

**STEVENS INSTITUTE OF TECHNOLOGY
457(b) DEFERRED COMPENSATION**



**FINANCIAL SERVICES
FOR THE GREATER GOOD™**

INTRODUCTION

The purpose of the Plan is to provide deferred compensation primarily for a select group of management and highly compensated employees covered under the Plan.

The Plan document and the Adoption Agreement are designated as constituting parts of a plan intended to constitute a top hat plan under Sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended, and to constitute an eligible deferred compensation plan within the meaning of Section 457 of the Internal Revenue Code of 1986, as amended, the regulations issued thereunder and other applicable law.

ARTICLE I – DEFINITIONS

- 1.1 Adoption Agreement means the separate agreement that is executed by the Employer which sets forth the elective and certain non-elective provisions of the Plan. The Adoption Agreement and this Plan document collectively constitute the Plan.
- 1.2 Beneficiary means the individual, trustee, estate or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death.
- 1.3 Code means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code includes not only the section but any comparable section or sections of any future legislation that amends, supplements or supersedes the section.
- 1.4 Compensation means, unless otherwise set forth in the Adoption Agreement, the total amount of cash remuneration earned by an Employee for personal services rendered to the Employer for the calendar year, including Differential Wage Payments. In all cases, Compensation shall include amounts deferred under this Plan and any reductions pursuant to any salary reduction agreement with the Employer with regard to any plan established under Section 457(b), 403(b), 401(k), 125 or 132(f)(4) of the Code.
- 1.5 Differential Wage Payment means any payment which is made by the Employer to an Employee with respect to any period during which the Employee is performing service in the uniformed services (as defined in chapter 43 of title 38 of the Code) while on active duty for a period of more than 30 days, and such payment represents all or a portion of the wages the Employee would have received from the Employer if the Employee were performing service for the Employer.
- 1.6 Disabled or Disability means the definition of disability in Section 72(m)(7) of the Code, to be determined by the Employer.
- 1.7 Effective Date means the date set forth in the Adoption Agreement if this is a new plan.
- 1.8 Elective Deferral means the annual amount of Compensation that a Participant elects to defer pursuant to a properly executed Voluntary Salary Deferral Agreement.
- 1.9 Eligible Deferred Compensation Plan or Eligible Plan means a plan that constitutes an eligible plan of a tax-exempt employer within the meaning of Section 457 of the Code.
- 1.10 Eligible Employee means any person who performs services for the Employer as an Employee and who, pursuant to the terms of the Adoption Agreement, is eligible to participate in this Plan. Eligible Employee shall not include any individual who is performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in this Plan or other benefit plans of the Employer. If any individual is not classified as an Eligible Employee by the Employer and is subsequently reclassified as an Eligible Employee by any governmental or regulatory authority, such individual shall

nevertheless be deemed to have become an Eligible Employee prospectively only, effective as of the date of such reclassification (and not retroactive to the date on which he or she was found to have first become eligible for any other purposes), and then only if he or she otherwise satisfies the requirements of this Plan.

- 1.11 Employee** means any person who performs services for the Employer to whom compensation is paid on a regular basis, any leased employee as defined in Section 414(n) of the Code, and any individual receiving a Differential Wage Payment from the Employer. If available and elected in the Adoption Agreement, Employee shall include any individual classified by the Employer as an independent contractor or trustee of the Employer in accordance with its general administrative policies.
- 1.12 Employer** means the entity that has adopted this Plan and is named in the Adoption Agreement.
- 1.13 Includible Compensation** means compensation for services performed for the Employer which is currently includible in the Employee's gross income for the taxable year for Federal income tax purposes (W-2 earnings), including any Differential Wage Payment made by the Employer to an Employee. Such term shall include any amount excludible from gross income under this Plan or any other plan described in Section 457(b) of the Code, or any amount excludible from gross income under Sections 403(b), 401(k), 125 or 132(f)(4) of the Code.
- 1.14 Investment Options** means the accounts offered by TIAA-CREF under the TIAA Group Annuity ("TIAA GA") and the CREF Group Annuity ("CREF GA") and any other investment alternatives made available by either TIAA-CREF or any other Investment Sponsor designated pursuant to the terms of this Plan document and the Adoption Agreement as being available for the purpose of measuring investment experience attributable to book entry accounts established under this Plan.
- 1.15 Investment Sponsors** means TIAA-CREF and any other insurance company, regulated investment company, or other entity providing Investment Options under the Plan.
- 1.16 Normal Retirement Age** means age 65 unless otherwise provided in the Adoption Agreement, provided that in no event shall Normal Retirement Age be earlier than the earliest date on which a Participant may retire under the Employer's basic retirement plan, if any, without the Employer's consent, and receive immediate retirement benefits without incurring an actuarial or similar reduction in benefits.
- 1.17 Participant** means an Eligible Employee or former Eligible Employee who shall have become a Participant in the Plan in accordance with Article II hereof. An Employee shall cease to become a Participant at such time as he or she no longer has any interest in accounts under the Plan. An "Active Participant" means a Participant who is an Employee other than one who is no longer an Eligible Employee.
- 1.18 Plan** means the 457(b) Deferred Compensation Plan set forth herein and in the Adoption Agreement, as amended from time to time.
- 1.19 Plan Administrator** means the individuals or committee appointed by the Employer to administer the Plan. If the Employer fails to make such appointment, the Employer shall be the Plan Administrator.
- 1.20 Plan Year** means the twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.
- 1.21 Restated Effective Date** means the date set forth in the Adoption Agreement if this is a restated plan.
- 1.22 TIAA-CREF** means Teachers Insurance and Annuity Association and College Retirement Equities Fund.

1.23 Voluntary Salary Deferral Agreement means the agreement between a Participant and the Employer to defer receipt by the Participant of Compensation not yet paid or otherwise made available. Such agreement shall state the Elective Deferral amount to be withheld from a Participant's Compensation and shall become effective no earlier than the first day of the month following execution of such agreement. Once executed, the Voluntary Salary Deferral Agreement shall be legally binding and irrevocable with regard to amounts paid or otherwise made available while the agreement is in effect.

ARTICLE II – PARTICIPATION IN THE PLAN

2.1 Eligibility

- (a) If this is a new plan, any Employee who is classified as an Eligible Employee as of the Effective Date shall be eligible to participate in the Plan on the Effective Date. If this is a restated plan, each present Participant shall continue to be a Participant in the Plan. Any other Employee who is classified as an Eligible Employee as of the Restated Effective Date shall be eligible to participate in the Plan on the Restated Effective Date.
- (b) If this is a new plan, any Employee who is not eligible to participate in the Plan as of the Effective Date pursuant to paragraph (a) above, shall be eligible to participate in the Plan upon classification as an Eligible Employee. If this is a restated plan, any Employee who is not eligible to participate in the Plan as of the Restated Effective Date pursuant to paragraph (a) above, shall be eligible to participate in the Plan upon classification as an Eligible Employee.

2.2 Enrollment in Plan. To participate in the Plan, each Eligible Employee shall complete and return the applicable forms, including a Voluntary Salary Deferral Agreement, and submit them to the Employer or its designee. Enrollment shall be effective on or after the first day of the month following the date the enrollment forms are properly completed by the Employee and accepted by the Employer or its designee.

ARTICLE III – DEFERRAL OF COMPENSATION

- 3.1 Elective Deferrals. If elected pursuant to the terms of the Adoption Agreement, an Eligible Employee may elect to make Elective Deferrals to the Plan pursuant to a Voluntary Salary Deferral Agreement with the Employer. Any such Elective Deferrals may be made up to the amount set forth in the Adoption Agreement. Subject to the rules of the applicable Investment Sponsor, each Eligible Employee who elects to contribute to the Plan pursuant to a Voluntary Salary Deferral Agreement must agree to voluntarily defer a minimum of twenty-five dollars (\$25) per pay period.
- 3.2 Modifications to Amount Deferred. A Participant may elect to change his or her Elective Deferral rate with respect to future Compensation by submitting a new properly executed Voluntary Salary Deferral Agreement to the Employer or its designee. Such change shall take effect as soon as administratively practicable but not earlier than the first pay period commencing with or during the first month following receipt by the Employer or its designee of such Voluntary Salary Deferral Agreement.
- 3.3 Deferral of Special Pay. If elected in the Adoption Agreement, a Participant may elect to defer accumulated sick pay, vacation pay or back pay. These amounts may be deferred for any calendar month only if an agreement providing for the Elective Deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available.
- 3.4 Termination of Deferral. A Participant may terminate his or her election to have Compensation deferred by so notifying the Employer or its designee using administrative practices specified by the Plan Administrator or its designee. Such administrative practices may include electronic notice if made available to Participants. The termination shall take effect as soon as administratively practicable, but not earlier than the first pay

period commencing with or during the first month following receipt by the Employer or its designee of satisfactory written notice of such revocation.

- 3.5 Employer Non-Elective Contributions.** If elected pursuant to the terms of the Adoption Agreement, the Employer shall make non-elective contributions (other than Employer matching contributions, if any, made pursuant to Section 3.6 below) to the Plan on behalf of each Active Participant. No Participant shall have the right to elect to receive any amount to be contributed pursuant to this Section 3.5 as cash in lieu of a contribution. All such non-elective contributions shall be made at the rate set forth in the Adoption Agreement.
- 3.6 Employer Matching Contributions.** If elected pursuant to the terms of the Adoption Agreement, the Employer shall make matching contributions (other than Employer non-elective contributions, if any, made pursuant to Section 3.5 above) to the Plan on behalf of each Active Participant who makes Elective Deferrals to the Plan pursuant to a Voluntary Salary Deferral Agreement. No Participant shall have the right to elect to receive any amount to be contributed pursuant to this Section 3.6 as cash in lieu of a contribution. All such matching contributions shall be made at the rate set forth in the Adoption Agreement and shall be based on the amount of Elective Deferrals properly made by an Active Participant to the Plan during the year.
- 3.7 Maximum Deferral**
- (a) **Primary Limitation.** The maximum amount that may be contributed to the Plan pursuant to Sections 3.1, 3.5 and 3.6 hereof on behalf of any Participant, other than by means of a rollover or transfer, shall not exceed the lesser of: (1) the applicable dollar amount, as set forth in Section 457(e)(15) of the Code or (2) 100% of the Participant's Includible Compensation for the taxable year.
- (b) **General Catch-Up Limitation.** If available and elected in the Adoption Agreement, for one or more of the last three taxable years ending before a Participant's attainment of Normal Retirement Age, the maximum amount that may be contributed to the Plan pursuant to Sections 3.1, 3.5 and 3.6 hereof on behalf of a Participant, other than by means of a rollover or transfer, shall be the lesser of X or Y. X shall be twice the applicable dollar amount in effect under Section 457(b)(2)(A) of the Code for such year. Y shall be the sum of (i) the primary limitation amount determined under Section 3.7(a) above for the year, and (ii) that portion of the primary limitation amount determined under Section 3.7(a) above not utilized by the Participant in prior taxable years in which the Participant was eligible to participate in the Plan. The general catch-up limitation is available to a Participant during one three-year period only. If the Participant uses the general catch-up limitation and then postpones retirement or returns to work after retirement, the general catch-up limitation shall not be available again.
- (c) **Coordination With Other Plans.** If a Participant participates in more than one Code Section 457(b) plan, the maximum deferral under all such plans shall not exceed the applicable limit described in Section 3.7(a) above (subject to modification by the catch-up limitation described in Section 3.7(b) above).
- (d) If the maximum deferral under all applicable plans exceeds the applicable limit described in Section 3.7(a) above (subject to modification by the catch-up limitation described in Section 3.7(b)), then the excess deferral (adjusted for any gain or loss in value, if any, allocable thereto) shall be distributed to the Participant. All excess deferrals shall be distributed, as adjusted for any gain or loss, by April 15 of the following calendar year. Such distribution may be made irrespective of any other provision of the Plan.
- 3.8 Vesting.** A Participant shall be fully vested at all times in his or her accrued benefits under this Plan

unless other vesting options are available and elected in the Adoption Agreement. Once vested, accrued benefits shall be non-forfeitable at all times.

3.9 Qualified Military Service

- (a) 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.
- (b) An Eligible Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Eligible Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

ARTICLE IV – DISTRIBUTIONS

- 4.1 Eligibility for Payment. Distribution of benefits from the Plan shall be made no earlier than (i) Severance from Employment, (ii) if available and elected in the Adoption Agreement, in the event of an approved financial hardship due to an Unforeseeable Emergency, as defined in Section 4.1(c) below, or (iii) if available and elected in the Adoption Agreement, to the extent permitted under Section 4.1(d) below.

Notwithstanding the foregoing, if available and elected in the Adoption Agreement, with respect to amounts payable to a Participant who is classified as an independent contractor, as determined by the Plan Administrator in its sole and absolute discretion, no amount will be paid to the Participant before a date at least twelve (12) months after the day on which the contract expires under which services are performed for the Employer (or, in the case of more than one contract, all such contracts expire); and no amount payable to the Participant on that date will be paid to the Participant if, after expiration of the contract (or contracts) and before that date, the Participant performs services for the Employer as an independent contractor or an Employee.

(a) Severance from Employment

“Severance from Employment” means the termination of a Participant's employment with the Employer for any reason including the Participant's death or retirement.

- (1) Effective for distributions on or after January 1, 2002, a Participant will be deemed to have incurred a Severance from Employment without regard to whether such Participant continues in the same job for a different employer following a liquidation, merger, consolidation or other similar transaction.
- (2) “Severance from Employment” shall not include the situation described in Section 4.1(b)(2) below under which a Participant is treated as having severed from employment while performing military service to enable him or her to take a distribution.
- (3) If available and elected in the Adoption Agreement, “Severance from Employment” for a Participant classified as an independent contractor shall mean the cessation of services upon expiration of the contract (or in the case of more than one contract, all contracts) under which services

are performed for the Employer provided the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration will not constitute a good-faith and complete termination of the contractual relationship if the Employer anticipates a renewal of the contractual relationship or the independent contractor becoming an Employee. For this purpose, an Employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to contract again for the services provided under the expired contract, and neither the Employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an Employer is considered to intend to contract again for the services provided under an expired contract if the Employer's doing so is conditioned only upon incurring a need for the services, the availability of funds, or both.

(b) Special Considerations Relating to Military Service

- (1) A Participant who dies or becomes Disabled while performing qualified military service will be treated as if he had resumed employment with the Employer on the date preceding death or Disability and terminated employment on the actual date of death or Disability.
- (2) A Participant shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Section 3401(h)(2)(A) of the Code, thereby enabling a distribution, but if the Participant elects such a distribution, the Participant may not make any Elective Deferrals during the six-month period beginning on the date of distribution.

(c) Unforeseeable Emergency

If available and elected in the Adoption Agreement, a Participant may request a distribution due to an Unforeseeable Emergency by submitting a written request to the Employer or its designee, accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency. The Employer or its designee shall have the authority to require such evidence as it deems necessary to determine if a distribution shall be warranted. If an application for a distribution due to an Unforeseeable Emergency is approved, the distribution shall be limited to an amount sufficient to meet the Unforeseeable Emergency.

“Unforeseeable Emergency” means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

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

The need to send a Participant's child to college or the desire to purchase a home shall not be considered to be an Unforeseeable Emergency.

A distribution on account of an Unforeseeable Emergency can be made to a Participant after

Severance from Employment only if one or more of the following conditions have been satisfied:

- (1) Participant has not yet made a distribution election with regard to the form of payment within the sixty (60) day period following Participant's Severance from Employment and is therefore entitled to receive a lump sum distribution.
- (2) Participant has not already elected to receive his benefits in the form of an annuity (including an annuity that calculates payments based on the required minimum distribution regulations), or has elected to receive his or her benefits in the form of an annuity but benefits have not yet commenced and Participant still has an opportunity to change the form of his or her benefit to a lump sum under the terms of the Plan.
- (3) Participant is not currently receiving his or her benefits in the form of an annuity, including an annuity that calculates payments based on the requirements specified in Section 401(a)(9) of the Code and the regulations issued thereunder.
- (4) Participant has elected to receive his or her benefit in the form of a lump sum distribution, but has not yet received his or her distribution.

(d) In-service Distributions

If available and elected in the Adoption Agreement, a Participant may elect to receive an in-service distribution of all or a part of the Participant's benefit under the Plan if the following requirements are met:

- (1) the total amount of the Participant's benefit under the Plan does not exceed \$5,000 (or the dollar limit under Section 411(a)(11) of the Code, if greater),
- (2) the Participant has not previously received an in-service distribution of the Participant's benefit under the Plan, and
- (3) amounts have been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution.

4.2 Commencement of Distributions

- (a) A Participant may commence distribution of benefits at any time following sixty (60) days after the date of the Participant's Severance from Employment. Distribution of benefits shall commence on the date selected by the Participant during the sixty-day election period following Severance from Employment unless an alternate election period is available and elected in the Adoption Agreement. If the Participant elects to defer payment during the sixty-day election period, the Participant may subsequently make an additional one-time written election in accordance with Section 457(e)(9)(B) of the Code to defer commencement of benefits to a specified later date, provided this option is available and elected in the Adoption Agreement and the election is made at least thirty (30) days prior to the commencement of benefits under the initial deferral election.

In the event a Participant fails to make an election during the sixty-day period following Severance from Employment, the Participant shall receive a lump sum distribution following the expiration of the sixty-day election period, within ninety (90) days following Severance from Employment, unless an alternate default distribution date is available and elected in the Adoption Agreement.

- (b) Notwithstanding the provisions of Section 4.2(a) above, in no event shall distribution of benefits

commence with respect to any Participant later than the April 1st of the calendar year following the calendar year in which the Participant attains age 70½, or if later, the April 1st of the calendar year following the calendar year in which the Participant incurs a Severance from Employment.

ARTICLE V – FORM OF PAYMENT

5.1 General Rule. This Article V is intended to comply with Section 457(d) of the Code and the regulations issued thereunder. To the extent that there is any conflict between the provisions of Section 457(d) of the Code and the regulations issued thereunder and any other provision in this Plan, the provisions of Section 457(d) of the Code and the regulations issued thereunder will control.

5.2 Distribution Options

(a) **Form of Payment.** Distributions to Participants will be made in a single lump sum of the total balance credited to a Participant's book entry account unless other distribution options are available and elected in the Adoption Agreement. These alternative distribution options may include:

- (1) **Single Life Annuity.** An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
- (2) **Joint Life Annuity.** An annuity payable in equal installments for the joint lives of the Participant and his or her Beneficiary.
- (3) **Fixed Period Payments.** Payments for a fixed period subject to the terms or limitations of the applicable Investment Sponsor or Investment Options.
- (4) **Such other annuity and withdrawal options provided under the Investment Options.**

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

(b) **Limits on Income Options.** Distributions, if not made in a single lump sum, shall be made over a period that does not exceed:

- (1) the life of the Participant;
- (2) the lives of the Participant and his or her designated Beneficiary;
- (3) a period certain not extending beyond the life expectancy of the Participant; or
- (4) a period certain not extending beyond the life expectancies of the Participant and his or her designated Beneficiary.

(c) **Minimum Amounts to be Distributed**

If a Participant's retirement payments are to be distributed in a form other than a single lump sum, the amount to be distributed each year, and the times those amounts are paid, shall satisfy the requirements specified in Section 401(a)(9) of the Code and the regulations issued thereunder.

5.3 Minimum Distribution Requirements During Participant's Lifetime

(a) **Precedence.** The requirements of this Section 5.3 will take precedence over any inconsistent provisions of the Plan.

(b) Requirements of Code and Related Regulations Incorporated. All distributions required under this Section 5.3 will be determined and made in accordance with Section 401(a)(9) of the Code and the regulations issued thereunder.

(c) Time and Manner of Distribution

- (1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the April 1 of the calendar year following the calendar year in which the Participant attains age 70½, or if later, the April 1st of the calendar year following the calendar year in which the Participant incurs a Severance from Employment.
- (2) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of: (a) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Income Tax Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or (b) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Income Tax Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (3) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 5.3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

5.4 Election. Subject to the rules of the Investment Sponsor, a Participant or Beneficiary may elect the form of distribution of his or her benefits and may revoke that election, with or without a new election, at any time at least thirty (30) days before his or her benefits begin, or such other time as permitted by the Employer or its designee, by notifying the Employer or its designee in writing of his or her election. Unless otherwise set forth in the Adoption Agreement, all distributions of benefits paid pursuant to the terms of this Plan shall be made directly by the applicable Investment Sponsor to the Participant or the Beneficiary.

5.5 Failure to Make Election. If a Participant or Beneficiary fails to elect a form of payment in a timely manner, benefits shall be paid in a single lump sum unless an alternate default form of payment is available and elected in the Adoption Agreement.

ARTICLE VI - DEATH BENEFITS

6.1 Distribution Options for Beneficiaries

(a) Form of Payment

Distributions to Beneficiaries will be made in a single lump sum of the total balance credited to the Participant's book entry account as soon as administratively feasible following the death of the Participant unless other distribution options are available and elected in the Adoption Agreement. These alternative distribution options may include:

- (1) Single Life Annuity. An annuity payable in equal installments for the life of the Beneficiary that terminates upon the Beneficiary's death.

- (2) **Joint Life Annuity.** An annuity payable in equal installments for the joint lives of the Beneficiary and his or her beneficiary.
- (3) **Fixed Period Payments.** Payments for a fixed period subject to the terms or limitations of the applicable Investment Sponsor or Investment Options.
- (4) Such other annuity and withdrawal options provided under the Investment Options.

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

(b) Death Distribution Requirements

Notwithstanding any other provisions in this section, any distribution option selected by a Beneficiary must comply with the following distribution provisions:

- (1) **Death After Distributions Begin.** If the Participant dies after distribution of his or her interest has commenced, the remaining portion of such interest shall continue to be distributed at least as rapidly as the method of distribution being used prior to the Participant's death.
- (2) **Death Before Distributions Begin.** If the Participant dies before distribution of his or her interest has commenced, distribution of the Participant's entire interest shall be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death, except to the extent that the recipient of such benefits elects to receive distributions in accordance with (i) or (ii) below:
 - (i) If any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made in substantially equal annual payments over the life of the designated Beneficiary, or over a period certain not extending beyond the life expectancy of the designated Beneficiary, commencing no later than the December 31 of the calendar year immediately following the calendar year of the Participant's death.
 - (ii) If the designated Beneficiary is the Participant's surviving spouse, the date distributions are required to begin in accordance with (i) above shall be the December 31 immediately following the calendar year of the Participant's death or, if later, the December 31 of the calendar year in which the Participant would have attained age 70½.
- (3) If the Participant has not made a distribution election pursuant to this Section 6.1 by the time of his or her death, the Participant's designated Beneficiary must elect the method of distribution no later than the earlier of (i) the December 31 of the calendar year in which distributions would be required to begin under this Section 6.1, or (ii) the December 31 of the calendar year which contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary, or if the designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) For purposes of Section 6.1(b)(2), if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of Section 6.1(b)(2), with the exception of Section 6.1(b)(2)(ii), shall be applied as if the surviving spouse were the Participant.
- (5) For purposes of this Section 6.1, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(6) For the purposes of this Section 6.1, distribution of a Participant's interest is considered to begin on the Participant's required beginning date (or, if applicable, the date distribution is required to begin to the surviving spouse). If distribution in the form of an annuity irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

(7) In the event that a Beneficiary dies after becoming entitled to receive benefits under this Plan but before distributions to the Beneficiary have commenced, the benefits due such Beneficiary shall be paid to the estate of the Beneficiary in a single lump sum payment as soon as administratively feasible following the Beneficiary's death. No other distribution elections shall be permitted.

ARTICLE VII – PLAN TRANSFERS

7.1 Transfers to the Plan. If elected in the Adoption Agreement, a Participant may elect to make, and each Investment Sponsor shall accept, subject to the rules of such Investment Sponsor, contributions which are transferred directly from any other Eligible Deferred Compensation Plan. Notwithstanding anything herein to the contrary, transfers shall be permitted only to the extent permitted by law. Such funds and the accumulation generated from them shall be fully vested and non-forfeitable at all times.

7.2 Transfers from the Plan. Notwithstanding any provision of the Plan to the contrary, to the extent permitted by law and elected in the Adoption Agreement, a Participant who has incurred a Severance from Employment may elect to transfer his/or her total account balance in this Plan to another Eligible Deferred Compensation Plan in which the Participant has become a participant if: (i) the plan receiving such amounts provides for acceptance of such transfers, and (ii) the Participant gives written direction to the Employer or its designee in a satisfactory form to make such transfer.

ARTICLE VIII – BENEFICIARY INFORMATION

8.1 Designation. A Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time prior to commencement of benefits, in writing, in a form approved by the Employer or its designee. Such designation, amendment or revocation shall be effective upon satisfactory receipt by the Employer or its designee. Any designee to receive beneficiary designations shall be documented in the Adoption Agreement.

8.2 Failure to Designate a Beneficiary. Benefits shall be paid to a Participant's estate in the event: (i) a Participant has the right to designate a Beneficiary pursuant to the terms of Section 8.1 above but prior to the date a Participant commences to receive payment of benefits under the Plan, the Participant has not designated a Beneficiary, or (ii) no designated Beneficiary survives the Participant and benefits are payable following the Participant's death.

ARTICLE IX – PLAN ADMINISTRATION

9.1 Plan Administration. The Employer shall be responsible for appointing a Plan Administrator to administer the Plan. The Plan Administrator may authorize a committee comprised (to the extent possible) of not less than three persons, to act collectively with regard to administration of the Plan. The Plan Administrator shall have sole discretionary responsibility for the interpretation of the Plan, enrolling Participants in the Plan, directing investments of deferrals made pursuant to the Plan, and for performing other duties required for the operation of the Plan. Any action taken on any matter within the discretion of the Plan Administrator shall be made in its sole and absolute discretion based on this Plan document and the Adoption Agreement, and shall be final, conclusive, and binding on all parties. In order to discharge its duties hereunder, the Plan Administrator shall have the power and authority to delegate ministerial duties and to employ such outside professionals as may be required for prudent administration of the Plan. The

Plan Administrator shall also have authority to enter into agreements on behalf of the Employer necessary to implement this Plan.

- 9.2 **Accounts and Expenses.** The Employer shall establish and maintain a book entry account on behalf of each Participant. Each such book entry account shall reflect the aggregate of Elective Deferrals, Employer non-elective contributions, Employer matching contributions, and transfers, if any, made on behalf of a Participant, and shall also reflect the investment experience attributable to each such book entry account based upon the investment experience described in Section 9.4 below. The book entry account shall also reflect any reductions due to expense charges applied to, and distributions made from, each such account.
- 9.3 **Mistaken Contribution.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Plan Administrator, to the Employer.
- 9.4 **Investment Experience.** Amounts credited to a Participant's book entry account shall reflect the investment experience of the Investment Options selected under the Plan. Unless otherwise set forth in the Adoption Agreement, the Employer authorizes each Participant to select the Investment Options under the Plan that will be used to measure the investment experience of such Participant's account. The Investment Options shall include the Investment Options made available by TIAA-CREF and may, in addition, include Investment Options made available by additional approved Investment Sponsors. The initial allocation request may be made at the time of enrollment in the Plan. Once made, an investment allocation request shall remain in effect for all subsequent contributions until changed by the Employer, or the Participant, as the case may be. Unless otherwise set forth in the Adoption Agreement, a Participant may change any allocation made by such Participant hereunder, or transfer existing accumulations to another Investment Option available under the Plan, pursuant to administrative practices specified by the Plan Administrator, the Investment Sponsors, or an appropriate designee. Such administrative practices may include electronic notice if made available to Participants. Any such changes shall become effective as soon as administratively feasible after the Employer or its designee receives a satisfactory request. Notwithstanding anything herein to the contrary, the Employer retains the right to allocate amounts hereunder without regard to a Participant's request. The Employer or its designee shall credit investment experience to each Participant's book entry account as of the last business day of each calendar quarter or such other dates selected by the Employer or its designee, in its sole and absolute discretion.
- 9.5 **Domestic Relations Orders.** If a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account balance shall be paid in the manner and to the person or persons so directed in the domestic relations order provided such domestic relations order is found to be qualified under the provisions of Section 414(p) of the Code. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Investment Sponsor shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. The Plan Administrator shall establish such procedures, in the absence of any procedures established by the Investment Sponsor.
- 9.6 **Claims Procedures**
- (a) Any claim by a Participant or Beneficiary with respect to eligibility, participation, contributions, benefits

or other aspects of the operation of the Plan shall be made in writing to the Plan Administrator or a committee acting on behalf of the Plan Administrator. If the Plan Administrator or the committee acting on its behalf believe that the claim should be denied, it shall notify the claimant in writing of the denial of the claim within ninety (90) days after receipt thereof (this period may be extended an additional ninety (90) days in special circumstances). Such notice shall (a) set forth the specific reason or reasons for the denial, making reference to the pertinent provisions of the Plan or the Plan documents on which the denial is based, (b) describe any additional material or information necessary to perfect the claim, and explain why such material or information, if any, is necessary, and (c) inform the Participant or Beneficiary making the claim of his right pursuant to this Section 9.6 to request a review of the decision. If notice of denial is not given to a claimant within such period of time, the claim will be deemed denied for purposes of seeking review of the claim.

- (b) Any such person may appeal the denial of a claim by submitting a written request for review to the Plan Administrator or the committee acting on its behalf, as the case may be, within sixty (60) days after the date on which such denial is received. Such period may be extended for good cause shown. The person making the request for review or his duly authorized representative may discuss any issues relevant to the claim, may review pertinent documents and may submit issues and comments in writing. If the Plan Administrator or the committee acting on its behalf deem it appropriate, it may hold a hearing as to a claim. If a hearing is held, the Claimant shall be entitled to be represented by counsel. The Plan Administrator or the committee acting on behalf of the Plan Administrator shall decide whether or not to grant the claim within sixty (60) days after receipt of the request for review, but this period may be extended for up to an additional sixty (60) days in special circumstances (the Participant or Beneficiary shall be notified of the delay); in any event such decision shall be rendered not later than one hundred twenty (120) days after receipt of the request for review. The decision shall be in writing, shall include specific reasons for the decision and shall refer to pertinent provisions of the Plan or the Plan documents on which the decision is based. Any claim not decided upon in the required time period shall be deemed denied.
- (c) All interpretations, determinations and decisions of the Plan Administrator or the committee acting on behalf of the Plan Administrator, or its designee, with respect to any claim under the Plan shall be made in its sole and absolute discretion, based on the Plan document and other related documents, and shall be final and conclusive.

ARTICLE X - AMENDMENT OR TERMINATION OF PLAN

10.1 Amendment of Plan. While it is expected that this Plan will continue indefinitely, the Employer reserves the right at any time to amend or otherwise modify the Plan without any liability for such action. No amendment shall increase the duties or responsibilities of any Investment Sponsor without its prior consent thereto in writing.

10.2 Termination of Plan. The Employer shall have the right at any time to terminate the Plan. In the event of a termination of the Plan, the Plan Administrator shall distribute benefits under the Plan to Participants and Beneficiaries as soon as administratively practicable.

ARTICLE XI - UNFUNDED PLAN

11.1 Unfunded Status. The Plan is intended to constitute an unfunded plan and all amounts held hereunder shall be allocated to the Employer. Any amount due and payable pursuant to the terms of the Plan shall be paid out of the general assets of the Employer. All assets of the Plan shall be subject to the claims of creditors of the Employer. Participants and Beneficiaries shall not have interest in any specific asset of the Employer or any specific asset held hereunder as a result of participation in this Plan. The Employer

shall have no obligation to set aside any funds for the purpose of making any benefit payments under this Plan. Nothing contained herein shall give any Participant any rights that are greater than those of an unsecured creditor of the Employer with respect to any unpaid amount as to which the Participant has a vested interest. No action taken pursuant to the terms of this Plan shall be construed to create a funded arrangement, a plan asset, or fiduciary relationship among the Employer, its designee, any Investment Sponsor, and a Participant or Beneficiary.

ARTICLE XII – MISCELLANEOUS

- 12.1 Plan Non-Contractual.** Nothing contained in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Employer, and nothing contained in this Plan will be construed as a commitment on the part of the Employer to continue the employment or the rate of compensation of any person for any period, and all Employees of the Employer will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 12.2 Claims of Other Persons.** The provisions of the Plan will in no event be construed as giving any Participant or any other person, firm, corporation or other legal entity, any legal or equitable right against the Employer, its officers, employees, directors or trustees, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 12.3 Assignments.** No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily, other than as provided under Section 401(a)(13) of the Code. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in Section 414(p) of the Code.
- 12.4 Pronouns.** Whenever used herein, the masculine pronoun is deemed to include the feminine. The singular form, whenever used herein, shall mean or include the plural form where applicable, and vice versa.
- 12.5 Representations.** The Employer does not represent or guarantee that any particular Federal or State income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Employer does not represent or guarantee investment returns with respect to any Investment Option and shall not be required to restore any loss which may result from such investment or lack of investment.
- 12.6 Tax Reporting.** Each Investment Sponsor will be responsible for all federal and state tax reporting for Participant distributions only if a particular Investment Sponsor is appointed as agent by the Employer. The Employer must complete and file the appropriate IRS form to enable the Investment Sponsor to act as Employer's agent for tax reporting purposes, as required by applicable law. The Employer will be responsible for the tax reporting of any benefits that are distributed prior to the time the applicable Investment Sponsor receives a letter from the IRS approving the agency relationship.
- 12.7 Severability.** If a court of competent jurisdiction holds any provision of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.
- 12.8 Applicable Law.** This Plan shall be construed in accordance with applicable Federal law and, to the extent otherwise applicable, the laws of the State in which the Employer is located.

IN WITNESS WHEREOF, this Plan document has been executed this _____ day of _____, 20_____.

Employer: _____

By: _____

Printed Name: _____

Title: _____

If any change is made to this specimen plan document (other than to the Adoption Agreement), this plan document will be considered to be an individually designed plan document and not the TIAA-CREF specimen 457(b) deferred compensation plan document for a tax-exempt employer.