

**UNIVERSITY SYSTEM OF MARYLAND
SUPPLEMENTAL 403(b) RETIREMENT PLAN**

Amended and Restated Effective as of January 1, 2020

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ARTICLE II.
RULES OF CONSTRUCTION AND DEFINITIONS

Rules of 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 Maryland 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*, and 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 a defined contribution plan under the provisions of Code Section 403(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.

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 separate accounts maintained for each Participant and Beneficiary under the Plan. The following Accounts shall be established for a Participant or Beneficiary, if applicable:

(1) A Pre-Tax Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Pre-Tax Contributions pursuant to Section 4.01. Such Account may be further divided into a Pre-1987 Pre-Tax Contribution Account reflecting Pre-Tax Contributions made to the Plan prior to 1987 and a Post-1986 Pre-Tax Contribution Account reflecting Pre-Tax Contributions made to the Plan after 1986, including any earnings on the Pre-1987 Pre-Tax Contributions.

(2) A Roth Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Roth Contributions pursuant to Section 4.01.

(3) "Post-Severance Employer Contribution Account" means the account maintained to reflect the Participant's or Beneficiary's interest under the Plan attributable to his or her Post-Severance Employer Contributions, if any, pursuant to Section 4.02.

(4) A Rollover Contribution Account to reflect the Participant's or Beneficiary's interest under the Plan attributable to Rollover Contributions pursuant to Section 4.03.

(b) "Administrator" means the Administrative Committee as designated by the Board, or such other person, persons, or entity designated by the Board, to perform the administrative duties and functions under the Plan.

(c) "Allocable Income" means the sum of the allocable gain or loss for the year or partial year determined in accordance with Code Section 402(g) and the regulations promulgated thereunder.

(d) "Annual Addition" means annual addition as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines annual addition as the sum of the following amounts credited to a Participant's Account for the Limitation Year under this Plan and to a Participant's account under any other Code Section 401(a) defined contribution plan maintained by the Employer (or, if required by Code Section 415 and the regulations thereunder, to any other defined contribution plan):

(1) employee contributions;

(2) employer contributions;

(3) forfeitures;

(4) allocations under a simplified employee pension;

(5) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the University or a Related Employer, or both, as applicable; and

(6) mandatory employee contributions to a defined benefit plan maintained by the University, unless the contributions are picked up by the University pursuant to Code Section 414(h)(2).

Annual Additions shall not include (i) elective deferrals made by a Participant who is age 50 or older in accordance with Code Section 414(v), (ii) excess elective deferrals distributed in accordance with Treasury Regulation Section 1.402(g)-1(e)(2), (iii) rollover contributions, or (iv) transfer contributions.

(e) "Annuity Contract" means a nontransferable contract as defined in Code Sections 403(b)(1) and 401(g), established for Participants by the Employer, or by each Participant individually, that is issued by a Vendor who is an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity.

(f) "Applicable Form" means the appropriate form as designated and furnished by the Administrator or Vendor to make an election or provide a notice as required by the Plan. If a written election or consent is not specifically required by the Code, the Administrator or Vendor

may prescribe a verbal, electronic, or telephonic instruction in lieu of or in addition to a written form.

(g) "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. A designation of an individual as a Beneficiary shall remain in effect until affirmatively revoked by the Participant on a subsequent Applicable Form. Unless otherwise provided in the Investment Arrangement, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's Spouse shall be the Beneficiary or, if none, the Participant's estate shall be the Beneficiary. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

(h) "Board" means the Board of Regents of the University System of Maryland.

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

(j) "Compensation" means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, which is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including an election to reduce compensation in order to make Elective Deferrals under the Plan). Compensation does not include amounts "picked up" by the Employer within the meaning of Code Section 414(h). Compensation includes any compensation described in paragraphs (1) or (2), provided it is paid by the later of 2½ months after the Employee's Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer:

(1) any payment that would have been paid to the Employee prior to a Severance from Employment if the Employee 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, 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, and only if the Employee separately elects for such payment to be reduced on his or her Salary Reduction Agreement pursuant to Section 4.01.

Notwithstanding the above, to the extent applicable, Compensation shall not exceed the limits under Code Section 401(a)(17), as increased for the Cost of Living Adjustment for the Plan Year.

(k) "Contributions" mean Pre-Tax Contributions, Roth Contributions, Post-Severance Employer Contributions, and Rollover Contributions.

(l) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17), 402(g), 414(v), or 415(d) for any applicable year.

(m) "Custodial Account" means the group or individual custodial account or accounts, as defined in Code Section 403(b)(7), established by the Administrator, or by each Participant individually, with a V/FTm0 g0 ifact 402 T.0912 0 612 792 reW*024;t5tion

the limits under Code Section 401(a)(17), as increased for the Cost of Living Adjustment for the Plan Year.

(w) "Investment Arrangement" means an Annuity Contract or Custodial Account that satisfies the requirements of Treasury Regulation Section 1.403(b)-3 and that is issued or established for funding amounts held under the Plan and specifically approved by the Administrator for use under the Plan.

(x) "Investment Options" mean the investment funds available under the Investment Arrangements provided by the Vendor(s) and specifically approved by the Administrator, in its sole and absolute discretion, for use under this Plan.

(y) "Limitation Year" means the Plan Year; provided, however, that if the Participant is in control of an employer within the meaning of Treasury Regulation Section 1.415(a)-1(f), the Limitation Year is the limitation year of that employer.

(z) "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.

(aa) "Plan" means the University System of Maryland Supplemental 403(b) Retirement Plan, as amended from time to time.

(bb) "Plan Year" means the calendar year.

(cc) "Post-Severance Employer Contribution" means Employer contributions made to the Plan on behalf of a Participant in connection with the Participant's Severance from Employment as determined in the sole and absolute discretion of the Board or its delegate pursuant to Section 4.02.

(dd) "Pre-Tax Contribution" means a contribution made to the Plan by the Employer at the election of a Participant pursuant to a Salary Reduction Agreement in accordance with Section 4.01.

(ee) "Public School" means a state sponsored educational organization described in Code Section 170(b)(1)(A)(ii).

(ff) "Qualified Distribution" means a distribution from a Roth Contribution Account after the Participant has satisfied a five year tax holding period and has attained age 59½, died, or become Disabled, in accordance with Code Section 402A(d). The five year tax holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Contribution under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed.

(gg) "Related Employer" means any entity which is under common control with the Employer under Code Section 414(b), (c), (m), or (o). The Employer shall determine which

entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under IRS Notice 89-23, 1989-1 C.B. 654.

(hh) "Rollover Contribution" means an amount contributed to the Plan pursuant to Section 4.03.

(ii) "Roth Contribution" means a contribution made to the Plan by the Employer at the election of a Participant pursuant to a Salary Reduction Agreement in accordance with Section 4.01, where the contribution has been (i) designated irrevocably by the Participant as a Roth Contribution being made in lieu of all or a portion of the Pre-Tax Contribution the Participant is otherwise eligible to make under the Plan, and (ii) treated by the Employer as includible in the Participant's gross income at the time the Participant would have received that amount in cash if the Participant had not made such an election. Roth Contributions shall be available under the Plan as soon as administratively practicable on or after January 1, 2020.

(jj) "Salary Reduction Agreement"

(qq) "Year of Service" means each year during which the Employee is a full-time Employee of the Employer for the entire work period, and a fraction of a year for each part of a work period during which the Employee is a full-time or part-time Employee of the Employer, determined in accordance with the rules under Treasury Regulation Section 1.403(b)-4(e).

ARTICLE III. **PARTICIPATION**

_____ **Participation.** An Employee may become a Participant in the Plan for purposes of Elective Deferrals or Rollover Contributions immediately after commencement of employment with the Employer. Participation in the Plan is voluntary.

_____ **Notice and Enrollment.**

(a) The Employer shall notify an Employee when he or she is eligible to participate in the Plan for purposes of Elective Deferrals.

(b) An Employee must complete the enrollment process and make investment elections with the Vendor on the Applicable Form, including a Salary Reduction Agreement for purposes of Elective Deferrals, to become a Participant in the Plan. An Employee who fails to complete the 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 enrollment process and making investment elections with the Vendor on the Applicable Form.

_____ **Cessation of Contributions.** A Participant shall cease to be eligible for Elective Deferrals under the Plan when he or she is no longer an Employee.

_____ **Cessation of Participation.** A Participant shall cease to be a Participant on the distribution of his or her entire interest in the Plan.

Reemployment. A former Participant who is reemployed 51d

Rollover Contributions to the Plan.

- (a) Subject to the Investment Arrangements, Participants who are Employees may

_____ **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 Investment Arrangements, unless paid by the Employer.

A. 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 Accounts by filing the Applicable Form with the Vendor(s). A Participant may change his or her investment election as often as determined by the Vendor(s). 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, regardless of whether offered by the same or a different Vendor, subject to the limitations of the Investment Arrangements, by filing a request on the Applicable Form with the Vendor(s) or by such other means that may be provided for by the Vendor(s). A Participant may also elect to transfer all or any portion of his or her Accounts invested with a Former Vendor to an Investment Option with a Vendor, subject to the terms of the Investment Arrangements. In no event, however, may a Participant transfer any portion of his or her Accounts invested in an Investment Option with a Vendor to an investment with a Former Vendor or any other vendor that is not eligible to receive Contributions under the Plan.

_____ **Exclusive Benefit.** Each Custodial Account 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 of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries.

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

ARTICLE VIII. **DISTRIBUTIONS**

_____ **Commencement of Distributions.**

(a) A Participant or, if applicable, a Beneficiary, shall be eligible to receive a distribution of his or her Vested Account under the Plan upon the Participant's:

- (1) Severance from Employment;
- (2) death;
- (3) Disability;
- (4) attainment of age 59½; or
- (5) financial hardship, as described in Section 8.03.

(5) The Participant has met any such additional or alternative requirements as may be prescribed in Treasury Regulation Section 1.401(k)-1(d)(3)(iv)(E) or subsequent promulgations.

(d) A Participant must provide substantiation of the reason for and the amount of the immediate and heavy financial need to the Vendor. The Vendor shall approve all hardship distributions under this Section 8.03.

(e) The Administrator shall take such steps as appropriate to coordinate the hardship distribution rules, including collection of information from Vendors, and transmission of information and transmission of

(c) Notwithstanding anything to the contrary in this Section 8.06, if the Vendor(s) separately accounts for Contributions made prior to January 1, 1987, then distribution of such Contributions (but not any interest accumulated with respect thereto) need not commence until April 1 of the calendar year following the calendar year in which the Participant attains age 75.

(b)

_____ **Loan Limits.**

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

(1)

- (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) a simple retirement account described in Code Section 408(p)(1) following the two year period described in Code Section 72(t)(6);
- (4) any annuity plan described in Code Section 403(a);
- (5) a plan described in Code Section 403(b);
- (6) a qualified plan described in Code Section 401(a);
- (7) a Code Section 457(b) eligible deferred compensation plan which is

Contributions are made by the Employer by a good faith mistake of fact, such amount may be returned to the Employer within one year of the date that they were made to the Plan.

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

_____ **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 Board has caused this amended and restated Plan to be executed by its duly authorized representative as of the date written below, but effective as of January 1, 2020.

**UNIVERSITY SYSTEM OF MARYLAND
BOARD OF REGENTS**

Signature

Printed

Title

Date

