.3 Rehire

A rehired former Participant who is an Employee shall again commence to be a Participant in the Plan upon the first day of the month after his or her date of reemployment.
ARTICLE IV
PLAN CONTRIBUTIONS

4.1 Elective Deferrals

(a) (1) General. Each active Participant shall be given the opportunity to make Elective Deferrals in the manner permitted by the Employer and in accordance with Code Section 403(b). The frequency with which a Participant may make, change or cease Elective Deferrals shall be determined by the Administrator on a uniform and nondiscriminatory basis. As of the effective date of this amendment and restatement, Participants may terminate their Elective Deferrals at any time and may also change the amount of their Elective Deferrals at any time. The Employer shall forward Elective Deferrals to the Funding Vehicles as soon as practicable after the date they otherwise would have been paid to the Participants but, in any event, not later than the time period set forth in Employee Benefits Security Administration Regulation 2510.3-102(b).

If the percentage of a Participant’s Elective Deferrals attributable to Compensation earned on and after July 1, 2011 is less than 5%, or an Employee is not eligible to participate in this Part I, Elective Deferrals made by such individuals will be made to a Tax Deferred Annuity Accumulation Account in accordance with Part II. If the percentage of a Participant’s Elective Deferrals attributable to Compensation earned on and after July 1, 2011 is equal to 5%, such Participant’s Elective Deferrals will be made to an Accumulation Account in accordance with the rules set forth in this Part I. If the percentage of a Participant’s Elective Deferrals attributable to Compensation earned on and after July 1, 2011 is greater than 5%, such Participant’s Elective Deferrals will be made to a Tax Deferred Annuity Accumulation Account in accordance with the rules set forth in Part II.

During a paid leave of absence, Elective Deferrals will continue to be made for a Participant on the basis of Compensation then being paid by the Employer. No Elective Deferrals or Matching Contributions will be made for periods of unpaid leaves of absence.

Notwithstanding the foregoing, to the extent that a Participant: (a) is a Professor; (b) is not a Highly-Compensated Employee [as defined in Code Section 414(q)]; and (c) goes on sabbatical, Elective Deferrals and Matching Contributions will be made for such Participant based on either the Participant’s rate of Compensation determined immediately prior to such sabbatical, or the Participant’s reduced Compensation paid during such person’s sabbatical, as elected by the Participant, provided that the Participant’s Annual Addition will not exceed the limitations set forth in Section 4.3(a) of this Part I.

(2) Automatic Enrollment. Notwithstanding the foregoing, effective for Employees hired on and after July 1, 2011, the Administrator will elect on behalf of such Employees to have 5% of each person’s Compensation contributed to the Plan, with such amounts commencing on and after the date that each such person first becomes a Participant in the Plan (i.e., after meeting the requirements set forth in Section 3.1 of this Part I) and will treat such amounts as Elective Deferrals made by the Employer on behalf of such Employees, provided that each affected Employee is provided with a notice containing:
(A) an explanation of the automatic deferral election, the Employee’s right to change or revoke the election prior to its implementation and the procedures and timing requirements for changing or revoking the election prior to its implementation; and

(B) an explanation of how contributions made on the Employee’s behalf will be invested if the Employee does not direct his or her Accumulation Account.

The notice described above shall be provided to the Employee within a reasonable time prior to the date after which the Employee’s Compensation would be subject to the automatic deferral election, and again, to the extent required by federal regulations, to the Employee prior to the beginning of each Plan Year.

If the Employee so chooses, he or she may elect to opt-out of the automatic deferral feature, whereby no amounts will be treated as compensation reduction amounts pursuant to this section.

(b) **Age 50 Catch-up Contributions.** A Participant who is prevented from making additional Elective Deferrals to the Plan for a Plan Year as a result of the dollar limitations set forth in Section 402(g)(1)(A) of the Code, and who has attained or will attain age 50 by the last day of a calendar year, may make additional Elective Deferrals, hereinafter referred to as “catch-up contributions” effective as of the January 1 of the calendar year in which he will attain age 50.

The amount of catch-up contributions made by a Participant shall not exceed the lesser of the dollar limitation set forth in Code Section 414(v)(2)(B) [as adjusted in accordance with Code Section 414(v)(2)(C)] or the amounts described in Code Section 414(v)(2)(A).

Catch-up contributions shall not be subject to the otherwise applicable limitations described in Sections 401(a)(30) or 415 of the Code for the relevant Plan Year or limitation year for which such contribution is credited.

(c) **Special 15-Years of Service Catch-up Contributions.** A Participant who is a “qualified employee” (generally, an Employee who has at least 15 years of service) of a “qualified organization” (generally, certain educational organizations, hospitals, health and welfare service agencies and church-related organizations), as such terms are further defined in Treasury Regulations 1.403(b)-4(c)(3)(ii) and (iii), and 1.403(b)-4(e), for whom the amount of Elective Deferrals contributed to this Plan on his or her behalf for any year are not less than the applicable dollar amount under Section 402(g)(1)(B) of the Code, shall have the Elective Deferral limitation set forth in Section 402(g)(1) of the Code increased by the lesser of:

1. $3,000;
(2) the excess of $15,000 over the total special 15-years of service catch-up Elective Deferrals made for the qualified employee by the qualified organization for prior years; or

(3) the excess of $5,000 multiplied by the number of years of service of the qualified employee with the qualified organization over the total Elective Deferrals made for the qualified employee by the qualified organization for prior years.

(d) Allocation. Age 50 catch-up contributions, special 15-years of service catch-up contributions and Elective Deferrals will be allocated by the Plan to the Participant’s Elective Deferral account. Any catch-up contribution made during a taxable year by a Participant who is eligible for both special 15-years of service catch-up contributions and age 50 catch-up contributions shall first be treated as an amount contributed as a special 15-years of service catch-up contribution up to the maximum contribution limitation for such contributions.

4.2 Matching Contributions

(a) Eligibility. A Participant meeting the eligibility requirements set forth in Section 3.1 of this Part I shall be eligible to receive the Matching Contribution described in Section 4.2(b) of this Part I.

(b) Allocation of Employer Contribution. For any payroll period during which an active Participant makes Elective Deferrals to this Part I attributable to Compensation earned on and after July 1, 2011 of at least 5% of his Compensation, the Employer shall contribute 10% based on such Participant’s Compensation. For the purpose of this subsection (b), the term “Elective Deferrals” shall exclude Age 50 Catch-up Contributions set forth in Section 4.1(b) and Special 15-Years of Service Catch-up Contributions set forth in Section 4.1(c). Such amounts contributed by the Employer will be treated as Matching Contributions. Matching Contributions shall be contributed and allocated to the Participant’s Matching Contributions account on a payroll period basis. The Employer reserves the right to change or eliminate the amount of Matching Contributions made to a Participant’s Accumulation Account, or to change the amount of Elective Deferrals required to be made by a Participant in order to receive a Matching Contribution.

(c) Discrimination Testing. Matching Contributions shall meet the coverage requirements of Code Section 410(b), and the discrimination testing requirements set forth in Code Section 401(m), which is further described in Section 4.3(c) of Part I below.

4.3 Limitations on Plan Contributions

(a) Code Section 415 Limitations

(1) Notwithstanding anything to the contrary contained in this Plan, the total Annual Additions made on behalf of a Participant or Tax Deferred Annuity Participant for any “limitation year” (which shall be the Plan Year) shall not exceed the limitations imposed by Code Section 415(c), as they may be adjusted from time to time. The limitations imposed by
Code Section 415(c) are the lesser of: (A) the dollar limitation set forth in Code Section 415(c)(1)(A) as adjusted for the applicable limitation year; or (B) 100% of the Participant’s or Tax Deferred Annuity Participant’s “compensation” [as defined in Code Section 415(c)(3) and Treasury regulation 1.415(c)-2(d)(4)]. If a Participant’s or Tax Deferred Annuity Participant’s Annual Additions for a limitation year exceed such limitations, the excess amounts will be held in a separate account. Such excess amounts will be removed from a Participant’s or Tax Deferred Annuity Participant’s Accumulation Account or Tax Deferred Annuity Accumulation Account in the manner permitted by the Internal Revenue Service in Rev. Proc. 2008-50, or other successor guidance.

Except as provided below, the following amounts otherwise meeting the definition of compensation may only be treated as compensation for the purpose of this section if such amounts are paid to the Participant or Tax Deferred Annuity Participant by the later of 2½ months after “severance from employment” [within the meaning of Treasury Regulation 1.415(a)-1(f)(5)] from the Employer or the end of the limitation year that includes the date of the Participant’s severance from employment from the Employer:

(i) regular payments received by the Participant or Tax Deferred Annuity Participant after severance of employment if: (A) the payments are regular compensation for services during the Participant’s regular working hours, or compensation for services outside the Participant’s regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments; and (B) the payments would have been paid to the Participant or Tax Deferred Annuity Participant prior to severance from employment if the Participant or Tax Deferred Annuity Participant had continued in employment with the Employer.

(ii) payment for unused accrued bona fide sick, vacation or other leave received after severance from employment, but only if the Participant or Tax Deferred Annuity Participant would have been able to use the leave if employment continued.

Notwithstanding the foregoing, Section 415 Compensation shall include, regardless of whether paid within the time period specified above, payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service to the extent the payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering into Qualified Military Service.

Notwithstanding the foregoing, compensation shall not include the following amounts: (A) amounts paid to a Participant or Tax Deferred Annuity Participant who is permanently and totally disabled [as defined in Code Section 22(e)(3)]; or (B) amounts that are treated as severance pay or parachute payments [within the meaning of Section 280G(b)(2)] if paid after severance from employment.

For limitation years beginning on or after July 1, 2007, compensation shall be subject to the dollar limitation set forth in Code Section 401(a)(17)(A), as adjusted by 401(a)(17)(B).
If the Plan is terminated effective as of a date other than the last day of the Plan’s limitation year, the Plan is treated for purposes of this section as if the Plan was amended to change its limitation year. As a result of this deemed amendment, the Section 415(c)(1)(A) dollar limit must be prorated under the short limitation year rules.

(2) If the limitations of this Section 4.3(a) are exceeded because the Participant is also participating in another plan maintained by the Employer or Related Employer that is required to be aggregated with this Plan for purposes of Code Section 415, then to the extent by which Annual Additions under this Plan will be reduced, as compared with the extent by which annual benefits or contributions under any other plans will be reduced, shall be determined by the Employer so as to maximize the aggregate benefits payable to the Participant or Tax Deferred Annuity Participant from all plans. If the reduction is under this Plan, the Employer will advise affected Participants or Tax Deferred Annuity Participants of any additional limitation on their Annual Additions required by this paragraph.

(3) To the extent not set forth herein, Section 415 of the Code and applicable regulations thereunder are hereby incorporated by reference.

(b) Limitations on Elective Deferrals

Each Fund Sponsor shall provide in each annuity contract or mutual fund offered to Participants and Tax Deferred Annuity Participants under the Plan that the amount of Elective Deferrals and Tax Deferred Annuity Elective Deferrals (excluding catch-up contributions) made by a Participant for any taxable year under this Plan and all other plans, contracts or arrangements of the Employer or Related Employer described in Code Section 402(g)(3) that are required to be aggregated with this Plan for purposes of Code Section 402(g)(1), as adjusted by Code Section 402(g)(4), at the beginning of such taxable year. For this purpose, the Administrator shall take into account any other such plan for which the Administrator receives from the Participant or Tax Deferred Annuity Participant sufficient information concerning his or her participation in such plan. In the event that a Participant has contributed to his Plan an amount in excess of the limitations set forth in Code Section 402(g), or this limitations set forth in Section 4.1(b) or (c), he or she may designate an amount contributed to this Plan during a taxable year as excess deferral by notifying the Administrator on or before March 1 of the taxable year after which such excess deferrals were made of the amount of the excess. Notwithstanding the foregoing, a Participant or Tax Deferred Annuity Participant is not required to notify the Plan with regard to excess deferrals that arose solely from amounts deferred to the Plan and any other plan sponsored by the Employer. Excess deferrals, adjusted to reflect any investment gain or loss up to the date of distribution, will be distributed no later than by the April 15 of the taxable year after the taxable year in which such excess deferrals were made to the Participant or Tax Deferred Annuity Participant who designates such amounts as excess deferrals for such taxable year. Effective for Plan Years commencing on and after January 1, 2009 the allocable gain or loss shall not include the period between the end of the Plan Year and the date of distribution.

(c) Limitations on Matching Contributions
(1) For a Plan Year, the contribution percentage for eligible Highly-Compensated Employees will not exceed the greater of: (i) 125% of the contribution percentage for eligible Non-Highly-Compensated Employees; or (ii) the lesser of: (A) 200% of the contribution percentage for eligible Non-Highly-Compensated Employees; or (B) the contribution percentage for eligible Non-Highly-Compensated Employees plus two percentage points. The calculation shall be computed to the nearest hundredth of a percentage point. For the purpose of this subsection, “Highly-Compensated Employee” shall mean any individual described in Section 414(q) of the Code and applicable regulations thereunder (without making a top paid group election), and “Non-Highly-Compensated Employee” shall mean an individual who is not a Highly-Compensated Employee.

(2) For purposes of this subsection, the “contribution percentage” for eligible Highly-Compensated Employees and eligible Non-Highly-Compensated Employees is the average of the ratios (calculated separately for each person in either the Highly- or Non-Highly-Compensated Employee group) of: (i) the Matching Contributions; divided by (ii) the Employee’s Compensation for the period during the Plan Year that the Employee was a Participant. The calculation shall be computed to the nearest hundredth of a percentage point. A contribution percentage will be calculated for each Participant who is eligible to have the contributions described in this subsection allocated to his Accumulation Account.

(3) The Plan will not be treated as failing to meet the requirements of this subsection for any Plan Year if, before the close of the following Plan Year (and if practical, to avoid certain excise taxes, before the close of the first 2½ months of the following Plan Year), the amount of the excess aggregate contributions for such Plan Year and any income allocable to such contributions is forfeited and used to reduce subsequent contributions by the Employer, if forfeitable or distributed, if not forfeitable, not later than the last day of the Plan Year following the Plan Year to which such excess aggregate contribution relates. For this purpose, “income” will mean the sum of the allocable gain or loss on such contributions for the Plan Year in which the excess aggregate contribution arose. Effective for Plan Years commencing on and after January 1, 2009 the allocable gain or loss shall not include the period between the end of the Plan Year and the date of distribution. The allocable gain or loss will be calculated under one of the methods set forth in Treasury Regulation 1.401(m)-1(e)(3)(ii)(B) or (C), with one such method being applied consistently to all affected Participants.

(4) Any distribution of excess aggregate contributions for any Plan Year will be made to Highly-Compensated Employees determined by allocating such amounts to the Highly-Compensated Employees with the largest excess contribution percentage amounts, beginning with the Highly-Compensated Employees with the largest amount and continuing in descending order until all of the excess aggregate contributions have been allocated. For purposes of this subsection, the term “excess aggregate contributions” will mean, with respect to a Plan Year, the excess of: (i) the aggregate amount of the Matching Contributions actually made on behalf of Highly-Compensated Employees for such Plan Year, over (ii) the maximum amount of such contributions permitted under the contribution percentage requirement described above.

(5) The Plan shall incorporate Section 401(m) of the Code and regulations thereunder, to the extent not set forth herein.
4.4 Military Service

(a) A former active Participant who returns to active service with the Employer after a period of Qualified Military Service and whose reemployment complies with the requirements of 38 USCA Section 4312 shall be permitted to make additional Elective Deferrals and catch up contributions (hereinafter referred to as “make-up deferrals”) of an amount not greater than the maximum amount of such contributions the Participant would have been permitted to make during a period of Qualified Military Service if the Participant had continued to be employed by the Employer, and shall also receive a corresponding amount of Matching Contributions for such period. Such returning service Participant shall be permitted to make such deferrals during a period which shall begin on the date he again commences active service with the Employer and shall end on the date which is the lesser of: (1) the product of 3 and the period of Qualified Military Service immediately prior to his rehire; or (2) 5 years.

(b) No earnings shall be credited with respect to make-up contributions or make-up deferrals until contributed to the Plan.

(c) Any make-up deferrals shall be subject to the limitations set forth in Article IV of the Plan with respect to the year in which such contribution relates in accordance with regulations provided by the Secretary of the Treasury.

(d) For the purpose of this section, “Qualified Military Service” shall mean any service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) by an individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

4.5 Rollover Contributions

Subject to procedures and restrictions established by the Administrator, and the Administrator’s reasonable determination that the contribution meets the requirements of Section 402(c) of the Code, a Participant who is also an Employee may contribute to this portion of the Plan, as a rollover contribution, a distribution (either directly or indirectly) from an eligible retirement plan within the meaning of Section 402(8)(B) of the Code. Amounts so rolled over will be credited to and maintained in one or more rollover accounts for the benefit of the Participant.
ARTICLE V
FUND SPONSORS/FUNDING VEHICLES

5.1 Fund Sponsors/Funding Vehicles

A Participant’s Accumulation Account shall be invested by each Participant in one or more of the Funding Vehicles made available to Participants by the Administrator. The Fund Sponsors and their Funding Vehicles which are made available to Participants shall be selected by the Administrator. Each Participant shall be fully responsible for his investment decisions. As of the Effective Date, the Fund Sponsors shall be the Teacher’s Insurance and Annuity Association (“TIAA”) and the College Retirement Equity Fund (“CREF”).

A Participant’s Accumulation Account shall be adjusted for investment gains or losses and Plan expenses in accordance with procedures established by the Administrator or each Fund Sponsor.

5.2 Fund Transfers

A Participant may transfer amounts accumulated under his or her Accumulation Account among the Funding Vehicles offered by the Funding Sponsors in accordance with the requirements and restrictions, if any, imposed by the Funding Sponsors and related Funding Vehicles or the Administrator.

5.3 Fees and Expenses

All reasonable costs and expenses incurred by the Employer or Fund Sponsor in connection with the administration of this Plan may be charged to the Accumulation Accounts of Participants and Beneficiaries on a nondiscriminatory basis if not paid by the Employer.
ARTICLE VI
VESTING

6.1 Vested Accounts

All amounts credited to a Participant’s Elective Deferral account, Matching Contribution account and rollover account shall be fully vested and nonforfeitable at all times.
ARTICLE VII
BENEFITS

7.1 Payment of Benefits

(a) In General

Subject to the rules set forth in this Article VII and procedures established by the Administrator, a Participant shall be entitled to receive his or her vested Accumulation Account under this Plan upon incurring a “hardship” as defined in Section 7.7 (Elective Deferral Account only), retirement on and after the attainment of age 65, “disability” [within the meaning of Code Section 72(m)(7)] or other severance from employment with the Employer.

A Participant may, with the approval of his or her Spouse, elect to receive his or her vested Accumulation Account on or after the attainment of age 59½ in accordance with the following requirements:

(1) Part-time Tenured Faculty. A faculty member holding tenure who has been accepted by the University into its “Phased Retirement Program” may make an election to receive a distribution from his vested Accumulation Account on or after the attainment of age 59 ½ and after being credited with at least 15 Years of Service.

(2) Part-time Faculty (non-tenured) and Part-time Non-Faculty. Eligible part-time faculty and eligible part-time non-faculty may elect to receive a distribution from their vested Accumulation Account on or after the attainment of age 59 ½.

A Participant’s Beneficiary is entitled to receive the Participant’s Accumulation Account upon the Participant’s death.

Upon becoming eligible to receive a benefit under the Plan, a Participant shall receive such benefit in accordance with the benefit options offered by the Funding Vehicles, which shall include the forms of benefits set forth in Section 7.1(b), a lump sum and each other form of benefit offered by a Fund Sponsor which does not exceed the life or life expectancy of the Participant or Participant and designated beneficiary. In addition, prior to the receipt of a distribution, the Participant shall be informed of his right to defer distribution of his Accumulation Account and the consequences of the failure to do so. Notwithstanding the foregoing, if the value of a Participant’s Accumulation Account exceeds $1,000, no distribution shall be made to the Participant prior to his or her attainment of age 65, without his consent. To the extent a Participant’s Accumulation Account does not exceed $1,000, the Plan may implement a procedure applicable to Participants on a uniform and nondiscriminatory basis that a terminated Participant (or Beneficiary in the case of the death of a Participant) will be required to receive a distribution after severance from employment.

(b) Annuity Payments

Notwithstanding any provisions contained in this Plan to the contrary, unless an optional form of payment is elected by the Participant, the benefit of an unmarried Participant shall be
paid in the form of an annuity for his life (hereinafter referred to as a “life annuity”). To the extent that a Participant has a Spouse at the time that he is eligible to receive a benefit pursuant to this Section 7.1, such benefit, unless waived by the Participant and such waiver is consented to by the Participant’s Spouse, shall be paid in a form that provides an annuity for the Participant’s life and, commencing after the Participant’s death, a benefit to his or her Surviving Spouse equal to 50% (or at the election of the Participant, 75%) of the benefit payable during the joint lives of the Participant and his or her Spouse (hereinafter referred to as a “joint and survivor annuity”). A life annuity or a joint and survivor annuity shall be purchased from an insurance company with the proceeds of the Participant’s Accumulation Account. A waiver of the joint and survivor annuity for a married Participant or the life annuity for an unmarried Participant may be made by the Participant (and his Spouse, if applicable, shall consent to such waiver) only during the 180-day period immediately preceding the commencement of benefit payments to the Participant. Any waiver of the joint and survivor annuity or life annuity may be revoked by the Participant during such 180-day period, provided it may not be revoked after benefit payments begin. However, a Spouse’s consent to the waiver of a joint and survivor annuity is not required if the Participant certifies that his Spouse cannot be located, that the Participant and Spouse are legally separated, or such consent is otherwise not required by law or regulation. The Spouse who makes a waiver contained herein shall be informed of the form of benefit and any non-spousal Beneficiaries selected by the Participant, and shall also be informed of the effect of such consent. The Spouse’s consent shall be witnessed by a Plan representative or notary public.

Upon the waiver of the life annuity or joint and survivor annuity (and the consent to such waiver by the Participant’s Spouse, if required), the Participant may select from any of the optional forms of benefit offered by the Fund Sponsor.

(c) Notification of Joint and Survivor Annuity

Each Participant will be provided no less than 8 days (or such lesser number of days as permitted by federal regulations) and no more than 180 days prior to the date benefit payments are to commence under Section 7.1 with a written explanation of the terms and conditions of the Spouse’s rights to a joint and survivor annuity and the Participant’s right to waive this form of distribution with the written consent of his Spouse.

7.2 Pre-retirement Death Benefits

Upon the death of a Participant prior to the commencement of benefit payments under Section 7.1, the Participant’s Accumulation Account shall be payable to the Participant’s Beneficiary. The Beneficiary may select from one of the forms of benefits offered by the Plan. In the event that the Beneficiary is the Participant’s Spouse, the amount payable to the Beneficiary shall be subject to such Spouse’s rights described in Section 7.3. If a Participant dies before distribution of the Participant’s account has commenced, the Participant’s entire account shall be distributed by the December 31 coinciding with or next following the fifth anniversary of the Participant’s death, provided that if the Participant has designated a beneficiary to receive a part or all of the Participant’s account and if payment to the beneficiary commences not later than by the December 31 coinciding with or next following the first anniversary of the Participant’s death, the portion payable to such beneficiary may be paid over a period which does
not exceed the beneficiary’s life expectancy. In the event the Participant’s designated beneficiary is the Participant’s Spouse, payment to the Spouse need not commence earlier than the date on which the Participant would have reached age seventy and a half (70½). If a deceased Participant’s designated beneficiary is the Participant’s Spouse and the Spouse dies before payments commence, the Participant’s entire account shall be distributed by applying the rules of this subsection as though the deceased Spouse were the Participant. To the extent not set forth above, distribution of survivor benefits shall be subject to the required distribution rules set forth in Code Section 401(a)(9)(B) and the regulations thereto, and Section 7.5 of Part I.

Effective for deaths occurring on or after January 1, 2007, if a Participant dies while in Qualified Military Service, the Beneficiaries of the Participant are entitled to all additional benefits provided under the Plan (except for benefit accruals) determined as if the Participant had resumed employment and then died.

7.3 Spouse’s Rights Regarding Pre-retirement Death Benefits

Pre-retirement death benefits shall be paid on behalf of a Participant who has a Spouse at the time of the Participant’s death prior to the commencement of retirement benefits, as described in this Section 7.3. The Participant and the Spouse may waive the spousal entitlement to receive pre-retirement death benefits only if a written waiver of the benefit signed by the Participant and the Spouse is filed with the Administrator in accordance with ERISA, unless the Participant certifies that his Spouse cannot be located, the Participant and Spouse are legally separated, or such consent is not otherwise required by law or regulation.

(a) Pre-retirement Spousal Entitlement

If the Participant dies prior to commencement of retirement benefits and a waiver of spousal entitlement to receive benefits has not been filed, the Surviving Spouse shall receive at least 50% of the Participant’s Accumulation Account, payable in the form of a life annuity (the “pre-retirement survivor benefit”). The period during which the Participant and his Spouse may elect to waive the pre-retirement survivor annuity benefit begins on the first day of the Plan Year in which the Participant attains age 35 and continues until the earlier of the date of the Participant’s death, or the date the Participant begins to receive benefit payments under this Plan of his entire Accumulation Account. If the Participant terminates employment before age 35, the waiver provisions shall be available to the Participant and his Spouse. Notwithstanding the foregoing, as soon as is administratively practicable after the death of a Participant, the Surviving Spouse may elect to receive survivor benefits in any form offered by the Fund Sponsor.

(b) Notification of Pre-retirement Spousal Entitlement

The Participant will be notified of the Spouse’s rights to pre-retirement death benefits and of the Participant’s corresponding right to waive his Spouse as Beneficiary and/or the form of the death benefit payable to the Spouse with the written consent of the Spouse within the latest of the following periods: (1) 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; (2) a reasonable period ending after the individual becomes
a Participant; (3) a reasonable period ending after this section ceases to apply to the Participant; and (4) a reasonable period after the provisions of Section 205 of ERISA first apply to the Participant. Participants who have terminated employment prior to age 32 will also be notified of these rights within a reasonable time after separating from service.

7.4 **Application for Benefits**

A Participant or Beneficiary shall apply for benefits by completing any application for benefits and supporting documents in the manner permitted by the Administrator.

7.5 **Minimum Distribution Requirements**

All distributions to a Participant or Beneficiary shall be made in accordance with the provisions of Code Section 401(a)(9) and the regulations promulgated thereunder. To this end, the Accumulation Account of each Participant who is not deceased shall commence to be paid to such individual not later than the later of: (a) the April 1 following the calendar year in which the Participant attains age 70½; or (b) the April 1 following the calendar year in which the Participant retires. All distributions required under this Section 7.5 and Section 7.2 of Part I will be determined and made in accordance with Code Section 401(a)(9) [including the incidental distribution requirements of Code Section 401(a)(9)(G)] and the provisions of Treasury Regulation 1.401(a)(9)-2 through 9, which shall be hereby incorporated by reference. The provisions of this Section 7.5 and Section 7.2 of Part I shall override any distribution options in the Plan which are inconsistent with such sections.

Notwithstanding the foregoing, a Participant or Beneficiary who would have been required to receive required minimum distributions in 2009 from the Plan but for the enactment of Section 401(a)(9)(H) of the Code will not receive a distribution from the Plan that would have satisfied the requirements of this section for 2009 (prior to the application of Code Section 401(a)(9)(H)) unless the Participant or Beneficiary elected to receive such distribution. In addition, notwithstanding any provision of the Plan to the contrary, and solely for purposes of applying the direct rollover provisions of the Plan, any distribution made in accordance with the preceding paragraph to a Participant or Beneficiary may be treated as an eligible rollover distributions by the Participant or Beneficiary.

7.6 **Eligible Rollover Distributions**

(a) A distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) The following definitions will apply for purposes of this section:

(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: (A) 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; (B) any distribution that is for a specified period of ten years or more;
(C) any distribution to the extent such distribution is required under Code Section 401(a)(9); (D) 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); (E) hardship distributions described in Code Section 401(k)(2)(B)(i)(IV); (F) other miscellaneous amounts set forth in the Code, regulations or other guidance, including the taxable amount of defaulted loans or the distributed amount of excess contributions and excess deferrals; and (G) at the election of the Fund Sponsor, any other distribution, providing all distributions in the year are reasonably expected to total less than $200.

(2) Notwithstanding subparagraph (D) of the preceding paragraph, amounts consisting of after-tax contributions, if any, distributed from a Participant’s Accumulation Account or Tax Deferred Annuity Participant’s Tax Deferred Annuity Accumulation Account that are excludable from such person’s gross income for federal income tax purposes will also be treated as an eligible rollover distribution. Such amounts may only be transferred to an individual retirement account or annuity described in Sections 408(a) or 408(b) of the Code, or directly transferred to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code, provided that such account, annuity or plan agrees to separately account for the amounts transferred, including separately accounting for the portion of such distribution that is includable in gross income.

(3) Eligible retirement plan: Except as provided below, an eligible retirement plan is (A) an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a) or a qualified trust described in Code Section 401(a) that accepts the distributee’s eligible rollover distribution; or (B) an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) that 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 that agrees to separately account for amounts transferred into such plan from this Plan. Effective on and after January 1, 2007, an eligible retirement plan shall also mean a Roth IRA, provided the distributee could have otherwise rolled over a traditional IRA to the Roth IRA during such taxable year. Effective on and after January 1, 2007, with regard to a rollover from a non-Spouse Beneficiary who is a “designated beneficiary,” as defined by Treasury Regulation 1.401(a)(9)-4, an eligible retirement plan shall mean an individual retirement account or annuity.

(4) Distributee: A distributee includes an Employee or former Employee, and a Tax Deferred Annuity Employee, or former Tax Deferred Annuity Employee. In addition, the Spouse or Surviving Spouse of an Employee, Tax Deferred Annuity Employee, or former Employee or former Tax Deferred Annuity Employee, including a Spouse or former Spouse who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), is a distributee with regard to the interest of the Spouse or Surviving Spouse. In addition, a non-Spouse Beneficiary who is a “designated beneficiary,” as defined by Treasury Regulation 1.401(a)(9)-4, is a distributee with regard to the interest of such person.

(5) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
(c) The Administrator shall provide, within 180 days prior to making an initial eligible rollover distribution, an explanation to the distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

7.7 **Hardship Distributions**

(a) A Participant, with the approval of his or her Spouse, may apply to the Administrator for a hardship distribution of the amount necessary to satisfy an immediate and heavy financial need. Hardship withdrawals shall be made from the Participant’s Elective Deferral Account (less earnings) and shall be charged against the Participant’s Accumulation Account.

(b) For purposes of this Plan, an immediate and heavy financial need is the need for money for:

1. expenses for or necessary to obtain medical care that would be deductible under Section 213(d) of the Code (without regard to whether the expenses exceed the 7.5% adjusted gross income limitation) for the Participant or the Participant’s Spouse or dependents;

2. costs directly related to the purchase (excluding mortgage payments) of a principal residence of the Participant;

3. the payment of tuition, related educational fees and room and board expenses for the next 12 months of postsecondary education for the Participant or the Participant’s Spouse, children or dependents [as defined in Code Section 152 and without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B)];

4. the prevention of the eviction of the Participant from his or her principal residence or the foreclosure on the mortgage of the Participant’s principal residence;

5. payments for burial or funeral expenses for a Participant’s deceased parent, Spouse, children or dependents [as defined in Code Section 152 and without regard to Code Section 152(d)(1)(B)]; or

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

(c) An amount is necessary to satisfy an immediate and heavy financial need if:

1. the amount distributed does not exceed the amount of the immediate and heavy financial need (including amounts necessary to pay reasonably anticipated taxes and penalties on the hardship distribution);

2. the Participant has obtained all other distributions and all nontaxable loans currently available under the Plan and any other plans maintained by the Employer; and
(3) a Participant who has received a hardship distribution will not be eligible to make any Elective Deferrals or Tax Deferred Annuity Elective Deferrals for the six-month period after the hardship distribution under this Plan or any other plan maintained by the Employer.
ARTICLE VIII
NON-ALIENATION OF RETIREMENT RIGHTS OR BENEFITS

8.1 General Rule

No benefit under the Plan may at any time be subject in any manner to alienation, encumbrance, the claims of creditors or legal process in violation of the assignment or alienation provisions set forth in ERISA Section 206(d)(1) or applicable regulations thereunder. No person will have the power in any manner to transfer, assign, alienate or in any way encumber his benefits under the Plan in violation of the assignment or alienation provisions set forth in ERISA Section 206(d)(1) or applicable regulations thereunder, or any part thereof, and any attempt to do so will be void and of no effect.

Each custodial account (as such term is defined in the definition of “Funding Vehicles” set forth in Article 2) shall provide that it shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the custodial account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries.

8.2 Qualified Domestic Relations Order/Other Exceptions

Notwithstanding the provisions of Section 8.1 of this Part I, the Plan shall comply with any judgment, decree or order that establishes the rights of another person to all or a portion of a Participant’s or Tax Deferred Annuity Participant’s benefit under this Plan to the extent that such judgment, decree or order is a “qualified domestic relations order,” as described in ERISA Section 206(d)(3). Notwithstanding anything in this Plan to the contrary, upon approval of a qualified domestic relations order, the alternate payee under such order may elect to receive an immediate distribution of the portion of the Participant’s or Tax Deferred Annuity Participant’s benefits assigned under the order, if the order so provides.

In addition, Section 8.1 shall not apply to any amount that a Participant or Beneficiary is ordered to have offset from his or her Tax Deferred Annuity Account or Accumulation Account as a result of a judgment or conviction for a crime involving the Plan, a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of ERISA, or pursuant to a settlement agreement between the Secretary of Labor or the Pension Benefit Guaranty Corporation and the Participant, in connection with a violation (or alleged violation) of part 4 of ERISA by a fiduciary or any other person. Section 8.1 shall also not apply to the enforcement of a federal tax levy made pursuant to section 6331, the collection by the United States on a judgment resulting from an unpaid tax assessment, or any other exception set forth in Section 206(d)(3) of ERISA or applicable regulations thereunder.
ARTICLE IX
ADMINISTRATION

9.1 Administrator

The Employer shall be the Administrator of this Plan and is responsible for enrolling Participants and Tax Deferred Annuity Participants, sending contributions to the Fund Sponsors selected by the Participant or Tax Deferred Annuity Participant, and for performing other duties required for the operation of the Plan.

9.2 Authority of the Administrator

The Administrator has the sole and absolute discretion to interpret and construe the Plan and to resolve any disputes arising under its provisions, including, but not limited to, disputes regarding an individual’s eligibility under the Plan and the determination of a Beneficiary. In exercising such power and authority, the Administrator will at all times exercise good faith, and refrain from arbitrary action. The Administrator may employ attorneys, agents and accountants as it finds necessary or advisable to assist it in carrying out its duties.

The Administrator may employ one or more persons to render advice with regard to any responsibility that it has under the Plan, and it may designate or permit others to carry out any of its responsibilities and duties.

9.3 Action of the Administrator

Any act authorized, permitted or required to be taken by the Administrator under the Plan, which has not been delegated in accordance with Section 9.2 of this Part I, may be taken 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 Administrator under the Plan will be in writing.

9.4 Indemnification

In addition to whatever rights of indemnification any person or persons who are employees of the Employer and to whom any power, authority or responsibility of the Administrator is delegated pursuant to this section may be entitled under the articles of incorporation, regulations or by-laws of the Employer; or under any provision of law or under any other agreement, the Employer will satisfy any liability actually and reasonably incurred by such persons who are Employees of the Employer, including expenses, attorneys’ fees, judgments, fines and amounts paid in settlement in connection with any threatened, pending or completed action, suit or proceeding that is related to the exercise of such power, authority or responsibility.
ARTICLE X
AMENDMENT AND TERMINATION

10.1 Amendment and Termination

The Employer reserves the right at any time to amend, otherwise modify or terminate the Plan; or to discontinue any further contributions to the Plan. Termination of the Plan shall only be permitted if the Employer and Related Employer (taking into account all entities that are treated as an employer under Code Section 414 on the date of termination) do not permit a Participant or Tax Deferred Annuity Participant to make a contribution to a Section 403(b) contract during the period beginning on the date of Plan termination and ending 12 months after distribution of all assets from the Plan, or as otherwise permitted in Treasury Regulation 1.403(b)-10. In the event of a termination of the Plan or discontinuance of contributions, the Employer will notify all Participants and Tax Deferred Annuity Participants of the termination or discontinuance. As soon as is administratively practicable after the termination of the Plan, Participants shall receive their Accumulation Accounts and Tax Deferred Annuity Accumulation Accounts to the extent permitted by federal regulations.

10.2 Limitation on Actions

Notwithstanding the provisions of Section 10.1, the following conditions and limitations shall apply:

(a) No amendment to the Plan shall be made which will operate to recapture for the Employer any contributions previously made under this Plan unless specifically permitted by the Code or ERISA; and

(b) No amendment to the Plan shall deprive, take away or alter any then accrued right of any Participant to his Accumulation Account, or Tax Deferred Annuity Participant to his Tax Deferred Annuity Accumulation Account, in violation of the Code or ERISA with respect to contributions previously made or earned under the Plan.
ARTICLE XI
MISCELLANEOUS

11.1 Plan Non-Contractual

Nothing contained in this Plan shall be construed as a commitment or agreement on the part of any person to continue his employment with the Employer or the rate of compensation of any person for any period with the Employer. All Employees and Tax Deferred Annuity Employees of the Employer shall remain subject to discharge to the same extent as if the Plan had never been put into effect.

11.2 Claims for Benefits

(a) Filing Claims for Benefits. A Participant, Beneficiary, alternate payee or such person’s authorized representative, or the Employer acting on behalf of such individual, will notify the Administrator of a claim for benefits under the Plan. Such request will set forth the basis of such claim and will authorize the Administrator to conduct such examinations as may be necessary for the Administrator to determine, in its discretion, the validity of the claim and to take such steps as may be necessary to facilitate the payment of benefits to which the claimant may be entitled under the terms of the Plan. Before deciding the claim, the Administrator shall review the provisions of the Plan, summary plan description and other relevant plan documents, including similar claims, in order to ensure and verify that the claim is made in accordance with such documents and the decision is applied consistently with regard to similarly situated claimants.

A decision by the Administrator on a claim for benefits under the Plan (other than a claim for disability benefits pursuant to Section 7.1 of Part I or Part II) will be made within a reasonable period of time and not later than 90 days after the Administrator’s receipt of such claim, unless special circumstances require an extension of the time for deciding the claim; in which case a decision will be rendered as soon as reasonably possible, but not later than 180 days after the initial receipt of the claim for benefits. The claimant will be notified of the extension prior to the expiration of the 90-day period described in this paragraph. Such notice to the claimant shall indicate the special circumstances requiring the extension and the date by which the Administrator expects to render a decision.

A decision by the Administrator on a claim for disability retirement pursuant to Section 7.1(a) of Part I or Part II shall be made promptly and not later than 45 days after the Administrator’s receipt of the claim, unless the Administrator determines that an extension of time of 30 days is necessary due to matters beyond the control of the Plan, and notifies the claimant prior to the expiration of the 45-day period of the circumstances requiring the extension of time and the date a decision will be made. If, prior to the end of the first 30-day extension period the Administrator determines that, due to matters beyond the control of the Plan, a decision cannot be rendered within the first 30-day extension period and notifies the claimant of the circumstances requiring the need for an additional extension, the determination may be extended for an additional 30 days after the expiration of the first 30-day extension. The notice to the claimant of the first or second 30-day extension shall explain the standards on which entitlement of a benefit is based, the unresolved issues that prevent a decision on the claim and
the additional information needed to resolve such issues. To the extent that the Administrator requests an extension due to the failure of the claimant to submit information necessary to decide a claim, the period of making the benefit determination described in this paragraph shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information. The claimant shall be afforded at least 45 days within which to provide the specified information.

(b) Denial of Claim. Whenever a claim for benefits by a claimant has been denied by the Administrator, in whole or in part, a notice, prepared in a manner calculated to be understood by such individual, must be provided by written or electronic means and must set forth:

(1) the specific reason or reasons for the denial;

(2) the specific reference to the pertinent Plan provision(s) on which the denial is based;

(3) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

(4) an explanation of the Plan’s claim review procedure and the time limits applicable to such procedures and a statement of the claimant’s right to bring a civil action under Section 502(a) of ERISA following an adverse determination upon review.

In the case of an adverse determination of a claim for disability benefits in accordance with Section 7.1(a) of Part I or Part II, the information provided to the claimant shall also include, to the extent necessary, the information set forth in Department of Labor Regulation 2560.503-1(g)(1)(v).

(c) Remedies Available to Claimants. Upon denial of his or her claim by the Administrator, the claimant may:

(1) request a review upon written application to the Plan;

(2) review and receive copies of all documents, records and other information relevant to claimant’s claim for benefits; and

(3) submit issues and comments in writing to a named fiduciary who shall be the Administrator unless there is a claim for disability benefits.

The claimant will have 60 days (180 days in the case of a claim for disability benefits) after receipt of the notification of a denial of his or her claim to request a review of such denied claim.

The Administrator will consider all information submitted by the claimant, regardless of whether the information was part of the original claim. A decision by the Administrator will be made within a reasonable period of time and not later than 60 days (45 days in the case of a claim for disability benefits) after the Administrator’s receipt of a request for review, unless special circumstances require an extension of the time for processing. In the case of such extension, a decision will be rendered as soon as possible, but not later than 120 days (90 days in the case of a
claim for disability benefits) after receipt of a request for review. The claimant will be notified of the extension prior to the expiration of the 45- or 60-day period described in this paragraph. Such notice to the claimant shall indicate the special circumstances requiring the extension and the date by which the Administrator expects to render a decision.

The decision on review by the Administrator will be in writing and will include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based. The decision shall also include a statement of the claimant’s right to bring an action under Section 502(a) of ERISA. Any action brought by a claimant under Section 502(a) of ERISA is required to be brought within one year of the date the decision on review was received by the claimant.

In the case of a claim for disability benefits: (a) the review of the denied claim shall be conducted by a named fiduciary who is neither the individual who made the benefit determination nor a subordinate of such person and (b) no deference shall be given to the initial benefit determination. For issues involving medical judgment, the named fiduciary must consult with an independent health care professional who may not be the health care professional who decided the initial claim.

11.3 **Claims of Other Persons**

The provisions of the Plan shall in no event be construed as giving any Participant, Tax Deferred Annuity Participant, or any other person, firm or corporation any legal or equitable right against the Employer, its officers, employees or directors, except the rights specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

11.4 **Merger, Consolidation or Transfers of Plan Assets**

The Plan shall not be merged or consolidated with any other plan unless, immediately after a merger or consolidation, each Participant or Tax Deferred Annuity Participant would receive a benefit under the Plan which is at least equal to the benefit he would have received immediately prior to a merger or consolidation (assuming in each instance that the Plan had then terminated).

11.5 **Gender and Number**

Whenever used in this Plan, a masculine pronoun shall refer to both the masculine and the feminine; and a singular pronoun shall refer to both the singular and the plural, unless the context clearly requires otherwise.

11.6 **Governing Law**

This Plan shall be governed by, and construed in accordance with, the laws of the State of Ohio, to the extent not preempted by ERISA.
11.7 **Severability**

The invalidity or unenforceability of any particular provision of this Plan shall not affect other provisions, and this Plan shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

11.8 **Certain Make-Up Deferrals and Contributions Relating to Qualified Military Service**

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 Section 414(u) of the Code.

11.9 **Mistake of Fact**

Contributions to the Plan made as a result of a mistake of fact may be returned to the Employer within one year of the date such contributions were made. Earnings attributable to the mistaken contribution may not be returned to the Employer, but losses attributable thereto must reduce the amounts to be returned.

11.10 **Mistakes or Misstatements**

In the event of a mistake or a misstatement by a Participant, Tax Deferred Annuity Participant, or Beneficiary as to any item of information that is furnished to the Administrator that has an effect on the amount paid or to be paid to such Participant, Tax Deferred Annuity Participant or Beneficiary, or a mistake by the Administrator or Trustee as to the amount paid or to be paid to a Participant, Tax Deferred Annuity Participant or Beneficiary, the Administrator shall take such action as in its judgment will provide such person with the benefit to which he is properly entitled. The actions that may be taken by the Administrator include, without limitation, the reduction of future payments to the Participant, Tax Deferred Annuity Participant or Beneficiary, the restatement of such person’s accrued benefit on the books and records of the Administrator or a request to the affected Participant or Beneficiary that such person repay the amounts paid to such person in error.
PART II

TAX-DEFERRED ANNUITY PLAN PROVISONS

ARTICLE IA

ESTABLISHMENT OF PART II

WHEREAS, Wittenberg University previously established the Wittenberg University Tax Deferred Annuity Plan ("Tax Deferred Annuity Plan") effective December 1, 1945. The Tax Deferred Annuity Plan has previously been amended, and amended and restated, from time to time. Effective as of the close of business on December 31, 2010, the Tax Deferred Annuity Plan will be merged into the Wittenberg University Defined Contribution Retirement Plan ("Plan"). Thereafter, certain provisions of the Tax Deferred Annuity Plan are set forth in this Part II of the Plan.
ARTICLE IIA
DEFINITIONS

The words and phrases defined in this article shall have the following meanings throughout this Part II.

“Tax Deferred Annuity Date of Employment” shall mean the first day upon which a Tax Deferred Annuity Employee is credited with an Hour of Service for performance of duties after the Tax Deferred Annuity Employee’s date of hire or rehire.

“Roth Elective Deferrals” means the amounts contributed by the Employer to the Plan as a result of a Tax Deferral Annuity Participant’s election to contribute a portion of his or her future Tax-Deferred Annuity Compensation on an after-tax basis to his or her Tax Deferred Annuity Accumulation Account, provide that such amounts meet the requirements of Section 402A of the Code, and are irrevocably designated as Roth Elective Deferrals at the time made.

“Tax Deferred Annuity Accumulation Account” shall mean the total of the separate accounts established for each Tax Deferred Annuity Participant, and where necessary, each Beneficiary, under the terms of this Part II. The current value of a Tax Deferred Annuity Participant’s Tax Deferred Annuity Accumulation Account includes: (a) Tax Deferred Annuity Elective Deferrals, Roth Elective Deferrals, and catch-up contributions described in Sections 4.1(a), (b) and (c), which shall be contributed to the Tax Deferred Annuity Participant’s elective deferral account or Roth elective deferral account, as appropriate; (b) rollover contributions, which shall be contributed to a Tax Deferred Annuity rollover account; and (c) any other Tax Deferred Annuity account deemed necessary to be established by the Administrator. All such accounts shall be adjusted for expense charges, withdrawals and investment experience.

A Tax Deferred Annuity Accumulation Account will also be established for a Beneficiary after the death of the Participant.

“Tax Deferred Annuity Compensation” shall have the meaning as set forth in the definition of “Compensation” set forth in Article IIA and Part I.

With respect to Tax Deferred Annuity Compensation paid in Plan Years beginning on or after January 1, 2008, Tax Deferred Annuity Elective Deferrals can only be made with respect to amounts that are treated as compensation under Section 4.3(a) of Part I. To this end, Tax Deferred Annuity Compensation shall in no event include amounts which are not paid to the Participant within 2½ months after the later of “severance from employment” [within the meaning of Treasury Regulation 1.415(a)-1(f)(5)] from the Employer or the end of the limitation year that includes the date of severance from employment from the Employer. Tax Deferred Annuity Compensation shall also not include severance payments paid after the Tax Deferred Annuity Participant’s termination of employment.

“Tax Deferred Annuity Elective Deferrals” shall mean all contributions made to the Tax Deferred Annuity Accumulation Account as a result of an election pursuant to Section 4.1 by the Tax Deferred Annuity Participant to have the Employer defer a portion of his or her future Tax Deferred Annuity Compensation to his or her Tax Deferred Annuity Accumulation Account on a
pre-tax basis in lieu of paying cash compensation to such person. A Tax Deferred Annuity Participant may not elect to contribute to the Plan amounts currently or constructively received by such person.

“Tax Deferred Annuity Employee” shall mean any individual who is treated by the Employer as a common law employee for payroll purposes, excluding employees who are students performing services who are (a) enrolled and regularly attending classes; (b) hired through the student employment system; and (c) paid through the student employment payroll. No individual who is deemed to be an independent contractor, as determined by the Employer 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 a Tax Deferred Annuity Employee for purposes of this Plan, regardless of any determination by a court of law or governmental agency to the contrary.

“Tax Deferred Annuity Participant” shall mean a Tax Deferred Annuity Employee participating in this Part II after satisfying the eligibility requirements set forth in Article IIIA, or a former Tax Deferred Annuity Employee for whom a Tax Deferred Annuity Accumulation Account is maintained under this Part II.

All capitalized terms used in this Part II which are not defined above shall have the meaning as set forth in Part I, Article I.
ARTICLE IIIA
ELIGIBILITY FOR PARTICIPATION

3.1 Participation

A Tax Deferred Annuity Employee shall commence participation in the portion of the Plan set forth in this Part II on and after his Tax Deferred Annuity Date of Employment.

An Employee who meets the requirements set forth above shall become a Participant for the purpose of Section 4.1 of this Part II by completing the forms necessary to have Elective Deferrals made pursuant to Section 4.1 of this Part II and returning such forms to the Employer or its designee.

3.2 Termination of Participation

A Tax Deferred Annuity Participant who ceases to be a Tax Deferred Annuity Employee shall nevertheless continue to be eligible to direct the investment of his Tax Deferred Annuity Accumulation Account and designate a Beneficiary of such account until his Tax Deferred Annuity Accumulation Account has been completely distributed.
ARTICLE IVA
PLAN CONTRIBUTIONS

4.1 Tax Deferred Annuity Elective Deferrals

(a) General. Each Tax Deferred Annuity Participant may elect to make Tax Deferred Annuity Elective Deferrals in the manner specified by the Administrator. All Tax Deferred Annuity Elective Deferrals will be contributed to the Tax Deferred Annuity Participant’s Tax Deferred Annuity elective deferral account. The frequency with which a Tax Deferred Annuity Participant may make, change or cease Tax Deferred Annuity Elective Deferrals shall be determined by the Administrator on a uniform and nondiscriminatory basis, provided that such frequency is not less than on an annual basis.

Effective on and after January 1, 2010, a Tax Deferred Annuity Participant may make Roth Elective Deferrals on the same basis as a participant may make Tax Deferred Annuity Elective Deferrals. Roth Elective Deferrals will be allocated to the Tax Deferred Annuity Participant’s Roth elective deferral account.

Tax Deferred Annuity Elective Deferrals and Roth Elective Deferrals shall continue under a leave of absence to the extent that the Tax Deferred Annuity Participant’s Tax Deferred Annuity Compensation continues to be paid to such person during the leave of absence.

The Employer shall forward Tax Deferred Annuity Elective Deferrals and Roth Elective Deferrals to the Funding Vehicles as soon as practicable after the date such amounts would have been paid to the Tax Deferred Annuity Participants, but in any event not later than the time period set forth in Employee Benefits Security Administration Regulation 2510.3-102(b).

(b) Age 50 Catch-up Contributions. A Tax Deferred Annuity Participant who is prevented from making additional Tax Deferred Annuity Elective Deferrals or Roth Elective Deferrals to this portion of the Plan for a Plan Year as a result of the dollar limitations set forth in Section 402(g)(1)(A) of the Code, and who has attained or will attain age 50 by the last day of a calendar year, may make additional Tax Deferred Annuity Elective Deferrals or Roth Elective Deferrals, hereinafter referred to as “catch-up contributions” effective as of the January 1 of the calendar year in which he will attain age 50.

The amount of catch-up contributions made by a Tax Deferred Annuity Participant shall not exceed the lesser of dollar limitation set forth in Code Section 414(v)(2)(B) [as adjusted in accordance with Code Section 414(v)(2)(C)] or the amounts described in Code Section 414(v)(2)(A).

Catch-up contributions shall not be subject to the otherwise applicable limitations described in Sections 401(a)(30) or 415 of the Code for the relevant Plan Year or limitation year for which such contribution is credited.

(c) Special 15-Years of Service Catch-up Contributions. A Tax Deferred Annuity Participant who is a “qualified employee” (generally, an Tax Deferred Annuity Employee who
has at least 15 years of service) of a “qualified organization” (generally, certain educational organizations, hospitals, health and welfare service agencies and church-related organizations), as such terms are further defined in Treasury Regulations 1.403(b)-4(c)(3)(ii) and (iii), and 1.403(b)-4(e), for whom the amount of Tax Deferred Annuity Elective Deferrals and Roth Elective Deferrals contributed to the Plan on his behalf for any year are not less than the applicable dollar amount under Section 402(g)(1)(B) of the Code, shall have the Elective Deferral limitation set forth in Section 402(g)(1) of the Code increased by the lesser of:

(1) $3,000;

(2) the excess of $15,000 over the total special 15-years of service catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or

(3) the excess of $5,000 multiplied by the number of years of service of the qualified employee with the qualified organization over the total Tax Deferred Annuity Elective Deferrals made for the qualified employee by the qualified organization for prior years.

(d) **Allocation.** Age 50 catch-up contributions, special 15-years of service catch-up contributions and Tax Deferred Annuity Elective Deferrals will be allocated by the Plan to the Tax Deferred Annuity Participant’s Tax Deferred Annuity elective deferral account, and Roth Elective Deferrals will be allocated to his or her Roth elective deferral account. Any catch-up contributions made during a taxable year by a Tax Deferred Annuity Participant who is eligible for both special 15-years of service catch-up contributions and age 50 catch-up contributions shall first be treated as an amount contributed as a special 15-years of service catch-up contribution up to the maximum contribution limitation for such contributions.

(e) **Military Service.**

(a) A former active Tax Deferred Annuity Participant who returns to active service with the Employer after a period of Qualified Military Service and whose reemployment complies with the requirements of 38 USCA Section 4312 shall be permitted to make additional Tax Deferred Annuity Elective Deferrals, Roth Elective Deferrals, and catch up contributions (hereinafter referred to as “make-up deferrals”) of an amount not greater than the maximum amount of such contributions the Tax Deferred Annuity Participant would have been permitted to make during a period of Qualified Military Service if the Tax Deferred Annuity Participant had continued to be employed by the Employer. Such returning service Tax Deferred Annuity Participant shall be permitted to make such deferrals during a period which shall begin on the date he again commences active service with the Employer and shall end on the date which is the lesser of: (1) the product of 3 and the period of Qualified Military Service immediately prior to his rehire; or (2) 5 years.

(b) No earnings shall be credited with respect to make-up deferrals until contributed to the portion of the Plan.
(c) Any make-up deferrals shall be subject to the limitations set forth in Article IVA of the Plan with respect to the year in which such contributions relate in accordance with regulations provided by the Secretary of the Treasury.

(d) For the purpose of this section, “Qualified Military Service” shall mean any service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) by an individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

4.2 Rollover Contributions

Subject to procedures and restrictions established by the Administrator, and the Administrator’s reasonable determination that the contribution meets the requirements of Section 402(c) of the Code, a Tax Deferred Annuity Participant who is also a Tax Deferred Annuity Employee may contribute to this portion of the Plan, as a rollover contribution, a distribution (either directly or indirectly) from an eligible retirement plan within the meaning of Section 402(8)(B) of the Code, including Roth accounts held in another eligible retirement plan. Amounts so rolled over will be credited to and maintained in one or more rollover accounts for the benefit of the Tax Deferred Annuity Participant.
ARTICLE VA
FUND SPONSORS/FUNDING VEHICLES

5.1 Fund Sponsors/Funding Vehicles

A Tax Deferred Annuity Participant’s Tax Deferred Annuity Accumulation Account shall be invested by each Tax Deferred Annuity Participant in one or more of the Funding Vehicles made available to Tax Deferred Annuity Participants by the Administrator. The Fund Sponsors and their Funding Vehicles which are made available to Tax Deferred Annuity Participants shall be selected by the Administrator. Each Tax Deferred Annuity Participant shall be fully responsible for his investment decisions. As of the Effective Date, the Fund Sponsors shall be the Teacher’s Insurance and Annuity Association (“TIAA”) and the College Retirement Equity Fund (“CREF”).

A Tax Deferred Annuity Participant’s Tax Deferred Annuity Accumulation Account shall be adjusted for investment gains or losses and Plan expenses in accordance with procedures established by the Administrator or each Fund Sponsor.

5.2 Fund Transfers

A Tax Deferred Annuity Participant may transfer amounts accumulated under his Tax Deferred Annuity Accumulation Account among the Funding Vehicles offered by the Funding Sponsors in accordance with the requirements and restrictions, if any, imposed by the Funding Sponsors and related Funding Vehicles, or the Administrator.

5.3 Fees and Expenses

All reasonable costs and expenses incurred by the Employer or Fund Sponsor in connection with the administration of this portion of the Plan may be charged to the Tax Deferred Annuity Accumulation Accounts of Tax Deferred Annuity Participants and Beneficiaries on a nondiscriminatory basis if not paid by the Employer.
ARTICLE VIA VESTING

6.1 Vested Accounts

All amounts credited to a Tax Deferred Annuity Participant’s Tax Deferred Annuity Accumulation Account shall be fully vested and nonforfeitable at all times.
ARTICLE VIIA

BENEFITS

7.1 Payment of Benefits

(a) In General

Subject to the rules set forth in this Article VIIA and procedures established by the Administrator, a Tax Deferred Annuity Participant shall be entitled to receive his vested Tax Deferred Annuity Accumulation Account under this portion of the Plan (1) upon retirement from the Employer on and after the attainment of age 65; (2) upon incurring a disability [within the meaning of Code Section 72(m)(7)]; (3) upon the attainment of age 59 ½ as explained below, or (4) after any other severance from employment from the Employer.

(1) Part-time Tenured Faculty. A faculty member holding tenure who has been accepted by the University into its “Phased Retirement Program” may make an election to receive a distribution from his vested Tax Deferred Annuity Accumulation Account on or after the attainment of age 59 ½ and after being credited with at least 15 Years of Service.

(2) Faculty and Non-faculty (including full-time and part-time). Eligible faculty and non-faculty may elect to receive a distribution from their vested Tax Deferred Annuity Accumulation Account on or after the attainment of age 59 ½.

A Tax Deferred Annuity Participant’s Beneficiary is entitled to receive the Tax Deferred Annuity Participant’s Tax Deferred Annuity Accumulation Account upon the Tax Deferred Annuity Participant’s death.

Subject to the spousal consent requirements set forth below, Tax Deferred Annuity Participants are entitled to receive their rollover accounts at any time.

Upon becoming eligible to receive a benefit under the Plan, a Tax Deferred Annuity Participant shall receive such benefit in accordance with the benefit options offered by the Funding Vehicles, which shall include the forms of benefits set forth in Section 7.1(b), a lump sum and each other form of benefit offered by a Fund Sponsor which does not exceed the life or life expectancy of the Tax Deferred Annuity Participant or Tax Deferred Annuity Participant and his or her designated beneficiary. In addition, prior to the receipt of a distribution, the Tax Deferred Annuity Participant shall be informed of his right to defer distribution of his Accumulation Account and the consequences of the failure to do so.

Notwithstanding the foregoing, if the value of a Tax Deferred Annuity Participant’s Accumulation Account exceeds $1,000, no distribution shall be made to such person prior to his or her attainment of age 65, without his consent. To the extent a Participant’s Accumulation Account does not exceed $1,000, the Plan may implement a procedure applicable to Participants on a uniform and nondiscriminatory basis that a terminated Participant (or Beneficiary in the case of the death of a Participant) will be required to receive a distribution after severance from employment.
(b) **Annuity Payments**

Notwithstanding any provisions contained in this Plan to the contrary, unless an optional form of payment is elected by the Tax Deferred Annuity Participant, the benefit of an unmarried Tax Deferred Annuity Participant shall be paid in the form of an annuity for his life (hereinafter referred to as a “life annuity”). To the extent that a Tax Deferred Annuity Participant has a Spouse at the time that he is eligible to receive a benefit pursuant to this Section 7.1, such benefit, unless waived by the Tax Deferred Annuity Participant, and such waiver is consented to by the Tax Deferred Annuity Participant’s Spouse, shall be paid in a form that provides an annuity for the Tax Deferred Annuity Participant’s life and, commencing after the Tax Deferred Annuity Participant’s death, a benefit to his or her Surviving Spouse equal to 50% (or at the election of the Tax Deferred Annuity Participant, 75%) of the benefit payable during the joint lives of the Tax Deferred Annuity Participant and his or her Spouse (hereinafter referred to as a “joint and survivor annuity”). A life annuity or a joint and survivor annuity shall be purchased from an insurance company with the proceeds of the Tax Deferred Annuity Participant’s Tax Deferred Annuity Accumulation Account. A waiver of the joint and survivor annuity for a married Tax Deferred Annuity Participant or the life annuity for an unmarried Tax Deferred Annuity Participant may be made by the Tax Deferred Annuity Participant (and his Spouse, if applicable, shall consent to such waiver) only during the 180-day period immediately preceding the commencement of benefit payments to the Tax Deferred Annuity Participant. Any waiver of the joint and survivor annuity or life annuity may be revoked by the Tax Deferred Annuity Participant during such 180-day period, provided it may not be revoked after benefit payments begin. However, a Spouse’s consent to the waiver of a joint and survivor annuity is not required if the Tax Deferred Annuity Participant certifies that his Spouse cannot be located, the Tax Deferred Annuity Participant and Spouse are legally separated, or as otherwise not required by law or regulation. The Spouse who makes a waiver contained herein shall be informed of the form of benefit and any non-spousal Beneficiaries selected by the Tax Deferred Annuity Participant, and shall also be informed of the effect of such consent. The Spouse’s consent shall be witnessed by a Plan representative or notary public.

Upon the waiver of the life annuity or joint and survivor annuity (and the consent to such waiver by the Tax Deferred Annuity Participant’s Spouse, if required), the Tax Deferred Annuity Participant may select from any of the optional forms of benefit offered by the Fund Sponsor.

(c) **Notification of Joint and Survivor Annuity**

Each Tax Deferred Annuity Participant will be provided no less than 8 days (or such lesser number of days as permitted by federal regulations) and no more than 180 days prior to the date benefit payments are to commence under Section 7.1, with a written explanation of the terms and conditions of the Spouse’s rights to a joint and survivor annuity, and the Tax Deferred Annuity Participant’s right to waive this form of distribution with the written consent of his Spouse.
7.2 Pre-retirement Death Benefits

Upon the death of a Tax Deferred Annuity Participant prior to the commencement of benefit payments under Section 7.1, the Tax Deferred Annuity Participant’s Tax Deferred Annuity Accumulation Account shall be payable to the Tax Deferred Annuity Participant’s Beneficiary. The Beneficiary may select from one of the forms of benefits offered by the Plan. In the event that the Beneficiary is the Tax Deferred Annuity Participant’s Surviving Spouse, the amount payable to the Beneficiary shall be subject to the Spouse’s rights described in Section 7.3. If a Tax Deferred Annuity Participant dies before distribution of the Tax Deferred Annuity Participant’s account has commenced, the Tax Deferred Annuity Participant’s entire account shall be distributed by the December 31 coinciding with or next following the fifth anniversary of the Tax Deferred Annuity Participant’s death, provided that if the Tax Deferred Annuity Participant has designated a beneficiary to receive a part or all of the Tax Deferred Annuity Participant’s account and if payment to the beneficiary commences not later than by the December 31 coinciding with or next following the first anniversary of the Tax Deferred Annuity Participant’s death, the portion payable to such beneficiary may be paid over a period which does not exceed the beneficiary’s life expectancy. Notwithstanding the foregoing, in the event the Tax Deferred Annuity Participant’s designated beneficiary is the Tax Deferred Annuity Participant’s Spouse, payment to the Spouse need not commence earlier than the date on which the Tax Deferred Annuity Participant would have reached seventy and a half (70½). If a deceased Tax Deferred Annuity Participant’s designated beneficiary is the Tax Deferred Annuity Participant’s Spouse and the Spouse dies before payments commence, the Tax Deferred Annuity Participant’s entire account shall be distributed by applying the rules of this subsection as though the deceased Spouse were the Tax Deferred Annuity Participant. To the extent not set forth above, distribution of survivor benefits shall be subject to the required distribution rules set forth in Code Section 401(a)(9)(B) and the regulations thereto, and Section 7.5 of Part II.

Effective for deaths occurring on or after January 1, 2007, if a Tax Deferred Annuity Participant dies while in Qualified Military Service, the Beneficiaries of the Participant are entitled to all additional benefits provided under the Plan (except for benefit accruals) determined as if the Participant had resumed employment and then died.

7.3 Spouse’s Rights Regarding Pre-retirement Death Benefits

Pre-retirement death benefits shall be paid on behalf of a Tax Deferred Annuity Participant who has a Spouse at the time of the Tax Deferred Annuity Participant’s death prior to the commencement of retirement benefits, as described in this Section 7.3. The Tax Deferred Annuity Participant and the Spouse may waive the spousal entitlement to receive pre-retirement death benefits only if a written waiver of the benefit signed by the Tax Deferred Annuity Participant and the Spouse is filed with the Administrator in accordance with ERISA, unless the Tax Deferred Annuity Participant certifies that his Spouse cannot be located, the Participant and Spouse is legally separated, or consent is otherwise not required by law or regulation.
(a) **Pre-retirement Spousal Entitlement**

If the Tax Deferred Annuity Participant dies prior to commencement of retirement benefits and a waiver of spousal entitlement to receive benefits has not been filed, the Surviving Spouse shall receive at least 50% of the Tax Deferred Annuity Participant’s Tax Deferred Annuity Accumulation Account, payable in the form of a life annuity (the “pre-retirement survivor benefit”). The period during which the Tax Deferred Annuity Participant and his Spouse may elect to waive the pre-retirement survivor annuity benefit begins on the first day of the Plan Year in which the Tax Deferred Annuity Participant attains age 35 and continues until the earlier of the date of the Tax Deferred Annuity Participant’s death, or the date the Tax Deferred Annuity Participant begins to receive benefit payments under this portion of Plan of his entire Tax Deferred Annuity Accumulation Account. If the Tax Deferred Annuity Participant terminates employment before age 35, the waiver provisions shall be available to the Tax Deferred Annuity Participant and his Spouse. Notwithstanding the foregoing, as soon as is administratively practicable after the death of a Tax Deferred Annuity Participant, the Surviving Spouse may elect to receive survivor benefits in any form offered by the Fund Sponsor.

(b) **Notification of Pre-retirement Spousal Entitlement**

The Tax Deferred Annuity Participant will be notified of the Spouse’s rights to pre-retirement death benefits and of the Tax Deferred Annuity Participant’s corresponding right to waive his Spouse as Beneficiary and/or the form of the death benefit payable to the Spouse with the written consent of the Spouse within the latest of the following periods: (1) the period beginning with the first day of the Plan Year in which the Tax Deferred Annuity Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Tax Deferred Annuity Participant attains age 35; (2) a reasonable period ending after the individual becomes a Tax Deferred Annuity Participant; (3) a reasonable period ending after this section ceases to apply to the Tax Deferred Annuity Participant; and (4) a reasonable period after the provisions of Section 205 of ERISA first apply to the Tax Deferred Annuity Participant. Tax Deferred Annuity Participants who have terminated employment prior to age 32 will also be notified of these rights within a reasonable time after separating from service.

7.4 **Application for Benefits**

A Tax Deferred Annuity Participant or Beneficiary shall apply for benefits by completing any application for benefits and supporting documents in the manner permitted by the Administrator.

7.5 **Minimum Distribution Requirements**

All distributions to a Tax Deferred Annuity Participant or Beneficiary shall be made in accordance with the provisions of Code Section 401(a)(9) and the regulations promulgated thereunder. To this end, the Tax Deferred Annuity Accumulation Account of each Tax Deferred Annuity Participant who is not deceased shall commence to be paid to such individual not later than the later of: (a) the April 1 following the calendar year in which the Tax Deferred Annuity Participant attains age 70½; or (b) the April 1 following the calendar year in which the Tax
Deferred Annuity Participant retires. All distributions required under this Section 7.5 and Section 7.2 of Part II will be determined and made in accordance with Code Section 401(a)(9) [including the incidental distribution requirements of Code Section 401(a)(9)(G)] and the provisions of Treasury Regulation 1.401(a)(9)-2 through 9, which shall be hereby incorporated by reference. The provisions of this Section 7.5 and Section 7.2 of Part II shall override any distribution options in the Plan which are inconsistent with such sections.

Notwithstanding the foregoing, a Tax Deferred Annuity Participant or Beneficiary who would have been required to receive required minimum distributions in 2009 from the Plan but for the enactment of Section 401(a)(9)(H) of the Code will not receive a distribution from the Plan that would have satisfied the requirements of this section for 2009 (prior to the application of Code Section 401(a)(9)(H)) unless the Tax Deferred Annuity Participant or Beneficiary elected to receive such distribution. In addition, notwithstanding any provision of the Plan to the contrary, and solely for purposes of applying the direct rollover provisions of the Plan, any distribution made in accordance with the preceding paragraph to a Participant or Beneficiary may be treated as an eligible rollover distributions by the Participant or Beneficiary.

7.6 Loans

Subject to the terms of the investment contracts, loans are available to Tax Deferred Annuity Participants before the commencement of benefit payments. Loans to Tax Deferred Annuity Participants shall comply with the requirements of Code Sections 72(p) and 4975(d)(1) and applicable regulations thereunder. In addition, no loans shall be made to a Tax Deferred Annuity Participant without his Spouse’s consent. Spousal consent shall be obtained within 180 days of the loan and in accordance with ERISA. Notwithstanding the foregoing, no loans shall be made from a Participant’s Roth Elective Deferrals, or earnings thereon.

To minimize the instances in which Tax Deferred Annuity Participants have taxable income as a result of loans from this portion of the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth below, including the collection of information from Fund Sponsors, and transmission of information requested by any Fund Sponsor, concerning the outstanding balance of any loans made to a Tax Deferred Annuity Participant under this portion of the Plan or any other plan of the Employer. The Administrator shall also take such steps as may be appropriate to collect information from Fund Sponsors and transmission of information to any Fund Sponsor concerning any failure by a Tax Deferred Annuity Participant to repay timely any loans made to such person under the Plan or any other plan of the Employer. In addition, Tax Deferred Annuity Participants are limited to having two outstanding loans at any one time.

No loan to a Tax Deferred Annuity Participant under this portion of the Plan may exceed the lesser of:

(a) $50,000, reduced by the greater of: (1) the outstanding balance on any loan from this portion of the Plan to the Tax Deferred Annuity Participant on the date the loan is made or (2) the highest outstanding balance on loans from this portion of the Plan to the Tax Deferred
Annuity Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or

(b) one half of the value of the Tax Deferred Annuity Participant's vested Tax Deferred Annuity Accumulation Account (as of the valuation date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this section, any loan from any other plan maintained by the Employer and any Related Employer required to be aggregated under Code Section 72(p) shall be treated as if it were a loan made from the Plan, and the Tax Deferred Annuity Participant's vested interest under any such other plan shall be considered a vested interest under this Plan.
IN WITNESS WHEREOF, the undersigned has caused this Plan to be executed by a duly authorized individual effective as indicated on the title page of this document.

WITTENBERG UNIVERSITY

Date executed: ____________

By: ________________________________

Name (Print): ______________________

Its: ______________________________}

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