OPTIONAL RETIREMENT PROGRAM

Plan Document

Amended and Restated Effective as of September 1, 2014
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ARTICLE 1  PURPOSE OF THE PLAN

Section 1.1  Establishment of Plan

Pursuant to New York Education Law Article 125-A, The City University of New York Board of Trustees (the “Board”) authorized The City University of New York Optional Retirement Plan (the “Plan”) on November 22, 1965 under Section 403(b) of the Internal Revenue Code (“Code”). That Plan was frozen and a new plan established as of January 1, 1990 under Section 401(a) of the Code. This restated Plan document is intended to update the terms of the Plan to reflect changes in tax law, incorporate prior amendments and maintain the qualification of the Plan under section 401(a) of the Code.

Section 1.2  Purposes

The purpose of the Plan is to provide retirement and death benefits for eligible Participants and their beneficiaries. The Plan is established with the intention that it shall meet all the requirements for qualification of the Plan as a money purchase plan under Section 401(a) of the Code. All terms and provisions contained in the Plan shall be interpreted, wherever possible, so as to be in compliance with Code Section 401(a). For purposes of the Employee Retirement Income Security Act of 1974 (ERISA), this retirement Plan is a governmental plan within the meaning of ERISA Section 3(32). Accordingly, the Plan is not subject to the requirements of ERISA.
ARTICLE 2 DEFINITIONS

The following words and phrases shall, when used in this Plan have the following meanings unless the context clearly indicates otherwise. Except as the context may specifically require otherwise, use of the masculine gender shall be understood to include both the masculine and feminine genders.

1. **Annuity Contract** shall mean a contract issued by a Provider, established for each Participant to which Employee and/or Employer Contributions are directed, and that meets the requirements of Article 5 and Code §401(f). An Annuity Contract includes an individual annuity contract and a certificate under a group annuity contract.

2. **Appointment Date** shall mean the date that is set out in the Letter of Appointment.

3. **Alternate Funding Vehicle** shall mean any Funding Vehicle other than one issued by TIAA or CREF.

4. **Administrator** or **Plan Administrator** means the Board, or its designee and any successor thereto.

5. **Beneficiary** means a person, other than a Participant, who is receiving or entitled to receive benefits from the Plan as a result of a designation of such benefits in writing by a Participant or because of the provisions of the Plan.

6. **Board** means the Board of Trustees of The City University of New York.

7. **Break in Service** means a period during which a Participant has experienced a severance from employment and has taken a distribution of his entire account balance(s) from all Provider Accounts that have been established for him under the Plan.

8. **Code** means the Internal Revenue Code of 1986, as amended from time to time, and as interpreted by applicable Treasury regulations and Internal Revenue Service Rulings and guidance. All citations to specific sections of the Code are to such sections as they may be from time to time amended, renumbered or recodified. Such reference to specific sections shall include reference to the applicable regulations, rulings and guidance issued there under which is currently in effect or as amended or recodified in corresponding provisions of any future regulations, rulings or guidance.

9. **Compensation** means an Employee’s salary, wages or other compensation in whatever form, lawfully determined for the individual service of the Employee by the employer, including bonus, overtime, severance pay, for any and all unused sick leave (“Travia/Terminal leave”), amounts paid under the Vacation Exchange
Program, and summer research grants, but not including early retirement incentives, housing allowance, and any part of such salary, wage or other compensation derived from federal grants. Compensation shall also include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant under Code §§ 125, 132(f), 403(b) or 457.

Effective on and after January 1, 2009, Differential Pay means any payment which is made by the Employer to a Participant with regards to any period during which the individual is performing services in the uniformed services while on active duty for a period of more than 30 days and such amount represents all or a portion of the wages such Participant would have received from the Employer if the Participant was performing services for the Employer. Differential Pay is included in Compensation for purposes of determining benefits under the Plan.

In addition to other limits set forth in the Plan, notwithstanding any other provisions of the Plan or law to the contrary, the annual compensation of each participant taken into account in determining allocations shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with §401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period.) The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If a determination period consists of fewer than 12 months the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If compensation for any prior determination period is taken into account in determining a participant’s allocations for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

Compensation also includes regular pay after severance from employment, as defined in Treasury Regulation 1.415(c)-2(e)(3)(ii)(A), if such payments are made by the later of 2 ½ months after severance from employment or the end of the limitation year that includes the date of severance from employment, and the payment would have been paid to the employee prior to a severance from employment if the employee had continued in employment with the Employer.

Compensation as defined in this section will apply to all provisions of this Plan unless specifically provided otherwise.

10. Contributions means both Employee Contributions and Employer Contributions made to the Plan in accordance with Article 4.
11. **Date of Employment** means the effective date of the appointment for an Eligible Employee.

12. **Domestic Relations Order** means a domestic relations order which has been determined, pursuant to procedures established by the Board, to be a qualified domestic relations order as defined in Code Section 414(p) as if such Section applies to governmental plans.

13. **Effective Date** means the Plan’s Effective Date of January 1, 1990.

14. **Election Period** means the period during which newly Eligible Employees may choose to enroll in the Plan. The Election Period is comprised of 30 days, beginning on the Eligible Employee’s Appointment Date.

15. **Eligible Employee** means an Employee who is a member of one of the classes of Employees listed in Section 3.1.

16. **Employee**: Each individual who is a common-law employee of the Employer and who is currently performing services for an Employer.

17. **Employee Contribution** means the mandatory Employee Contribution made pursuant to Article 4 of the Plan.

18. **Employer** means The City University of New York.

19. **Employer Contribution** means the Employer Contribution made each year in accordance with Article 4.

20. **Funding Vehicle** means the Annuity Contract authorized by the Board issued by a Provider to receive Employer and Employee contributions under the Plan.

21. **Independent Contractor** means a person who is not treated as a common-law Employee by the Employer.

22. **Normal Retirement Age** means age sixty-two (62).

23. **Participant** means any Employee or former Employee who has satisfied the eligibility and participation requirements of the Plan as provided in Article 3 and for whom a Provider Account is being maintained by the Plan. The term Participant shall not include an alternative payee under a Domestic Relations Order or a Beneficiary notwithstanding the fact that such may have a Provider Account under the Plan.
24. **Plan** means The City University of New York Optional Retirement Program, as set forth herein, and as amended from time to time.

25. **Plan Entry Date** means the day following the date that the Employee meets all of the eligibility requirements for participation in the Plan.

26. **Plan Year** means the calendar year.

27. **Provider** means a vendor further described in Article 5 and approved by the Board to provide Annuity Contracts under the Plan to Plan Participants and to receive Plan contributions. Providers are set forth on Exhibit B and may be changed or discontinued as determined by the Board from time to time.

28. **Provider Account** means the account established with a Provider on behalf of a Participant based on a selection by the Participant to receive Employee and Employer Contributions under the Plan.

29. **Qualified Joint and Survivor Annuity** means an annuity for the life of a Participant with a survivor annuity for the life of the spouse which is not less than 50% of the amount of the annuity which is payable during the joint lives of the Participant and the spouse, and is the actuarial equivalent of a single annuity for the life of the Participant.

30. **Spouse** means the individual to whom the Participant is lawfully married under any state law, including an individual who was legally married to a Participant of the same sex in a state that recognizes such marriages, but who are domiciled in a state that does not recognize such marriages. Any provision to the contrary notwithstanding, where required by Federal tax law, whether an individual is a Participant's Spouse will be determined in accordance with the requirements of Federal tax law including Revenue Ruling 2013-17 and any subsequent guidance.

31. **Tier I** means the group of Employees whose Appointment Dates were prior to July 1, 1973.
   
   **Tier II** means the group of Employees whose Appointment Dates were on or after July 1, 1973 and before July 27, 1976.
   
   **Tier III** means the group of Employees whose Appointment Dates were on or after July 27, 1976 and before September 1, 1983.
   
   **Tier IV** means the group of Employees whose Appointment Dates were on or after September 1, 1983 and before July 16, 1992.
   
   **Tier V** means the group of Employees whose Appointment Dates were on or after July 16, 1992 and before April 1, 2012.
Tier VI means the group of Employees whose Appointment Dates were on or after April 1, 2012.

32. **Year of Participation** means a period of 365 days of participation in this Plan commencing on the Employee’s Plan Entry Date, and each subsequent period of 365 days of participation commencing after the end of the prior Year of Participation. For purpose of this definition, any year for which a Participant receives a retroactive contribution shall be counted as a Year of Participation or a partial Year of Participation as applicable. All partial Years of Participation in this Plan will be counted towards determining the number of Years of Participation. For purposes of this section, a Participant will continue to accrue Years of Participation during a period in which he is not an Employee unless he has received a complete distribution from all his Funding Vehicles under this Plan.

33. **Year of Service** means a period of 365 days of employment with the Employer as an Eligible Employee commencing on an Employee’s Date of Employment, and each subsequent period of 365 days of employment commencing after the end of the prior Year of Service. An Employee who is on a leave of absence with or without pay will be deemed to be employed for purposes of determining a Year of Service. All service as an eligible Employee will be counted towards a Year of Service regardless of whether the days of service are consecutive. For purposes of this section, an Employee who is reemployed after a severance of employment will be credited with all days employed prior to the severance of employment unless the Employee has experienced a Break in Service.

34. **Other Terms.** Additional terms as defined in other Sections of this Plan as follows:

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<th>Sections</th>
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<td>f. Direct Rollover</td>
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ARTICLE 3 ELIGIBILITY AND PARTICIPATION

3.1 Eligible Employees

The following classifications of Employees are Eligible Employees under this Plan:

(a) All Instructional Staff (faculty and non-faculty), (i) as defined in the applicable Agreement between the Employer and the Professional Staff Congress/CUNY with exception of teaching and non-teaching Adjuncts, and (ii) not represented by the Professional Staff Congress/CUNY;

(b) Full Time Classified Managerial Staff;

(c) All Employees covered by the CUNY Executive Compensation Plan; and

(d) An Employee described in (a), (b), or (c) above who simultaneously performs services as an Adjunct Professor and who 1) ceases to be employed under (a), (b) or (c) above, 2) continues to perform services as an Adjunct Professor, and 3) remains in continuous service with the Employer as an Adjunct Professor after ceasing to be employed under (a), (b) or (c).

Notwithstanding the above, no Employee may be a Participant of this Plan if he is receiving retirement income from any retirement system maintained by New York City, New York State, or any of their political subdivisions.

Independent Contractors who are categorized as such in good faith are not covered by this Plan even if they are later determined to be Eligible Employees. Independent Contractors who are reclassified as Employees who are otherwise eligible to participate in the Plan, are eligible to participate in the Plan on the date they are reclassified.

Leased Employees are not eligible to participate in the Plan.

3.2 Participation

An Eligible Employee will begin Participation in the Plan as of the Plan Entry Date after completion of a Year of Service plus one day of service as an eligible Employee and the completion of an Election to Participate. An Employee who experiences a severance from employment prior to completing a Year of Service plus one day and who is subsequently reemployed, or who has experienced a Break in Service and is subsequently reemployed and meets the rules established by the Administrator for such reemployment, will begin participation after reemployment on the later of the next Plan Entry Date after his completion of a Year of Service and the completion of an Election to Participate. An Employee who is the owner of a vested and open Annuity Contract issued by TIAA-CREF on his Date of Employment is deemed to have completed the
Year of Service and one day of service requirement and will begin Participation after meeting the requirements of section 3.3.

3.3 Election to Participate

In order to participate in the Plan, an Eligible Employee must submit to the Administrator an irrevocable election to participate during the Election Period and in accordance with the rules and requirements established by the Administrator for such elections. An Eligible Employee who fails to meet the requirements to submit an election to participate in accordance with these rules and requirements will not be a Participant under this Plan and will be required to participate in the Teachers Retirement System or other applicable retirement plan to the extent the Employee is eligible for such plan. An Election to Participate is irrevocable.

3.4 Termination of Participation

A Participant shall terminate participation in the Plan on the date which is the earlier of (i) when a complete distribution is made from the Participant's Provider Account and (ii) the Employer terminates the Plan.
ARTICLE 4  CONTRIBUTIONS AND ALLOCATIONS

4.1 Employee Contributions

(a) A Participant in this Plan shall, by virtue of his written election to participate, make a mandatory election to direct the Employer to make Contributions (hereinafter referred to as Employee Contributions) directly to the Provider for investment in his Provider Account if so required by the schedule set forth herein. Employee Contributions shall be made in accordance with the following schedule:

- Tier I, II, III and IV members: Participants are not required to contribute to the Plan.
- Tier V members with less than ten (10) Years of Participation: 3% of Compensation.
- Tier V members with ten or more Years of Participation in this Plan and who completed their Election to Participate prior to April 1, 2012:
  
  After March 31, 2010: no Employee Contributions are required.

- Tier V members with ten or more Years of Participation and who submitted their Election to Participate on or after April 1, 2012: 3% of Compensation.
- Tier VI members:
  
  From April 1, 2012 until March 31, 2013: 3%.

  From April 1, 2013 until the end of the Plan Year that commenced on January 1, 2013, and for each subsequent Plan Year, in accordance with the following schedule:

<table>
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<th>Annual Compensation</th>
<th>Employee Contribution</th>
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<tr>
<td>$45,000</td>
<td>3%</td>
</tr>
<tr>
<td>$45,001 - $55,000</td>
<td>3.5%</td>
</tr>
<tr>
<td>$55,001 - $75,000</td>
<td>4.5%</td>
</tr>
<tr>
<td>$75,001 - $100,000</td>
<td>5.75%</td>
</tr>
<tr>
<td>Greater than $100,000</td>
<td>6%</td>
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For purposes of this section Annual Compensation shall be determined by reference to the Participant’s Compensation in the second Plan Year preceding the Plan Year for which contributions are being made. Notwithstanding the previous sentence, for a Participant’s service during each of the first three Plan Years in which he is a Participant, Annual
Compensation shall be determined by the Employer based upon a projection of Compensation to be paid during that Plan Year.

The schedule of Employee Contributions prior to April 1, 2010 is attached hereto as Schedule A.

(b) The Plan Administrator shall allocate the Employee Contributions for each payroll period to the Provider selected by the Participant for whom such Contributions were made as soon as administratively feasible following the end of each payroll period and the Provider shall deposit the Contributions in accordance with the Participant's current allocation election on file with the Provider.

(c) For Employees who are required to make Employee Contributions, the Employer shall "pick-up" and pay the Employee Contributions under this Section on behalf of each Participant. The amount paid by the Employer shall be paid in lieu of the Contributions made by the Employee under this Section in a manner and as permitted under Code Section 414(h)(2). Employee Contributions paid by the Employer as “pick-up” contributions under this Section shall be treated as Employer Contributions under the Code.

(d) The amount of such Employee Contributions in any Plan Year, when taken into account with any other Contributions, shall not exceed the limits of annual additions as set forth in Article 6 of this Plan.

(e) Employee contributions attributable to service during the first Year of Service as an Eligible Employee will be made in accordance with the above schedule on behalf of those Employees who meet the eligibility requirements of this Plan as soon as administratively feasible after the Employee begins Participation.

(f) A Participant shall provide the Plan Administrator with an election form (in a form acceptable to the Plan Administrator) directing the Employer to allocate the mandatory Employee Contributions to a Provider chosen by the Participant.

(g) No Employee Contributions shall be made for any Participant unless he is an Eligible Employee under section 3.1.

4.2 Employer Contributions

(a) The Employer shall contribute an amount to the Plan in accordance with the following schedule:

- Tier I, II, III and IV members:
After March 31, 2009: 12% of the first $16,500 of Compensation and 15% of the Compensation above $16,500.

- Tier V and VI members:
  - Employees with less than seven (7) Years of Service as an Eligible Employee: 8% of Compensation.
  - Employees with seven (7) or more Years of Service as an Eligible Employee: 10% of Compensation.

In addition to the contributions set forth above, effective April 1, 2010, Tier V members with ten (10) or more Years of Participation in the Plan will receive an additional 3% Employer contribution.

The schedule of Employer Contributions prior to April 1, 2010 is attached hereto as Schedule A.

(b) Employer contributions attributable to service during the first Year of Service as an Eligible Employee will be made in accordance with the above schedule and the provisions of section 4.3 on behalf of those Employees who meet the eligibility requirements of this Plan.

(c) The amount of such Employer Contributions in any Plan Year, when taken into account with any other Contributions, shall not exceed the limits of annual additions as set forth in Article 6 of this Plan.

(d) A Participant shall provide the Plan Administrator with an election form (in a form acceptable to the Plan Administrator) directing the Employer to allocate the mandatory Employee Contributions to a Provider chosen by the Participant.

(e) No Employer Contributions shall be made for any Participant unless he is an Eligible Employee under section 3.1.

4.3 Timing of Contributions

All Employer Contributions attributable to employment during the first Year of Service will be made to the Plan as soon as administratively practicable after the Employee's Plan Entry Date. All Employer Contributions attributable to employment for all periods after the completion of the first Year of Service as an Eligible Employee will be made to the Plan no later than eight and one-half months after the last day of the Plan Year for which such service is attributable. Mandatory Employee contributions, when required, shall be transmitted to the Funding Vehicles as soon as administratively practicable but in no event will any such contributions be remitted later than the 15th day of the month following the month to which the contributions relate.
4.4 Return of Mistaken Contributions

If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, in accordance with applicable law, 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 either the Participant or the Employer, whichever made the contribution in error.

4.5 Repayment of Contributions

After a Break in Service, a former participant may repurchase credit for Years of Service under the Plan pursuant to rules established by the Administrator.

4.6 Military Service

(a) A Participant whose employment is interrupted or who is on a leave of absence due to qualified military service (as defined in the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)) and under Code Section 414(u) will be provided contributions, benefits and service credit with respect to qualified military service in accordance with Code section 414(u) and USERRA.

(b) A Participant returning from military service who meets the requirements of Code Section 414(u) and USERRA may voluntarily elect to make up his Employee Contributions, if any. Such Participant shall notify the Administrator upon reemployment of his/her desire to repay his Employee Contributions on a form acceptable to the Employer. Such Employee Contributions shall be made on a pre-tax basis over a period not to exceed the lesser of three (3) times his military service or five (5) years.

(c) The Employer will make-up the amount of Employer Contributions for a Participant returning from military service who meets the requirements of Code section 414(u) and USERRA. The amount of Employer Plan Contributions to be made-up by the Employer will be equal to the amount of contributions that would have been made had the Participant not been activated to military service. The Employer will determine the amount of Employer Plan Contributions to be made-up and remit them as soon as administratively feasible. To the extent that the Employer Contributions are contingent upon the Participant making Employee Contributions, the Employer Contributions described herein will be made only to the extent the Participant makes such Employee Contributions in accordance with the rules in subsection (b).

(d) The amount of Employee and Employer Contributions owed to the Plan shall be determined by reference to the Employee’s rate of Compensation that would have
been paid had the Employee not been called to qualifying service, except that if the Employer cannot reasonably determine the amount of Compensation that would have been paid, then the Compensation in effect immediately prior to the Participant’s military service will be used.

(e) To the extent required by USERRA, a Participant must inform the Employer in writing before entering military service in order to be eligible for Years of Participation as described above.

4.7 Rollovers

The Plan does not allow Rollover contributions.

4.8 Contributions During Periods of Disability

The Employer shall make contributions to the Plan on behalf of all permanently and totally disabled Participants in accordance with the applicable Long Term Disability insurance plan and subject to the requirements of Code section 415(c)(3)(C).
ARTICLE 5 PROVIDER ACCOUNTS

5.1 Establishment of Funding Mechanism

The Board has authorized the purchase of Funding Vehicles providing for retirement and death benefits for eligible Participants. Benefits shall be payable only to Participants or their Beneficiaries, and such benefits shall be paid only by the selected Providers in accordance with the terms of the Annuity Contracts providing benefits to the Participant or Beneficiary.

5.2 Selection of Insurers

The Board shall designate the Provider or Providers to which payments of contributions may be made and shall approve the form and content of the Funding Vehicles. The Board will enter into all agreements necessary to establish Funding Vehicles for the investment of contributions and that comply with the requirements of Code § 401(a). Subject to the terms of the Funding Vehicle, the Board may terminate the availability of a Funding Vehicle at any time. The list of designated Providers to which payments of contributions may be made or which may maintain Provider Accounts under this Plan are listed in Schedule C.

5.3 Manner of Investments

All amounts contributed to the Plan, and all income attributable to such amounts, will be held and invested in one or more Provider Accounts under the Funding Vehicles. Each Funding Vehicle shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income held by such Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

5.4 Investment of Contributions

The initial contribution on behalf of a Participant to the Plan shall be made to the TIAA-CREF account selected by the Participant, or, if the Participant has not selected such account, to the default account determined by the Board. A Participant, subject to the terms of the Funding Vehicles, may transfer the accumulation in his Provider Account at TIAA-CREF to Provider Accounts at the Alternate Funding Vehicles and designate all future contributions to Provider Accounts at any of the Funding Vehicles. Each Participant or Beneficiary will provide instructions directing the contributions made on his behalf and the accumulations attributed thereto among the Funding Vehicles available under the Plan in accordance with their terms and with rules established by the Administrator and as permitted under applicable law. Instructions requesting a change in Funding Vehicles for accumulations or future contributions will take effect as soon as administratively feasible. The Administrator shall not be responsible for delays in processing any change request made to a Provider.
5.4 Termination of Provider Account

A Funding Vehicle under the Plan shall be considered as no longer part of the Plan at the time in which payment of the entire amount of the Participant’s balance is made or distributed as or converted to an individual annuity outside of the Plan.

5.5 Limited Rights to Assets

The fact that Provider Accounts are established for each Participant under the Plan shall not give any Employee or others any right, title or interest in the Plan or its assets, or in the Provider Account except at the time and upon the terms and conditions provided in this Plan.
ARTICLE 6. CONTRIBUTION AND ALLOCATION RESTRICTIONS

6.1 Maximum Limits on Allocations

This Article 6 shall limit Contributions and allocations made pursuant to Article 4.

(a) The Annual Addition to a Participant’s Provider Account for any limitation year prior to December 31, 2001, shall not exceed the lesser of:

(1) $30,000; or

(2) 25% of the compensation paid or made available to the Participant in such year.

(b) For limitation years beginning after December 31, 2001, the annual addition that may be contributed or allocated to a Participant’s Provider Account under the Plan for any Limitation Year shall not exceed the lesser of:

(1) $40,000, as adjusted for increases in the cost-of-living under Code Section 415(d), or

(2) 100% of the Participant’s compensation, within the meaning of Code Section 415(c)(3), for the limitation year.

The 100% of compensation limit referred to in paragraph (b)(2) above shall not apply to any Contribution for medical benefits after separation from service (within the meaning of Code Section 401(h) or 419A(f)(2)) that otherwise is treated as an annual addition.

“Annual Addition” shall mean the sum allocated to a Participant’s Provider Account for any year of Contributions or forfeitures, if any, pursuant to this Plan and allocated to his benefit pursuant to all other defined contribution plans maintained by the Employer for the calendar year, including Employee Contributions. Contributions allocated to any Provider Accounts that are part of a pension or annuity plan shall be treated as annual additions to a defined contribution plan to the extent required under Code Section 415.

(c) “Compensation” for purposes of this Section shall mean wages within the meaning of Code Section 3401(a) (for purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed. “Compensation” includes, but is not limited to, any elective deferral (as defined in Code Section 402(g)(3)) or any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includable in the gross income of the Employee by reason of Code Section 125, 403(b), 132(f)(4) or 457. In addition, if paid by the later of 2 ½ months after Severance from Employment or the end of the limitation year that includes the date of the Employee’s Severance from Employment, Compensation shall also include those amounts that would have been included in Compensation if they were paid prior to the Employee’s Severance from Employment if
1) a payment that is regular compensation for services during the Employee’s working hours, or for services outside the Employee’s working hours (such as commissions, bonuses or other similar payments), and 2) absence a severance of employment, the payment would have been made to the Employee while the Employee continued in the employ of the Employer.

(d) Excess annual additions will be corrected by a method set forth in the IRC or the most current revenue procedure describing the Employee Plans Correction Resolution Program (“EPCRS”), as applicable.

(e) For the purposes of this Section, Contributions made on behalf of a Participant to a tax-sheltered annuity under Code Section 403(b) shall not be considered a defined contribution plan maintained by the Employer. Notwithstanding the previous sentence, if said contributions are treated as annual additions because of the application of Code Section 415(c), then the Participant’s Code Section 403(b) arrangement must be adjusted for any excess contributions under the limits of Code Section 415(c).
ARTICLE 7.   VESTING AND YEARS OF PARTICIPATION

7.1   Vesting

A Participant’s interest in his Provider Account, including Employee and Employer Plan Contributions plus any amounts rolled over to the Plan, shall always be fully vested and nonforfeitable.
ARTICLE 8. DISTRIBUTIONS

8.1 Distribution Eligibility

Subject to the provisions of this Article 8, a Participant’s Provider Account is distributable upon the occurrence of one (1) of the following events. The Plan Administrator (or its designee) will have sole discretion to make a determination of eligibility for a Plan distribution:

(a) The Participant has separated from active employment with the Employer;
(b) The Participant dies;
(c) The Participant is permanently and totally disabled in accordance with the terms of the applicable Long Term Disability Insurance Plan; or
(d) The Payment is to an alternate payee under a Domestic Relations Order.

8.2 Timing of Distribution

The Plan Administrator may notify the Participant in writing of his right to receive a distribution of his Provider Account upon the occurrence of a distribution event described in Section 8.1. Unless the Participant has reached his Required Beginning Date, a distribution will not commence until the Participant elects to begin a distribution, in writing, on a form acceptable to and filed with the Plan Administrator or the Provider, as determined by the Plan Administrator. The distribution of the Provider Account may be made to the Participant at any time after his termination of employment with the Employer, but in no event shall the distribution of a Participant’s Provider Account commence later than his Required Beginning Date if he has terminated his employment. Distributions on account of the Participant’s death or in accordance with a Domestic Relations Order shall be made in accordance with the procedures established by the Plan Administrator and under the Funding Vehicle.

8.4 Unclaimed Participant Accounts

(a) If the Participant or Beneficiary entitled to receive any benefits hereunder is unable to be located, the procedures of the Provider holding the accumulation will be followed.
(b) In the absence of any such procedures, the Plan Administrator shall make all reasonable attempts to determine the identity and address of the Participant or the Participant’s Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means:
   (1) The mailing by certified mail of a notice to the last-known address shown on Employer’s or the Plan Administrator’s Records;
(2) Notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), to the extent such agencies perform such service; and
(3) The payee has not responded within six months.

If the Plan Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Provider shall continue to hold such amounts unless directed otherwise by the Administrator.

8.5 Required Beginning Date

Notwithstanding any provision of the Plan to the contrary, payment of distribution amounts must begin to all Participants by their Required Beginning Date in accordance with Article 10 and the terms of the funding vehicle, whether or not they apply for benefits. If a Participant who is definitely located fails to file a completed application for distribution of his Provider Account on a timely basis, subject to the procedures in place at the Provider, the Plan Administrator will direct the Provider to begin payment of distribution amounts on the Participant’s Required Beginning Date.

Federal, state and local income tax, and any other applicable taxes, will be withheld from the distribution amounts payable as required by law or determined by the Board to be appropriate for the protection of the Plan and the Participant.
ARTICLE 9. FORM OF DISTRIBUTION

9.1 Earliest Distribution Date

Distribution of a Participant’s Provider Account shall occur no earlier than the date on which the Participant becomes eligible for a distribution in accordance with Section 8.1 of this Plan, unless specifically authorized elsewhere in the Plan. Any funds which have been accepted into the plan as a result of a rollover pursuant to section 4.6 are subject to the same rules and restrictions as Employee and Employer contributions to the Plan.

9.2 Method of Payment

The normal form of benefit for a married Participant is a Qualified Joint and Survivor Annuity. However, the Participant may elect to waive the Qualified Joint or Survivor Annuity and receive an Optional Form of Benefit provided the Participant’s spouse consents to such waiver pursuant to a Qualified Election within the applicable period. For purposes of this paragraph, a Qualified Election is an election to waive the Qualified Joint and Survivor Annuity that is presented along with the consent of the spouse in a form satisfactory to the Administrator. An Optional Form of Benefit is one of the permitted distribution options offered by the applicable Provider under the Funding Vehicle (other than a Qualified Joint and Survivor Annuity) subject to the distribution rules and the fees that are contained in the Funding Vehicle. For purposes of this paragraph, the Applicable Period is defined as the 180 day period ending on the annuity starting date.

The normal form of benefit for a Participant who is not married is any of the Optional Forms of Benefits offered by the applicable Provider under the Funding Vehicle.

However, notwithstanding anything to the contrary in this Plan, a Participant who is eligible for Retiree Health Benefits under the New York City Health Benefit Program may not take a distribution from the Plan in any form other than a life annuity until he attains the age that he may begin to receive Retiree Health Benefits under the Agreement Between CUNY and the Professional Staff Congress. In addition, at the time that he elects a benefit under section 8.2 (and as limited by this section) he must elect to convert a minimum of $50,000 of the balance in his Provider Accounts into a life annuity from TIAA-CREF in accordance with the procedures established by the Administrator. If his Provider Accounts do not total $50,000, the only form of benefit available to him is a life annuity purchased from TIAA-CREF.

9.3 Required Distributions

Notwithstanding any other provision of the Plan, all benefits shall comply with the requirements of Code Section 401(a)(9), the incidental benefit rule of Code Section 401(a)(9)(G) and the Treasury regulations prescribed thereunder as set forth in Article 10.
9.4 Direct Rollovers

A Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except that a Distributee may not elect a Direct Rollover of a distribution or series of distributions of less than $200 in a single calendar year. For purposes of applying this Section 9.4, the following definitions shall apply:

(a) **Eligible Rollover Distribution.** Unless otherwise described in Code Section 402(c)(4), an Eligible Rollover Distribution is any distribution of all or any portion of the balance of a Provider Account to the credit of the Distributee except that an Eligible Rollover Distribution does not include:

1. any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and his 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. any corrective distribution of excess aggregate contributions, and income allowable to such corrective distributions.

A portion of a distribution shall 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. Such portion, however, may be transferred only to an Eligible Retirement Plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution that is includible in gross income and the portion that is not so includible.

(b) **Eligible Retirement Plan.** An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity plan described in Code Section 408(b), an annuity plan described in Code Section 403(a) or 403(b), a qualified trust described in Code Section 401(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state or for distributions on or after January 1, 2008, a Roth IRA described in Code Section 408A that accepts the Distributee’s Eligible Rollover Distribution or as otherwise described in Code Section 402(c)(8)(B). However, in the case of Eligible Rollover Distributions to the Participant’s non-spousal beneficiary, an
Eligible Retirement Plan is an individual retirement account or individual retirement annuity (IRA) that is an inherited IRA as described in Code Section 408(d)(3)(C).

(c) **Distributee.** A Distributee includes a Participant, a spouse beneficiary and effective January 1, 2007, a non-spouse beneficiary. In addition, the Employee’s or former Employee’s Spouse or former Spouse and the Employee’s or former Employee’s Spouse or former Spouse who is the alternate payee under a Domestic Relations Order, as described in Code Section 414(p), are Distributees with regard to the interest of the Spouse or former Spouse.

(d) **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

### 9.5 Death Benefits

(a) **Distribution to a Beneficiary.** The balance of a deceased Participant’s Provider Account shall be payable to the Beneficiary identified in the Beneficiary designation in effect at the time of the Participant’s death or, if no such designation exists, in accordance with the provisions of the applicable Funding Vehicle. Each Participant may designate, in writing, on forms approved and filed with the Provider, one (1) or more Beneficiaries and a contingent Beneficiary to receive distribution of the Participant’s Provider Account. The Participant’s properly executed Beneficiary designation becomes effective upon receipt by the Provider.

(b) **Form of Death Benefit.** The death benefit will be paid in any method the individual chooses and that is made available by the Provider under the Funding Vehicle, subject to any restrictions requested by the Participant that the Provider has agreed to impose.

(c) **Timing of Payment.** Distribution to a Participant’s Beneficiary shall be made by the Provider as soon as administratively feasible after the Beneficiary completes all requirements for benefits in accordance with the rules and procedures of the Administrator and applicable Funding Vehicle. All payments to Beneficiaries shall be subject to the requirements set forth in section 10.2.

(d) **Death during Qualified Military Service.** The Plan will provide to the beneficiaries and/or survivors of a Participant who dies while performing qualified military service (as defined by the USERRA) with any additional benefits, other than benefit accruals relating to the period of qualified military service, that would have been provided if the Participant had resumed employment with the Employer and then terminated employment because of death. The provisions of this section are applicable to deaths that occur on or after January 1, 2007.

### 9.6 Loans
(a) Loans shall be permitted under this Plan. All amounts held in a Participant’s Provider Account shall be available for a loan in accordance with the terms of the Funding Vehicle.

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

   (1) $50,000, reduced by the greater of:
      a. The outstanding balance on any loan from the Plan to the Participant on the date the loan is made; or
      b. 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 Plan Administrator (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 balance (as of the valuation date immediately preceding the date on which such loan is approved by the Plan Administrator)

(c) For purposes of this Section any loan from any other plan maintained by the 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 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.

(d) The number and frequency of loans during any period of time, and the funding vehicle from which loans are available, may be limited by the Administrator.
ARTICLE 10.  MINIMUM DISTRIBUTION REQUIREMENTS

10.1 General Rules

(a) Effective Date. The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(b) Precedence. The requirements of this article will take precedence over any inconsistent provisions of the Plan.

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

(d) A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code (2009 RMDs), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) 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 and the participant’s designated beneficiary, or for a period of at least 10 years (Extended 2009 RMDs), will not receive those distributions for 2009 unless the participant or beneficiary chooses to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. A direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to section 401(a)(9)(H).

10.2 Time and Manner of Distribution.

(a) Required Beginning Date. The Participant’s entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant’s Required Beginning Date.

(b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant’s entire interest will be distributed, or begin to be distributed, no later than as follows:

i. If the Participant’s surviving spouse is the Participant’s sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 ½), if later.
ii. If the Participant’s surviving spouse is not the Participant’s sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

iii. If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant’s death, the Participant’s entire interest will be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant’s death.

iv. If the Participant’s surviving spouse is the Participant’s sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.2 other than Section 10.2(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section and Section 10.4, unless Section 10.2(b)(4) applies, distributions are considered to begin on the Participant’s Required Beginning Date. If Section 10.2(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.2(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant’s Required Beginning Date (or to the Participant’s surviving spouse before the date distributions are required to begin to the surviving spouse under Section 10.2(b)(1) the date distributions are considered to begin is the date distributions actually commence.

(c) Forms of Distribution. Unless the Participant’s interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date as of the first (1st) Distribution Calendar Year, distributions will be made in accordance with Sections 10.3 and 10.4. If the Participant’s interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations.

10.3 Required Minimum Distributions During Participant’s Lifetime

(a) 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:

(1) 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 Treasury regulations, using the Participant’s age as of the Participant’s birthday in the Distribution Calendar Year; or

(2) 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 Treasury regulations, using the Participant’s and spouse’s attained ages as of the Participant’s and spouse’s birthdays in the Distribution Calendar Year.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant’s Death. Required minimum distributions will be determined under this Section 10.3 beginning with the first (1st) Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant’s date of death. The Participant’s Beneficiary must receive any amount due to the Participant in the year of death but was undistributed prior to his death.

10.4. Required Minimum Distributions After Participant’s Death

(a) Death On or After Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant’s death is the quotient obtained by dividing the Participant’s Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant’s Designated Beneficiary, determined as follows:

(i) The Participant’s remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

(ii) If the Participant’s surviving spouse is the Participant’s sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant’s death using the surviving spouse’s age as of the spouse’s birthday in that year. For Distribution Calendar Years after the year of the surviving spouse’s death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse’s birthday in the calendar year of the spouse’s death, reduced by one (1) for each subsequent calendar year.

(iii) If the Participant’s surviving spouse is not the Participant’s sole Designated Beneficiary, the Designated Beneficiary’s remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant’s death, reduced by one (1) for each subsequent year.
(2) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

(b) **Death Before Date Distributions Begin.**

(1) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.4(a).

(2) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death.

(3) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant’s surviving spouse is the Participant’s sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.2, this Section 10.4(b) will apply as if the surviving spouse were the Participant.

10.5 **Definitions**

(a) **Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the Designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the Treasury regulations.

(b) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first (1st) Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant’s Required Beginning Date. For distributions
beginning after the Participant’s death, the first (1st) Distribution Calendar Year is the calendar year in which distributions are required to begin under section 10.2. The required minimum distribution for the Participant’s first Distribution Calendar Year will be made on or before the Participant’s Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant’s Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(c) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d) **Participant’s Account Balance.** The account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

(e) **Required Beginning Date.** April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70 ½) or the calendar year in which the Participant retires from the employ of the Employer maintaining this Plan.
ARTICLE 11. DETERMINATION OF DISPUTES

11.1 Participant Claim to Benefits

No Participant, Beneficiary or other person shall have any right or claim to benefits under the Plan, other than as specified herein. Any dispute as to eligibility, type, amount or duration of benefits or payment shall be resolved pursuant to the terms of the Plan.

11.2 Interpretation and Construction of the Plan

The Plan Administrator shall have total and complete discretion to interpret the Plan and to determine all questions arising in the administration, interpretation and application of the Plan; to decide all questions relating to an individual’s eligibility to participate in the Plan or eligibility for benefits and the amounts thereof; to have fact finder discretionary authority to decide all facts relevant to the determination of eligibility for benefits or participation; to determine the amount, form and timing of any distribution to be made hereunder, subject to the terms of the funding vehicle; and to approve any loan hereunder.

11.3 Basis for Rulings by Administrator

In any matter in which the Administrator shall make rulings or act in its discretion under the terms of this Plan, the Administrator may act on the basis of his investigation of the pertinent facts, or on the basis of his review of the findings and recommendations made by such other persons as may be designated by it to make findings of fact and recommendations.
ARTICLE 12. AMENDMENT AND TERMINATION

12.1 Amendment of Plan

The Employer may amend or modify the Plan at any time, except that no amendment or modification may reduce any benefits that have been approved for payment prior to amendment.

12.2 Termination of Plan

(a) In the event of termination of the Plan, the assets then remaining, after providing for the expenses of the Plan and for the payment of any Provider Accounts theretofore approved, shall be distributed among the Participants. No part of the assets shall be returned to the Employer or inure to the benefit of the Employer. For purposes of this subsection, all Annuity Contracts issued to a Participant shall be deemed to be distributed to that Participant at termination of the Plan if so determined by the Administrator.

(b) In the event of a termination of the Plan, the rights of each Participant to all benefits accrued to date of such termination, which is the Provider Account of each Participant’s Provider Account, shall be 100% nonforfeitable and fully vested in each Participant.

(c) Except as permitted specifically by law, it shall be impossible by operation of this Plan, by termination or amendment or by the happening of any contingency, for any part of the corpus or income of the Plan or an Provider Account thereto, or any fund contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries.

12.3 Severability

If any provision of the Plan or any step in the administration of the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, unless such illegality or invalidity prevents accomplishment of the purposes and objectives of the Plan. In the event of any such holding, the Board will immediately amend the Plan to remedy the defect.
ARTICLE 13. GENERAL PROVISIONS

13.1 Written Application Required

As a condition to payment of any distribution amount, an application for such benefit must be made in writing in a form and manner approved by the Administrator.

13.2 Required Information

(a) Every Employee or Beneficiary shall furnish, at the request of the Administrator, any information or proof reasonably required for the administration of the Plan or for the determination of any matter that the Administrator may legitimately have before it. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for denial of benefits to such Employee or Beneficiary, or the suspension or discontinuance of benefits. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be sufficient reason for the denial, suspension or discontinuance of benefits under this Plan except such benefits that are nonforfeitable and in any such case the Administrator shall have the right to recover any benefit distribution made in reliance thereon.

(b) Every Participant must file a written statement on which the Administrator is entitled to rely, concerning the Participant’s current and prior marital status, including, without limitation, whether or not he is currently legally married, and if married, as to when such marriage occurred. If a Participant states that he was not married or that he had not been legally married throughout the year before his benefit was distributed, no person shall be entitled to benefits under this Plan on the ground that she was, in fact his Spouse, or if his Spouse, was in fact legally married to him throughout the year before his benefit was distributed.

(c) Any payment made in good faith on the basis of a written statement of a Participant or Beneficiary shall discharge all obligations of the Plan to the extent of such payment, and shall entitle the Administrator to exercise all rights of recoupment or other remedies, including the right to adjust the amount distributed to a surviving Spouse or other Beneficiary in order to recoup any excess benefits which may have been erroneously paid.

13.3 Employment not Guaranteed by Plan

The establishment of this Plan, its amendments and the granting of a benefit pursuant to the Plan shall not give any Participant the right to continued employment with the Employer, or limit the right of the Employer to dismiss or impose penalties upon the Participant or modify the terms of employment of any Participant.

13.4 Designation of Beneficiary
A Participant’s designation of his Beneficiary shall be in writing on a form provided by the Plan Administrator or the applicable Provider and may be changed from time to time in the same manner insofar as permitted in connection with the benefit involved and in accordance with the rules of section 9.5(a).

13.5 Incapacitated Participants and Beneficiaries

In the event it is determined to the satisfaction of the Provider or Administrator that a Participant or Beneficiary who is entitled to benefits is unable to care for his affairs because of mental or physical incapacity, distribution shall be made in accordance with the procedural rules of the Provider. If the Provider has no procedural rules for this situation, then the Administrator may apply any distribution due to the maintenance and support of such person unless, prior to such distribution, claim shall have been made for such distribution by a legally appointed guardian, committee, or other legal representative appropriate to receive such distributions on behalf of the Participant or Beneficiary. Any such payment shall completely discharge the Administrator’s liability with respect to such payment.

13.6 Nonalienation of Benefits

(a) Benefits payable by the Plan shall not be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy, either voluntary or involuntary. Any attempt to anticipate, alienate, sale, transfer, assign, pledge, encumber, charge, garnish, execute, levy or otherwise dispose of any right to Plan benefits shall be void. This subsection shall not apply to a Domestic Relations Order as issued pursuant to a state domestic relations law that relates to child support or alimony. However, the Plan Administrator may pay from a Participant’s or Beneficiary’s Account the amount that the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

(b) The Administrator in consultation with the Providers shall adopt and prescribe reasonable rules and regulations for the implementation of the Domestic Relations Order provisions of Code Section 414(p) as if such Section applies to governmental plans.

(c) If a Domestic Relations Order directs that portion of a Participant’s Provider Account be paid to an alternate payee, the Administrator shall authorize the distribution of such portion to the alternate payee within a reasonable period of time after the determination of the qualified status of the order.

(d) The right of a former Spouse or other alternate payee to any share of a Participant’s benefit as set forth in a Domestic Relations Order takes precedence over any claims of a Participant’s Spouse at the time of retirement or death, to the extent provided by such order or by any federal law or regulation.
13.7 Merger or Consolidation

In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which a Participant would receive upon a termination of the Plan immediately after the merger, consolidation or transfer shall be equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had been terminated.
SCHEDULE A – PRIOR SCHEDULES OF CONTRIBUTIONS

The prior schedules of contributions are set forth in New York Education Law Article 125-A and are hereby incorporated by reference.

SCHEDULE B – PERMITTED INVESTMENTS

**TIAA-CREF Annuities**

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<td>TIAA Access-Western Asset Core Plus Bond</td>
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<td>TIAA-CREF Large Cap Value Instit.</td>
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<td>TIAA-CREF Small-Cap Equity Instit.</td>
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<td>TIAA Access -TIAA-CREF Small-Cap Equity</td>
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<tr>
<td>CREF Global Equities</td>
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<td>American Funds Euro Pacific Growth</td>
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<td>TIAA Access-American Funds Euro Pacific Growth</td>
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<td>TIAA-CREF International Equity Index Instit.</td>
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<td>TIAA Access -TIAA-CREF International Equity Index</td>
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**Guardian Life Insurance Annuities**

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<td>Guardian RS Fund: Small Cap Growth Equity</td>
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<td>Guardian RS Fund: Large Cap Alpha</td>
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<tr>
<td>Guardian Gabelli: Capital Asset Fund</td>
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<td>Guardian MFS Fund: Investor Trust Series</td>
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<td>Guardian Value Line: Value Line Centurion Fund</td>
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<td>Guardian Value Line: Strategic Asset Management Trust</td>
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<td>Guardian RS Fund: International Growth Fund</td>
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<td>Guardian RS Fund: Emerging Markets Fund</td>
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**MetLife Annuities**

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<td>Calvert VP SRI Mid Cap Growth Portfolio</td>
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<tr>
<td>Fidelity Equity-Income Portfolio</td>
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<td>Fidelity Growth Portfolio</td>
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<td>BlackRock Large Cap Core Portfolio</td>
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<td>Frontier Mid Cap Growth Fund</td>
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<td>Morgan Stanley Mid Cap Growth Portfolio</td>
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<td>MetLife Stock Index Portfolio</td>
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<td>BlackRock Diversified Portfolio</td>
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<td>MFS Total Return Portfolio</td>
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<td>MFS Research International Stock Portfolio</td>
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<tr>
<td>Baille Gifford International Stock Portfolio</td>
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<td>Oppenheimer Global Equity Portfolio</td>
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A complete list of all funds available for each Provider is also available at the Human Resources office on each campus.
All Providers have restrictions on distribution options and fees which apply. A full description of those is available in the prospectus and/or annuity contract.