

**IVY TECH COMMUNITY COLLEGE OF INDIANA  
457(b) DEFERRED COMPENSATION PLAN**

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**IVY TECH COMMUNITY COLLEGE OF INDIANA  
457(b) DEFERRED COMPENSATION PLAN**

**ARTICLE I**

**ESTABLISHMENT AND RESTATEMENT OF PLAN**

**Section 1.01. Plan Establishment and History.**

(a) Ivy Tech Community College of Indiana ("College") is a public college established under Indiana law and an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The College established the Ivy Tech Community College of Indiana 457(b) Deferred Compensation Plan ("Plan"), effective October 1, 2002, under which eligible employees could voluntarily choose to supplement their retirement benefits by making salary deferral contributions. The Plan was, and is intended to remain, an eligible deferred compensation plan under Code Section 457(b), and is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(b) The Plan was most recently amended and restated effective January 1, 2009.

**Section 1.02. Plan Restatement.**

(a) The Plan is now being amended and restated effective June 1, 2016, to incorporate all prior amendments and to make other desired changes.

(b) Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after June 1, 2016, and to transactions under the Plan on and after June 1, 2016. The rights and benefits, if any, of individuals who are not Employees on or after June 1, 2016, shall be determined in accordance with the terms and provisions of the Plans that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

**Section 1.03. Plan Funding.** The Plan is funded exclusively through the purchase of Funding Vehicles from the Vendor(s) identified in Appendix A attached hereto, as that Appendix may be amended from time to time. The terms and conditions of the Funding Vehicles shall be considered part of, and shall be construed as having been incorporated into, this Plan. To the extent there is any conflict between the terms of any such Funding Vehicles and the terms of the Plan, however, the terms of the Plan shall govern, except as otherwise expressly provided herein.

## ARTICLE II

### CONSTRUCTION AND DEFINITIONS

#### Section 2.01. Construction and Governing Law.

(a) This Plan shall be interpreted, enforced and administered in accordance with the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Indiana without regard to conflict of law principles.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and *vice versa*, words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate, and *vice versa*.

(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute an eligible deferred compensation plan under the provisions of Code Section 457(b), (ii) be a "governmental" plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with all applicable requirements of the Code shall prevail over any different interpretation.

**Section 2.02. Definitions.** When the initial letter of a word or phrase is capitalized herein the meaning of such word or phrase shall be as follows:

(a) "Account" means the following separate accounts maintained for each Participant under a Funding Vehicle, reflecting his or her interest in such Funding Vehicle as follows:

(1) "Pre-Tax Contribution Account" means the account maintained to reflect the Participant's interest in a Funding Vehicle attributable to his or her Pre-Tax Contributions pursuant to Section 4.01.

(2) "Rollover Contribution Account" means the account maintained to reflect the Participant's interest in a Funding Vehicle attributable to his or her Rollover Contributions pursuant to Section 4.03.

(b) "Administrator" means the College; provided, however, that to the extent that the College has delegated any of its responsibilities as Administrator to any other person or persons, the term Administrator shall be deemed to refer to that person or persons.

(c) "Allocable Income" means the sum of the allocable gain or loss for the year or partial year determined in accordance with Code Section 457 and the regulations promulgated thereunder.

(d) "Applicable Form" means the appropriate form as designated and furnished by the Administrator or the Vendor to make any election or provide any notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Administrator and/or the Vendor may prescribe an electronic or telephonic form in lieu of or in addition to a written form.

(e) "Beneficiary" means the person, company, trustee or estate designated by the Participant on the Applicable Form to receive any benefits payable under the Plan in the event of the Participant's death. Unless otherwise provided in the applicable Funding Vehicle, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's surviving Spouse shall be the Beneficiary, or if there is no surviving Spouse, the Participant's estate shall be the Beneficiary. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

(f) "Board" means the Board of Trustees of Ivy Tech Community College of Indiana.

(g) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(h) "College" means Ivy Tech Community College of Indiana.

(i) "Compensation" means the amount paid by the College to a Participant that is reportable as wages on the Participant's Form W-2, but does not include any taxable fringe benefits or severance payments. Compensation shall also include Pre-Tax Contributions made to this Plan, and any amounts reduced pursuant to a salary reduction agreement with the College under Code Section 457(b), 403(b), 125 or 132(f). Compensation includes any compensation described in paragraphs (1) or (2) paid after an Employee's Severance from Employment, provided it is paid by the later of two and one-half (2½) months after the Employee's Severance from Employment or the end of the calendar year in which the Employee has a Severance from Employment:

(1) any payment that would have been paid to the Employee prior to a Severance from Employment if the Employee had continued in employment with the College and that otherwise satisfies the definition of Compensation; and

(2) a payment for unused accrued bona fide sick leave (if the Employee qualifies for such payment under the College's criteria), vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the Employee's Severance from Employment.

Any payment that is not described in paragraph (1) or (2) is not considered Compensation if paid after Severance from Employment, even if it is paid within two and one-half (2½) months following Severance from Employment.

Compensation also includes payments to an individual who does not currently perform services for the College by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the College rather than entering qualified military service.

Compensation shall not exceed the limits under Code Section 401(a)(17), to the extent applicable, increased by the Cost of Living Adjustment.

(j) "Contributions" mean Pre-Tax Contributions and Rollover Contributions.

(k) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17), 414(v) or 457(e)(15) for any applicable year.

(a) "Effective Date" means, with respect to the Plan, October 1, 2002, and with respect to this restatement, June 1, 2016.

(l) "Employee" means a common law employee of the College except an individual who is designated in good faith as an independent contractor, as determined by the Administrator in its sole discretion, regardless of whether such individual is later determined to be a common law employee for tax purposes.

(m) "Former Vendor" means any provider that was approved by the Administrator to receive Contributions under the Plan, but that ceases to be eligible to receive new contributions under the Plan.

(n) "Funding Vehicles" means the individual or group annuity contracts, whether fixed or variable (or some combination thereof), issued by a life insurance company authorized to do business in the state of Indiana, custodial accounts invested in regulated investment company stock (mutual funds), or such other investment vehicles as may be available under the Plan from time to time.

(o) "HEART" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

(p) "Includible Compensation" means all Compensation received by an Employee from the College that is includible in his or her gross income for federal income tax purposes (computed without regard to Code Section 911) for that taxable year. Includible Compensation also includes any amounts excludable from taxable income because of an election under Code Sections 403(b), 457(b), 125, and 132(f). Includible Compensation includes any compensation described in paragraphs (1) or (2), provided the compensation is paid by the later of two and one-half (2½) months after the Employee's Severance from Employment or the end of the calendar year in which the Employee has a Severance from Employment:

(1) any payment that would have been paid to the Employee prior to a Severance from Employment if the Employee had continued in employment with the Employer and that is regular compensation for services during the Employee's regular

working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) a payment for unused accrued bona fide sick leave (if the Employee qualifies for such payment under the College's criteria), vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would have been included in the definition of Compensation if paid prior to the Employee's Severance from Employment.

Includible Compensation is determined without regard to any community property laws. Compensation shall not exceed the limits under Code Section 401(a)(17), to the extent applicable.

(q) "Investment Options" means the investment funds available under the Funding Vehicles provided by the Vendor(s) and specifically approved by the Administrator, in its sole and absolute discretion, for use under this Plan in accordance with Article VII.

(r) "Normal Retirement Age" means age sixty-five (65).

(s) "Participant" means any Employee who is or may become eligible to receive a benefit of any type under the Plan. A Participant shall also mean, when appropriate to the context, a former Employee who is eligible to receive a benefit of any type under the Plan.

(t) "Plan" means the "Ivy Tech Community College of Indiana 457(b) Deferred Compensation Plan" as amended from time to time.

(u) "Plan Year" means January 1 through December 31.

(v) "Pre-Tax Contributions" mean contributions made to the Plan by the College at the election of a Participant pursuant to a Salary Reduction Agreement in accordance with Section 4.01.

(w) "Related Employer" means the College and any other entity which is under common control with the College under Code Section 414(b), (c) or (m). For this purpose, the Board shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

(x) "Rollover Contributions" mean an amount contributed to the Plan pursuant to Section 4.03.

(y) "Salary Reduction Agreement" means an agreement entered into between an Employee and the College pursuant to Section 4.01. Such agreement shall not be effective with respect to Compensation made available prior to the effective date of such agreement and shall be binding on the parties and irrevocable with respect to Compensation earned while it is in effect.



(z) "Section" means, when not preceded by the word Code, a section of the Plan.

(aa) "Severance from Employment" means the complete termination of the employment relationship between the Employee and the College and any Related Employer, and shall not occur prior to the date that (i) the Employee's final paycheck has been processed through the payroll system and (ii) the Employee's official termination date has been posted in the payroll system. Notwithstanding the preceding, for purposes of Section 9.01 only, a Participant shall be treated as having had a Severance from Employment during any period the Participant is performing service in the uniformed services described in Code Section 3401(h)(2)(A).

(bb) "Spouse" means the person to whom a Participant is married where the marriage was validly entered into in a state whose laws authorize the marriage, even if the Participant is domiciled in a state that does not recognize the validity of the marriage.

(cc) "Trust" means any trust that satisfies the requirements of Code Section 457(g) (including a custodial account or annuity contract described in Code Section 401(f) that satisfies the requirements of Code Section 457(g)(3)) established to hold the Trust Fund, and as maintained pursuant to a trust agreement, custodial account, or annuity contract.

(dd) "Trust Fund" means the assets of the Plan held pursuant to the terms of the Plan and the Trust.

(ee) "Trustee" means the trustee or any successor trustee designated and appointed by the College and includes a custodian under a custodial account or annuity contract under Code Section 457(g)(3).

(ff) "Unforeseeable Financial Emergency" means a severe financial hardship of the Participant resulting from:

(1) an illness or accident of the Participant, the Participant's Spouse, or the Participant's dependent (as defined in Code Section 152, and for taxable years beginning on and after January 1, 2005, without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(2) loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or

(3) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

(gg) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(hh) "Vendor" means a service provider that has been approved by the Administrator to make Funding Vehicles available to Participants under this Plan, and that is set forth in

Appendix A hereto, as amended from time to time. The Administrator, in its sole and absolute discretion, shall select the Vendor(s) and may add or delete Vendor(s).

(ii) "Vested" means the interest of the Participant or Beneficiary in his or her Accounts which is unconditional, legally enforceable, and nonforfeitable at all times.

### **ARTICLE III**

#### **ELIGIBILITY AND PARTICIPATION**

##### **Section 3.01. Participation.**

(a) An Employee may become a Participant in the Plan for purposes of Pre-Tax Contributions immediately after commencement of employment with the College.

(b) The College shall notify an Employee when he or she is eligible to participate in the Plan for purposes of Pre-Tax Contributions. To become a Participant under the Plan, an Employee must complete the online enrollment process and make investment elections with the Vendor on the Applicable Form, including a Salary Reduction Agreement. An Employee who has satisfied the participation requirements under paragraph (a) and who fails to complete the online enrollment process and make investment elections with the Vendor on the Applicable Form shall be deemed to have waived all of his or her rights under the Plan, provided that such Employee may become a Participant in the Plan at any time thereafter by completing the online enrollment process and making investment elections with the Vendor on the Applicable Form.

**Section 3.02. Cessation of Contributions.** A Participant shall cease to be eligible to make Pre-Tax Contributions under the Plan when (i) he or she is no longer an Employee or (ii) the Plan is terminated.

### **ARTICLE IV**

#### **CONTRIBUTIONS**

##### **Section 4.01. Pre-Tax Contributions.**

(a) Subject to the limitations under Article V, an Employee who has satisfied the participation requirements under Section 3.01(a) may enter into a written Salary Reduction Agreement with the College agreeing to contribute each pay period Pre-Tax Contributions to the Plan any whole percentage amount of his or her Compensation. Pre-Tax Contributions shall begin as soon as administratively practicable following the date specified in the Salary Reduction Agreement, or, if later or if no date is specified, as soon as administratively practicable after the Salary Reduction Agreement is filed with the Administrator. Notwithstanding the preceding, the Salary Reduction Agreement shall become effective no earlier than the first day of the month following the month in which the Salary Reduction Agreement is executed and submitted to the Administrator; provided, however, that a new Employee may defer Compensation payable in the calendar month during which he or she first becomes an Employee if he or she enters into a Salary Reduction Agreement before the first day on which he or she performs services for the College.

(b) Pre-Tax Contributions shall reduce the Compensation otherwise payable to a Participant and shall be paid in cash to the Trust Fund by the College, on a basis consistent with its payroll practices, as soon as administratively feasible after being withheld from the Compensation of a Participant, but no later than fifteen (15) business days following the end of the month in which such amount is withheld from the Compensation of the Participant. Pre-Tax Contributions shall be allocated to the Pre-Tax Contribution Account of the Participant as of the date of contribution.

(c) A Participant may change his or her election to make Pre-Tax Contributions at any time by filing a new Salary Reduction Agreement with the Administrator. Any such changes shall be effective as soon as administratively practicable following the date specified in the new Salary Reduction Agreement, or, if later, as soon as administratively practicable after the Salary Reduction Agreement is filed with the Administrator; provided that the Salary Reduction Agreement shall become effective no earlier than the first day of the month following the month in which the Salary Reduction Agreement is executed and submitted to the Administrator.

(d) A Participant may terminate his or her election to make Pre-Tax Contributions at any time by filing the Applicable Form with the Administrator, which shall be effective as soon as administratively practicable after the Applicable Form is filed with the Administrator.

(e) An election to make Pre-Tax Contributions shall not be valid with respect to any period during which the Participant is not an Employee. No election to make, change, or discontinue Pre-Tax Contributions shall be given retroactive effect.

(f) The Administrator may establish additional nondiscriminatory rules and procedures governing the manner and timing of elections by Participants to make, change, or discontinue Pre-Tax Contributions.

**Section 4.02. Sick, Vacation and Back-Pay.** A Participant who has not had a Severance from Employment may elect to defer accumulated sick pay (if the Employee qualifies for such payment under the College's criteria), accumulated vacation pay, and back pay under the Plan if the requirements of Code Section 457(b) are satisfied. These amounts may be deferred for any calendar month only if a Salary Reduction Agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee on the date the amounts would otherwise be paid or made available. Compensation that would otherwise be paid for a payroll period that begins before Severance from Employment is treated as an amount that is paid or made available before an Employee has a Severance from Employment.

**Section 4.03. Rollover Contributions to the Plan.**

(a) Subject to the Funding Vehicles, Participants who are Employees may transfer to the Plan as a Rollover Contribution a distribution from a Code Section 401(a) or 403(a) qualified plan (excluding after-tax contributions), a Code Section 403(b) plan (excluding after-tax contributions), a Code Section 408 individual retirement account or annuity, or a Code Section 457(b) eligible deferred compensation plan which is maintained by an eligible employer described in Code Section 457(e)(1)(A). Any Rollover Contribution (i) shall be subject to the

Vendor's determination, in its discretion, that the Rollover Contribution satisfies all applicable requirements of the Code and (ii) shall be made directly from such prior plan, or if such amount was distributed to the Participant, such Rollover Contribution shall be made within sixty (60) days after the Participant receives the rollover amount.

(b) A Rollover Contribution shall be allocated to the Rollover Contribution Account of the Participant as of the date of the contribution. Before a Rollover Contribution is made, the Participant shall designate on the Applicable Form the Investment Options in which the Vendor should invest the Participant's Rollover Contribution.

**Section 4.04. Leave of Absence.** During a paid leave of absence, Pre-Tax Contributions shall continue to be made for a Participant on the basis of Compensation paid by the College during the leave. No Contributions shall be made on behalf of a Participant who is on an unpaid leave of absence or who is receiving benefits under the College's insured disability plans.

**Section 4.05. Expenses of Plan.** All reasonable expenses of administering the Plan shall be charged against and paid from the Participant's Accounts, subject to the terms of the applicable Funding Vehicles, unless paid by the College. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with rules promulgated by the Internal Revenue Service.

## **ARTICLE V**

### **LIMITATIONS ON CONTRIBUTIONS**

#### **Section 5.01. Pre-Tax Contribution Limits.**

(a) The maximum amount of Pre-Tax Contributions to the Plan for any calendar year shall be limited to the lesser of (i) the applicable dollar amount as provided in Code Section 457(e)(15) or (ii) the Participant's Includible Compensation as provided in Code Section 457(b)(2). The applicable dollar amount is Eighteen Thousand Dollars (\$18,000) for 2016, increased thereafter by the Cost of Living Adjustment.

(b) A Participant who attains age fifty (50) or more by the end of the calendar year, and who is contributing up to the applicable dollar amount under paragraph (a), may make additional Pre-Tax Contributions under Code Section 414(v) of up to Six Thousand Dollars (\$6,000) for 2016, increased thereafter by the Cost of Living Adjustment.

(c) If the applicable year is one of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this paragraph (c) exceeds the amount computed under paragraphs (a) and (b), then the Pre-Tax Contributions limit under this Article V shall be the lesser of:

(1) An amount equal to two times the applicable dollar amount set forth in paragraph (a) for such year; or

(2) The sum of:

(i) An amount equal to (i) the aggregate paragraph (a) limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (ii) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(ii) An amount equal to (i) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to paragraph (b) or (c)), minus (ii) the aggregate contributions to Pre-2002 Coordination Plans (as defined by Treasury regulations and as provided in Section 5.02(c)) for such years.

However, in no event can the Pre-Tax Contributions be more than the Participant's Compensation for the year.

**Section 5.02. Coordination of Limits.**

(a) If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code Section 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article V. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the College and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) In applying Section 5.02, a year shall be taken into account only if:

(1) the Participant was eligible to participate in the Plan during all or a portion of the year; and

(2) Compensation deferred, if any, under the Plan during the year was subject to the applicable dollar amount described in paragraph (a) or any other plan ceiling required by Code Section 457(b).

(c) For purposes of Section 5.01(c)(2)(B) "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), including plans, arrangements or accounts maintained by the College or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 5.01(c)(2)(B) to the extent that the total of such

contributions does not exceed the aggregate limit referred to in Code Section 457(b)(2) for that year.

(d) For 2002 and thereafter, any amounts contributed by the Participant to a tax-sheltered annuity pursuant to Code Section 403(b) or to a 401(k) plan pursuant to Code Section 402(e)(3) shall not reduce the maximum Pre-Tax Contributions under Section 5.01.

(1) An individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in Section 5.03. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

(2) The Participant is responsible for ensuring coordination of these limits.

**Section 5.03. Correction of Excess Deferrals.** If the Pre-Tax Contributions on behalf of a Participant for any calendar year exceeds the limitations described above, or the Pre-Tax Contributions on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Pre-Tax Contributions, to the extent in excess of the applicable limitation and adjusted for Allocable Income shall be distributed to the Participant as soon as reasonably practicable after determining that excess contributions were made to the Plan.

## **ARTICLE VI**

### **ACCOUNTING**

**Section 6.01. Participant Accounts.** The Vendor(s) shall establish and maintain adequate records to reflect the Accounts of each Participant and Beneficiary. Credits and charges shall be made to such Accounts to reflect additions, distributions, and withdrawals, and to reflect gains or losses pursuant to the terms of each Funding Vehicle. The maintenance of individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

**Section 6.02. Participant Statements.** The Vendor(s) shall provide to each Participant a quarterly statement reflecting the value of the Participant's Account as of the end of each quarter, and shall provide similar information to the Administrator upon its request.

**Section 6.03. Value of Account.** The value of the Account of a Participant as of any valuation date is the value of the Account balance as determined by the Vendor. All transactions and Account records shall be based on fair market value.

## ARTICLE VII

### INVESTMENT OF CONTRIBUTIONS

#### Section 7.01. Vendors and Investment Options.

(a) All Contributions under the Plan shall be transferred to the Vendor(s) to be held, managed, invested and distributed in accordance with the provisions of the Plan and the Funding Vehicles as applicable. All benefits under the Plan shall be distributed solely from the Funding Vehicles, and the College shall have no liability for any such benefits other than the obligation to make Contributions as provided in the Plan.

(b) Participants' Accounts shall be invested in one or more of the Investment Options available to Participants under this Plan, as selected by the Administrator and communicated to Participants. The Administrator's current selection of Vendor(s) and Investment Options is not intended to limit future additions or deletions of Vendor(s) or Investment Options.

(c) A Participant shall have the right to direct the investment of his or her Account by filing the Applicable Form with the Vendor. A Participant may change his or her investment election as often as determined by the Vendor. A Participant may elect to transfer all or any portion of his or her Accounts invested in any one Investment Option to another Investment Option, subject to the limitations of the Funding Vehicle(s), by filing a request on the Applicable Form with the Vendor or by such other means that may be provided for by the Vendor. A Participant may also elect to transfer all or any portion of his or her Accounts invested in an Investment Option with a Former Vendor to an Investment Option with a Vendor, subject to the terms of the Funding Vehicles.

(d) An investment change that includes an investment with a Former Vendor or other vendor that is not eligible to receive Contributions under the Plan is not permitted.

Section 7.02. Default Investments. If a Participant does not have a valid and complete investment direction on file with the Vendor on the Applicable Form, Contributions may be invested in a default fund selected by the Administrator in its sole discretion, until the Participant makes an affirmative election regarding the investment of his or her Account.

## ARTICLE VIII

### TRUST

Section 8.01. Trust Fund. All Pre-Tax Contributions under the Plan shall be transferred to the Trustee to be held in Trust as part of the Trust Fund in accordance with the provisions of the Plan and the Funding Vehicles, as applicable. All assets held in connection with the Plan, including all Pre-Tax Contributions, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property or rights, shall be held in, managed, invested and distributed in Trust as part of the Trust Fund, in accordance with the provisions of the Plan. All benefits under the Plan shall be distributed solely from the Trust Fund, and the College shall have no liability for any such benefits other than the obligation to make Pre-Tax Contributions as provided in the Plan.

**Section 8.02. Trust Status.** The Trust Fund shall be held in Trust for the exclusive benefit of Participants and Beneficiaries under the Plan in accordance with Code Section 457(g). No part of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries, and for defraying the reasonable expenses of the Plan and Trust. The Trust is exempt from tax pursuant to Code Sections 457(g)(2) and 501(a).

## **ARTICLE IX**

### **DISTRIBUTIONS**

#### **Section 9.01. Distribution Restrictions.**

(a) Except as otherwise provided in this Section 9.01, a Participant is not entitled to a distribution of his or her Vested Accounts under the Plan until the Participant's Severance from Employment.

(b) If a Participant has a Severance from Employment solely because he or she is performing service in the uniformed services as described in Code Section 3401(h)(2)(A), and the Participant receives a distribution under the Plan because of such Severance from Employment, the Participant may not make Pre-Tax Contributions to the Plan for the six (6) month period beginning on the date of the distribution.

(c) A Participant may submit a request for a distribution to the Vendor on the Applicable Form. When applicable, the College shall certify that the Participant has had a Severance from Employment.

#### **Section 9.02. Payment Options.**

(a) Effective for distributions made on or after August 15, 2016, and subject to the terms of the Funding Vehicles, a Participant shall receive his or her Vested Account in a single lump sum. Distributions made prior to August 15, 2016 shall be governed by the terms of the prior Plan document.

(b) To the extent permitted by the Funding Vehicles, a lump sum payment of a Vested Account may be made without the consent of the Participant or Beneficiary if his or her Account balance does not exceed Five Thousand Dollars (\$5,000), provided that to the extent the Account balance exceeds One Thousand Dollars (\$1,000), such distribution shall be made in a direct rollover to an individual retirement plan designated by the Administrator, unless the Participant elects to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in a lump sum. For this purpose, the value of a Participant's or Beneficiary's Account balance shall include any amounts in his or her Rollover Contribution Account.

**Section 9.03. Death Benefit.** If a Participant dies before distribution of his or her Account commences, his or her Account shall be payable to his or her Beneficiary(ies) under the payment options available under the Funding Vehicle(s), subject to Code Section 401(a)(9).



**Section 9.04. Required Distribution Rules.** The provisions of this Section 9.04 take precedence over any inconsistent provisions of the Plan or of any Funding Vehicle. All distributions under this Plan shall be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G), and shall comply with the following rules.

(a) Distributions may only be made over one of the following periods (or a combination thereof):

- (1) The life of the Participant;
- (2) The life of the Participant and a designated Beneficiary;
- (3) A period certain not extending beyond the life expectancy of the Participant; or
- (4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary.

(b) A Participant's Accounts shall be distributed to the Participant beginning no later than April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70 ½) or, if later, April 1 of the calendar year following the calendar year that the Participant has a Severance from Employment.

(c) Upon the death of the Participant, the following distribution provisions shall take effect:

- (1) If the Participant dies after distribution of his or her Account(s) begins, any remaining portion of the Account(s) shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.
- (2) If the Participant dies before distributions of his or her Account(s) begins and the Participant has no designated Beneficiary(ies), the Participant's Account(s) under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death.
- (3) If the Participant dies before distributions of his or her Account(s) begins and any portion of his or her Account(s) are payable to a designated Beneficiary, the designated Beneficiary may elect for the Participant's Account(s) to be distributed (i) by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. If the designated Beneficiary is the surviving Spouse, the Beneficiary may elect to delay payment under subparagraph (ii) until December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 ½). If the designated Beneficiary does not elect a method of distribution as provided

above, the Participant's Account(s) shall be distributed in accordance with subparagraph (i).

(4) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this Section 9.04(d).

(d) The Vendors(s) shall be solely responsible for complying with the provisions of this Section 9.04. The Vendor(s) shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions at least sixty (60) days prior to the date distributions must begin.

(e) Notwithstanding this Section 9.04 of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least ten (10) years ("extended 2009 RMDs") will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, solely for purposes of applying the direct rollover provisions of Article XII, 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

#### **Section 9.05. Unforeseeable Financial Emergency Distributions.**

(a) Prior to August 15, 2016, if permitted by the applicable Funding Vehicle, a Participant who has not had a Severance from Employment may receive a distribution for an Unforeseeable Financial Emergency from his or her Pre-Tax Contributions. An Unforeseeable Financial Emergency distribution shall only be available from such Pre-Tax Contributions that are held with current Vendor(s) listed in Appendix A and only for distributions requested prior to August 15, 2016, and no Unforeseeable Financial Emergency distribution shall be available from Pre-Tax Contributions that are held with a Former Vendor.

(b) Any distribution made because of the Participant's Unforeseeable Financial Emergency shall not exceed the amount reasonably necessary to relieve the Participant's need, including any anticipated taxes or penalties associated with such distribution.

(c) The Participant's distribution request shall specify the reason for the Unforeseeable Financial Emergency and specify the amount the Participant wishes to withdraw to meet the need caused by the Unforeseeable Financial Emergency.

(d) A distribution on account of Unforeseeable Financial Emergency shall not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets to the extent

the liquidation of such assets would not itself cause severe financial hardship, or by cessation of Pre-Tax Contributions under the Plan.

(e) The Administrator shall determine based on uniform and nondiscriminatory standards whether an Unforeseeable Financial Emergency exists based on the facts and circumstances and in accordance with the claims procedures of the Plan.

(f) No amount that is held as security for an outstanding Plan loan shall be eligible for a hardship withdrawal.

(g) The Administrator shall take such steps as appropriate to coordinate Unforeseeable Financial Emergency distributions, including collection of information from Vendors, and transmission of information requested by any Vendor.

(h) The Vendor may charge a reasonable fee for processing Unforeseeable Financial Emergency distributions.

**Section 9.06. Transfer to Defined Benefit Governmental Plan.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Pre-Tax Contribution Account transferred to the defined benefit governmental plan, subject to the terms of the Funding Vehicle(s). A transfer under this Section may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under this Section only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

**ARTICLE X**

**LOANS**

**Section 10.01. Loans Generally.** Subject to the terms of the Funding Vehicles, loans shall be available to a Participant who is an Employee from his or her Pre-Tax Contribution Account and/or Rollover Contribution Account. Loans shall only be made available from such Contributions that are held with current Vendor(s) listed in Appendix A, and no loan shall be available from Contributions that are held with a Former Vendor. Loans shall be subject to all applicable requirements and restrictions of the Code, including the provisions of Code Section 72(p) and the regulations thereunder. All loans shall be subject to the approval of the Vendor. The Vendor may charge a reasonable processing fee with respect to any loan.

**Section 10.02. Loan Procedures.** The Administrator or Vendor shall establish written procedures to govern Participant loans under the Plan, which may be amended from time to time. All loans shall comply with such procedures, and shall be administered subject to the terms of the Funding Vehicle(s).

**Section 10.03. Loan Limits.**

(a) No loan to a Participant under the Plan may exceed the lesser of:

(1) Fifty Thousand Dollars (\$50,000), reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Vendor (not taking into account any payments made during such one-year period); or

(2) One-half of the value of the Participant's Vested Account (as of the valuation date immediately preceding the date on which such loan is approved by the Vendor).

(b) For purposes of paragraph (a), any loan from any other plan maintained by the College and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a Vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

(c) Notwithstanding anything to the contrary, a Participant may only have one (1) loan outstanding at any given time from the Plan and any other plan maintained by the College.

(d) The Administrator shall take such steps as appropriate to coordinate the limitations on loans, including collection of information from Vendors, and transmission of information requested by any Vendor.

**ARTICLE XI**

**VESTING**

A Participant shall be one hundred percent (100%) Vested in his or her Account at all times.

**ARTICLE XII**

**ROLLOVERS FROM THIS PLAN**

**Section 12.01. Definitions for this Article.** For purposes of this Article, the following definitions shall apply.

(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.

(b) "Distributee" means a Participant, the Spouse of the Participant, or the Participant's former Spouse who is the alternate payee under a qualified domestic relations order

as defined in Code Section 414(p), and a Participant's non-Spouse Beneficiary, any of whom is eligible to receive a distribution from the Plan.

- (c) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means:
- (1) an individual retirement account described in Code Section 408(a);
  - (2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);
  - (3) any annuity plan described in Code Section 403(a);
  - (4) a plan described in Code Section 403(b);
  - (5) a qualified plan described in Code Section 401(a);
  - (6) a Code Section 457(b) eligible deferred compensation plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and
  - (7) a Roth individual retirement account described in Code Section 408A(e) provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs.

In the case of a distribution to a non-Spouse Beneficiary, and Eligible Retirement Plan means the plans described in subparagraphs (1) and (2) only, to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(d) "Eligible Rollover Distribution," as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under the Plan, excluding the following:

- (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more;
- (2) any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (3) the portion of any distribution that is not includible in gross income; however, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, although such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified retirement plan described in Code Section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately

accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(4) any distribution which is made upon the financial hardship of the Participant; and

(5) other items designated by regulations, or by the commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

**Section 12.02. Direct Transfer of Eligible Rollover Distribution.** A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Vendor. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 403, or 408.

**Section 12.03. Mandatory Withholding of Eligible Rollover Distributions.**

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory twenty percent (20%) federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e), and only to the extent such amount would otherwise be includible in the Distributee's taxable gross income.

(b) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the sixtieth (60<sup>th</sup>) day following the day on which the Distributee received the distribution.

(c) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

**Section 12.04. Explanation of Plan Distribution and Withholding Requirements.** Not fewer than thirty (30) days nor more than one hundred eighty (180) days before an Eligible Rollover Distribution, the Vendor shall provide each Distributee a written explanation as required under Code Section 402(f), which explains the rules:

(a) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

(b) that require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan;

(c) that provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within sixty (60) days after the date the Distribute receives the distribution; and

(d) if applicable, certain special rules regarding taxation of the distribution as described in Code Sections 402(d) and (e).

Notwithstanding the above, a distribution may begin fewer than thirty (30) days after the notice discussed in the preceding sentence is given, provided that the Vendor clearly informs the Participant that he or she has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution and the Participant, after receiving a notice, affirmatively elects a distribution.

### **ARTICLE XIII**

#### **ADMINISTRATION OF THE PLAN**

**Section 13.01. Authority of the Administrator.** The Administrator is responsible for enrolling Participants in the Plan, entering into Salary Reduction Agreements with Participants, sending Contributions for each Participant to the selected Vendor(s), and performing the duties required for operation of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. In connection therewith, the Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan.

**Section 13.02. Powers of the Administrator.** The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claims procedures, the Administrator should be the sole and final judge of such expediency. Benefits under the Plan shall be paid only if the Administrator decides in its discretion that the Participant or Beneficiary is entitled to them.

**Section 13.03. Delegation by Administrator.** The Administrator may delegate to an individual, committee, or organization to carry out its fiduciary duties or other responsibilities under the Plan. Any such individual, committee or organization delegated fiduciary duties shall be a fiduciary until the Administrator revokes such delegation. A delegation of the Administrator duties or responsibilities may be revoked without cause or advance notice. Such individual, committee, or organization shall have the same power and authority with respect to such delegated fiduciary or other responsibilities as the Administrator has under the Plan.

**Section 13.04. Employment of Consultants.** The Administrator may employ one (1) or more persons to render advice with regard to its responsibilities under the Plan.

## ARTICLE XIV

### REQUESTS FOR INFORMATION AND OTHER CLAIMS PROCEDURES

**Section 14.01. Requests for Information Concerning Eligibility, Participation and Contributions.** Requests for information concerning eligibility, participation, contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the Administrator of the Plan.

**Section 14.02. Requests for Information Concerning Funding Vehicles.** Requests for information concerning the Funding Vehicles and their terms, conditions, and interpretations thereof, claims thereunder, and any requests for review of such claims, should be in writing and directed to the Vendor(s).

#### **Section 14.03. Processing of Claims.**

(a) The Administrator or Vendor, as applicable, shall within ninety (90) days after receipt of the claim, notify the claimant of its decision on the claim. If an extension of time for processing is required, the Administrator or Vendor shall provide written notice to the Participant of the reason for the extension and the extended due date, which shall not be longer than an additional ninety (90) days, prior to the termination of the initial ninety (90) day period. If a Participant's claim is denied, in whole or in part, the Administrator or Vendor, as applicable, shall provide notice to the Participant, written in a manner calculated to be understood by the Participant, which shall include (i) the specific reasons for denial, (ii) specific reference to the provisions of the Plan on which the denial is based, and (iii) how to apply for a review of the denied claim, including the time limits for requesting a review. Where appropriate, the written denial shall also include a description of any information or material which is needed to complete or perfect a claim and why such information or material is necessary.

(b) Within sixty (60) days after the Participant receives notification of a denial, the Participant or the Participant's duly authorized representative may request in writing that the Administrator or Vendor, as applicable, review a denied claim. The Participant or the Participant's duly authorized representative must be provided, upon request and free of charge, access to and copies of all documents, records and other information and materials relevant to the claim. The Participant or the Participant's duly authorized representative may submit written comments, documents, records and other information related to the claim on appeal for consideration. If the Participant or the Participant's duly authorized representative does not request a review of the denial of the Participant's claim within the sixty (60) day period, the Participant shall be barred and estopped from challenging the Administrator's or Vendor's decision, as applicable.

(c) The Administrator or Vendor, as applicable, shall provide a written decision to the Participant on his or her appeal within sixty (60) days following receipt of the Participant's written request for review. However, if an extension of time for considering the appeal is required, the Administrator or Vendor, as applicable, shall provide a written notice to the Participant of the reason for the extension and the extended due date, which shall not be longer than an additional sixty (60) days, prior to the termination of the initial sixty (60) day period.



The Administrator or Vendor, as applicable, shall consider all comments, documents, records and other information submitted by the Participant without regard to whether such information was submitted or considered in the initial review. If the Participant's claim is denied on appeal, the Administrator's or Vendor's, as applicable, decision shall be written in a manner calculated to be understood by the Participant, and shall include (i) the specific reasons for denial, (ii) specific reference to the provisions of the Plan on which the denial is based, and (iii) a statement that the Participant is entitled to receive upon request and free of charge reasonable access to and copies of all documents, records, and other information relevant to the claim. Any such decision by the Administrator or Vendor, as applicable, shall be final.

## ARTICLE XV

### AMENDMENT AND TERMINATION

**Section 15.01. Amendment and Termination.** While it is expected that the Plan shall continue indefinitely, the College reserves the right to amend, freeze, or terminate the Plan, or to discontinue any further Contributions to the Plan at any time, by action of the Board. The College has delegated to the President authority to amend the Plan at any time in his or her sole discretion, provided that the amendment does not increase the College's expenditures with respect to the Plan.

**Section 15.02. Adverse Effects.** Any amendment or termination of the Plan cannot adversely affect the benefits accrued by Participants prior to the date of amendment or termination. The Plan may not be amended in a manner that violates any provision of the Code.

**Section 15.03. Distribution Upon Termination of the Plan.** The College shall have the right to completely terminate this Plan, subject to any statutory requirements, at any time and in its sole discretion. In such a case, the College shall arrange for suitable distribution of Plan assets, including the possibility of transfer to another 457 plan or plans. The Trustee shall not be required to pay out any asset of the Trust Fund to Participants and Beneficiaries or a successor plan upon termination of the Trust until the Trustee has received written confirmation from the College (i) that all provisions of the law with respect to such termination have been complied with, and, (ii) after the Trustee has made a determination of the fair market value of the assets of the Plan, that the assets of the Plan are sufficient to discharge when due all obligations of the Plan required by law. The Trustee shall rely conclusively upon such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

## ARTICLE XVI

### MISCELLANEOUS

**Section 16.01. Non-Alienation.**

(a) A Participant's Account under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment,

execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.

(b) Notwithstanding paragraph (a), the Plan shall comply with any judgment, decree or order ("domestic relations order") which establishes the right of an alternate payee within the meaning of Code Section 414(p)(8) to all or a portion of a Participant's benefit under the Plan to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p). The Administrator or the Vendor shall establish reasonable written procedures to determine whether a domestic relations order is a QDRO and to administer the distribution of benefits with respect to such orders, which procedures may be amended from time to time, and which shall be provided to Participants upon request. Notwithstanding any other provisions in the Plan, the Plan may make an immediate distribution to the alternate payee pursuant to a QDRO.

(c) Notwithstanding paragraph (a), the Plan shall offset from the benefit otherwise payable to a Participant or his or her Spouse such amounts as are permitted to be offset under a court order, civil judgment, or settlement agreement in accordance with Code Section 401(a)(13)(C).

#### **Section 16.02. Military Service.**

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with USERRA, HEART, Code Section 414(u), and Code Section 401(a)(37). For purposes of this section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(b) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service may elect to make Pre-Tax Contributions upon resumption of employment with the College up to the maximum Pre-Tax Contributions that the Participant could have elected during that period if the Participant's employment with the College had continued (at the same level of Compensation) without the interruption or leave, reduced by the Pre-Tax Contributions, if any, actually made for the Participant during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for the lesser of (i) five (5) years following the resumption of employment or (ii) a period equal to three (3) times the period of the interruption or leave. Such Pre-Tax Contributions by the Participant may only be made during such period and while the Participant is reemployed by the College.

(c) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the College shall be treated as an Employee of the College who is a Participant eligible to make Pre-Tax Contributions during such service and the differential wage payment shall be treated as Compensation and Includible Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**Section 16.03. Limitation of Rights and Obligations.** Neither the establishment nor maintenance of the Plan, nor any amendment thereof, nor the purchase of any insurance contract, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) as conferring upon any Participant, Beneficiary or any other person any right or claim against the College, Administrator, or Trust, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as a contract or agreement between the College and any Participant or other person; or

(c) as an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the College or any Employee to continue or terminate the employment relationship at any time

**Section 16.04. Federal and State Taxes.** It is intended that Pre-Tax Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries. However, the Administrator does not guarantee that any particular federal or state income, payroll or other tax consequence will occur as a result of participation in this Plan.

**Section 16.05. Erroneous Payments.** If the Administrator or Vendor makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Vendor, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or Vendor may deduct it when making any future payments directly to that Participant.

**Section 16.06. Missing or Lost Participants.** In the event that the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary under the Plan, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. If a Participant or Beneficiary has not been located after reasonable efforts have been made, then any benefit to which the Participant or Beneficiary is entitled under the Plan shall be forfeited and used by the Plan to reduce Plan expenses; provided, however, that such benefit shall be reinstated prospectively if the Participant or Beneficiary is subsequently located.

**Section 16.07. Indemnification.** The College shall satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the College is delegated pursuant to Section 13.03, except a Vendor or other service provider. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the regulations or by-laws of the College, under any

provision of law, or under any other agreement; provided, however, that the College will not satisfy any such liability to the extent that the person did not act in good faith.

**Section 16.08. No Reversion.** Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the College, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, if Contributions are made by the College by mistake of fact, these amounts and, if applicable, any interest earned therein, may be returned to the College within one year of the date that they were made.

**Section 16.09. Finality of Determination.** All determinations with respect to crediting of service under the Plan are made on the basis of the records of the College, and all determinations made are final and conclusive upon Employees, former Employees, and all other persons claiming a benefit under the Plan.

**Section 16.10. Counterparts.** The Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be evidenced by any one counterpart.

IN WITNESS WHEREOF, the College has caused this amended and restated Plan to be adopted as of the Effective Date.

IVY TECH COMMUNITY COLLEGE OF  
INDIANA

By: Julie Lorton Rowland

Printed Name: Julie Lorton Rowland

Title: Vice President for Human Resources

Date: 8-12-2016

APPENDIX A

IVY TECH COMMUNITY COLLEGE OF INDIANA  
457(B) DEFERRED COMPENSATION PLAN

APPROVED VENDORS

The current selection of Vendor(s) is not intended to limit future additions or deletions of Vendor(s). The Administrator from time to time may add or delete Vendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in a revised Appendix A.

A. Approved Vendor(s)

Effective June 1, 2016, the Vendor under the Plan is Transamerica.

B. Former Vendor(s)

Effective June 1, 2016, the Former Vendor under the Plan is Teachers Insurance and Annuity Association – College Retirement Equities Fund (TIAA-CREF).

Dated this 24<sup>th</sup> day of August, 2016.

