

**THE UNIVERSITY OF COLORADO**

**OPTIONAL RETIREMENT PLAN**

**(AS AMENDED AND RESTATED  
EFFECTIVE JANUARY 1, 2016)**

The University Of Colorado

Optional Retirement Plan

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## ARTICLE I.

### ESTABLISHMENT OF PLAN

#### 1.1 Establishment of Plan

The University of Colorado Board of Regents (the "Board") established the University of Colorado TIAA-CREF Retirement Plan (the "Plan") as of 1924.

The Plan has been amended and restated from time to time, most recently to read as set forth herein, effective January 1, 2016, for eligible Participants of the Plan at the University of Colorado. This Plan document sets forth the provisions of this University of Colorado Optional Retirement Plan, which is a defined contribution (money purchase) retirement plan. It is intended that this Plan and related trust continue to meet the requirements of Section 401(a) and Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), as a "governmental plan," as defined in Code section 414(d).

The provisions of this amended and restated Plan shall apply as of January 1, 2016, except as otherwise provided herein.

This amended and restated Plan is intended to reflect the requirements contained in the 2014 Cumulative List of Changes in Plan Qualification Requirements, as issued by the Internal Revenue Service in Notice 2014-77.

Plan contributions are invested, at the direction of each Participant, with one or more Fund Sponsor(s) in one or more of the Funding Vehicles available to Participants under the Plan. Mandatory Participant Contributions are designated "picked-up" by the Institution so as not to be

included in Participant's gross income for Federal tax purposes as provided by Code  
section 414(h)(2).

## ARTICLE II.

### ELIGIBILITY FOR PARTICIPATION

#### 2.1 Participation

- (a) Mandatory Participation for Eligible Employees.
- (i) Effective July 1, 2013, and beginning with the August 1, 2013 entry date and subject to Section 2.1(b), each Eligible Employee in a position described in Exhibit A (Eligibility Matrix) whose Date of Employment or Reemployment is on or after July 1, 2013, shall begin participation in this Plan on the first day of the first calendar month following the Eligible Employee's Date of Employment or Reemployment.
- (ii) Effective July 1, 2013, and subject to Section 2.1(b), each
- (A) Eligible Employee in a position described in Exhibit A (Eligibility Matrix) who is not a Participant as of July 1, 2013, and whose Date of Employment or Reemployment is prior to July 1, 2013, and
- (B) Eligible Employee in a position described in Exhibit A (Eligibility Matrix) who prior to July 1, 2013 was not an Eligible Employee because the Employee holds a temporary non-resident visa,
- shall begin participation in this Plan on the August 1, 2013, entry date, unless an earlier entry date is permitted by Section 2.1(a)(iii) notwithstanding that the Employee has not had a one year anniversary of his or her Date of Employment or Reemployment or completed one Year of Service.
- (iii) Through July 1, 2013, and subject to Section 2.1(b), each Eligible Employee in a position described in Exhibit A (Eligibility Matrix), will begin participation in this Plan as described in Section 2.1(a)(iii)(A) through (D), if earlier than when participation would begin under Section 2.1(a)(i) or (ii).

(A) *Prior Participation in Non-Voluntary Institutional Retirement Plan.* An Eligible Employee in a position described in Exhibit A (Eligibility Matrix), who participated in a non-voluntary institutional retirement plan of a previous Eligible Employer, will begin participation in this Plan on the later of the first day of the month following:

- (1) his or her Date of Employment or Reemployment at the Institution; or
- (2) the date that evidence of such prior participation in a non-voluntary institutional retirement plan of a previous Eligible Employer satisfactory to the Plan Administrator has been provided.

(B) *No Prior Participation in Non-Voluntary Institutional Retirement Plan.* An Eligible Employee (other than a visa holder described in Section 2.1(a)(iii)(D) below) in a position described in Exhibit A (Eligibility Matrix), will begin participation in this Plan on the first day of the month following the one year anniversary of his or her Date of Employment or Reemployment provided he or she has not incurred a Break in Service. Service prior to the Break in Service when the Employee was not a Participant will be disregarded. Notwithstanding the foregoing, for any faculty member who has a written acceptance of appointment approved by the Institution by December 31, 2011, the one year waiting period will be reduced by the period of time which has elapsed from the date the faculty member's written acceptance of the appointment is approved by the Institution to the Eligible Employee's effective date of appointment.



(C) *Certain Designated Positions.* An Eligible Employee in a position so designated as not subject to the one-year waiting period described in Section 2.1(a)(iii)(B) in Exhibit A (Eligibility Matrix), will begin participation in this Plan on the first day of the month following his or her Date of Employment or Reemployment at the Institution.

(D) *Visa Holders.* An Eligible Employee in a position described in Exhibit A (Eligibility Matrix), who is a visa holder will begin participation in this Plan on the first day of the month following one Year of Service provided he or she has not incurred a Break in Service. Notwithstanding the foregoing, if an Eligible Employee in a position described in Exhibit A (Eligibility Matrix) is eligible to enter the Plan at an earlier date under Section 2.1(a)(iii)(A) or 2.1(a)(iii)(C), the Eligible Employee shall enter the Plan under such Section 2.1(a)(iii)(A) or 2.1(a)(iii)(C).

(b) Employees Who Are Members or Inactive Members of PERA.

Notwithstanding Section 2.1(a), effective August 5, 2009, upon initial appointment to or employment in one of the following positions: the University of Colorado President, chancellor, dean, other professional exempt from the state personnel system, and faculty, as determined by the Board to be eligible to participate in a University of Colorado retirement plan, an Employee who is a member or inactive member of PERA (as defined in Article 51 of Title 24 of the Colorado Revised Statutes) shall irrevocably elect in writing within thirty (30) days after his or her Date of Appointment, to either join PERA or participate in the Plan in accordance with Section 2.1(a). This irrevocable written election, made on or after August 5, 2009, in accordance with section 23-20-139, Colorado Revised Statutes, shall remain the election of such Employee at any time such Employee is employed in one of the following positions: the University of Colorado President, chancellor, dean, other

professional exempt from the state personnel system, and faculty, as determined by the Board to be eligible to participate in a University of Colorado retirement plan. On or after August 5, 2009, any Employee's failure to make an election as described above in accordance with section 23-20-139, Colorado Revised Statutes, within the thirty (30) day period following his or her Date of Appointment to such position shall be deemed an election to opt out of the Plan and join PERA. Notwithstanding the foregoing sentence, if, prior to August 5, 2009, an Employee who is a member or inactive member of PERA has previously made an irrevocable election with the Institution to participate in PERA, then such Employee shall participate in PERA and will be considered to always have been ineligible to participate in the Plan. If, on or after August 5, 2009, any Employee makes an irrevocable written election with the Institution in accordance with section 23-20-139, Colorado Revised Statutes to join PERA, such Employee will be considered to always have been ineligible to participate in the Plan.

## **2.2 Notification**

The Institution shall endeavor to notify each Eligible Employee when participation in the Plan begins. Each Participant is entitled to the benefits and is bound by all of the terms, provisions, and conditions of this Plan, including any and all amendments, which from time to time may be adopted, including the terms, provisions and conditions of any contract and/or certificate under the Plan.

## **2.3 Sabbatical and Leaves of Absence**

Temporary appointment to sabbatical or leaves of absence will not terminate participation in the Plan or eligibility for contributions based on Compensation by the Institution for the period of leave. For sabbatical or leaves of absence without Compensation from the Institution, participation is deemed suspended and will resume once the sabbatical or leave of absence

without Compensation is complete. Any Eligible Employee on a sabbatical or leave of absence may begin participation pursuant to Section 2.1(a) during such sabbatical or leave of absence provided he or she has not incurred a Break in Service during such sabbatical or leave of absence. Service for those Eligible Employees on a sabbatical or leave of absence shall be credited in accordance with Section 11.19.

## **2.4 Reemployment**

Other than an Employee who,

- (a) prior to August 5, 2009, previously made an irrevocable election with the Institution to participate in PERA, or
- (b) on or after August 5, 2009, makes an irrevocable written election with the Institution to participate in PERA under Section 2.1(b) in accordance with section 23-20-139, Colorado Revised Statutes,

an Eligible Employee who is reemployed by the Institution will begin participation in this Plan upon meeting the participation requirements set forth in Section 2.1. If an Employee who had previously elected to participate in the Plan prior to August 5, 2009 is reemployed, then such Employee will have the opportunity to make an irrevocable written election under Section 2.1(b) in accordance with section 23-20-139, Colorado Revised Statutes, to participate in either PERA or the Plan. Notwithstanding the foregoing sentence, if an Employee who is a member or inactive member of PERA previously made an irrevocable election with the Institution to participate in PERA (either before August 5, 2009, or on or after August 5, 2009, in accordance with section 23-20-139, Colorado Revised Statutes), then such Employee shall participate in PERA and will be considered to always have been ineligible to participate in the Plan.

## **2.5 Enrollment in Plan**

The Institution shall enroll in the Plan all Eligible Employees (who are mandated to participate in this Plan) with the Fund Sponsor. An Eligible Employee may select his or her own Funding Vehicle(s) for investment directly with the Fund Sponsor. If an Eligible Employee does not select his or her own Funding Vehicle(s) with the Fund Sponsor, the Plan Administrator shall specify a Funding Vehicle for the investment of that portion of an Eligible Employee's Accumulation Account which is not yet held in a Funding Vehicle and for which no valid investment selection has been made. Such default Funding Vehicle(s) may be changed from time to time by the Plan Administrator, in writing, without the necessity of amending the Plan.

## **2.6 Cessation of Participation**

Except as provided in Section 6.1A, relating to the phased retirement and special early programs described in Exhibit B-1 and Exhibit B-2, an Eligible Employee will not continue to participate in this Plan:

- (a) Upon retirement or Separation from Employment with the Institution; or
- (b) Upon a transfer or reclassification to a position not described in Section 2.1; or
- (c) If the Plan is terminated.

**ARTICLE III.**  
**PLAN CONTRIBUTIONS**

**3.1 Mandatory Participant Contributions**

Except as provided in the next sentence, Mandatory Participant Contributions shall be made for each Participant effective the date he or she begins participation in the Plan in accordance with Section 2.1. Notwithstanding any other provision in this Plan to the contrary, Mandatory Participant Contributions for an Eligible Employee who on or after August 5, 2009, makes an irrevocable written election in accordance with section 23-20-139, Colorado Revised Statutes, to participate in the Plan in accordance with Section 2.1 shall commence for each such Participant the later of: (a) the date he or she begins participation in the Plan in accordance with Section 2.1, or (b) September 1, 2009.

Each contribution made pursuant to this Section 3.1 shall be a Mandatory Participant Contribution whereby the Employer shall deduct from a Participant's Compensation and contribute to the Plan for each Plan Year an amount equal to 5% of Compensation earned by the Participant. Such amounts are specified by the Institution as being made by the Institution in lieu of contributions by the Participant in accordance with Code section 414(h)(2). Furthermore, the "pick-up" amounts cannot be received directly by Participants in accordance with Code section 414(h)(2).

In no event shall the Mandatory Participant Contributions and the Employer Contributions for any Participant exceed the limitation on allocations set forth in Section 3.8 below and as established by the University of Colorado Board of Regents. Plan contributions shall not continue beyond the date a Participant ceases to be an Eligible Employee due to Early

Retirement, Separation from Employment, transfer or reclassification to a position that is not eligible for participation in this Plan under Section 2.1, or termination of the Plan.

During a paid sabbatical or leave of absence, as described in Section 2.3, Mandatory Participant Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution and at the Participant's Mandatory Participant Contribution rate in effect prior to such paid sabbatical or leave of absence.

Effective January 28, 2000, Mandatory Participant Contributions shall continue for Participants in a Phased Retirement Program described in Section 3.2(c).

### **3.2 Employer Contributions**

Except as provided in the next sentence, Employer Contributions shall be made for each Participant effective the date he or she begins participation in the Plan in accordance with section 2.1. Notwithstanding any other provision in this Plan to the contrary, Employer Contributions for an Eligible Employee who on or after August 5, 2009, makes an irrevocable written election in accordance with section 23-20-139, Colorado Revised Statutes, to participate in the Plan in accordance with Section 2.1 shall commence for each such Participant the later of the date he or she begins participation in the Plan in accordance with Section 2.1, or September 1, 2009.

The amount of such Employer Contribution for each category of Participants is set forth below. Each contribution paid to the Plan pursuant to this Section 3.2 shall be referred to as an Employer Contribution. In no event shall the Mandatory Participant Contributions and the Employer Contributions for any Participant exceed the limitation on allocations set forth in Section 3.8 below and as established by the University of Colorado Board of Regents. Plan contributions

shall not continue beyond the date a Participant ceases to be an Eligible Employee due to Early Retirement, Separation from Employment, transfer or reclassification to a position that is not eligible for participation, or termination of the Plan.

(a) Participants Other Than PERA Retirees or Phased Retirement Program Participants.

The Employer Contribution for each Plan Year shall be an amount equal to 10% of the Compensation earned by such Participant.

(b) PERA Retirees.

(i) Through September 30, 2009, for PERA retirees, the Institution will make Employer Contributions for Compensation earned on or after July 1, 2005 by a PERA retiree (as defined in Article 51 of Title 24 of the Colorado Revised Statutes) who is hired or rehired by the Employer on or after July 1, 2005. The Employer Contribution for each Plan Year in an amount equal to 10% of the Compensation earned by such Participant under this Section 3.2 shall be reduced by any amount the Employer is required by state law to contribute to PERA with respect to the Participant for each Plan Year. Effective October 1, 2009, PERA retirees are ineligible to participate in the Plan.

(ii) Notwithstanding Section 3.2(b)(i), a PERA retiree (as defined in Article 51 of Title 24 of the Colorado Revised Statutes) who

- (A) (1) is hired or rehired by the Employer on or after July 1, 2005,  
and  
(2) received Employer Contributions which were not reduced by any amount the Employer was required by state law to contribute to PERA with respect to the Participant during a period of time when the Employer was required by state law to contribute to PERA with respect to the Participant from July 1, 2005 through September 30, 2009, or

(B) effective October 1, 2009, received Employer Contributions when ineligible,

shall, assuming such Participant still has a balance attributable to such Employer Contributions, described above in Section 3.2(b)(ii), as adjusted for expense charges, net income, gains and/or losses ("PERA Balance"), effective as of such date(s) as determined by the Plan Administrator, forfeit such PERA Balance or transfer or have transferred such PERA Balance to PERA to offset employer contributions to PERA through a trust-to-trust transfer.

(c) Phased Retirement Program Participants.

(i) *Phased Retirement Program Effective January 28, 2000.* During a Participant's participation in the Phased Retirement Program, effective January 28, 2000, and as described in Exhibit B-1 to the Plan, Employer Contributions will be made at a rate described in the Phased Retirement Program effective January 28, 2000.

(ii) *Phased Retirement Program Effective June 6, 2007.* During a Participant's participation in the Phased Retirement Program, effective June 6, 2007, and as described in Exhibit B-2 to the Plan (or any successor Administrative Policy Statement adopted pursuant to Regent Policy 11 which shall also be attached hereto and incorporated in this Optional Retirement Plan document as part of Exhibit B-2), Employer Contributions will be made at a rate described in the Phased Retirement Program effective June 6, 2007, or any successor Administrative Policy Statement.

(d) Participants on Paid Sabbatical or Leave of Absence.

During a paid sabbatical or leave of absence, as described in Section 2.3, Plan contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution and at the Participant's Employer Contribution rate in effect prior to such paid sabbatical or leave of absence.



(e) Participants on Long-Term Disability.

(i) A Participant who received or receives contributions to the Plan while covered under the Employer's long-term disability policy as described in Exhibit C while the Participant has compensation under Code Section 415 (to the extent Code Section 415 was in effect) shall be entitled to such contributions as adjusted for earnings/losses and such contributions made on behalf of such Participant shall be nonforfeitable when made. A Participant who received or receives contributions to the Plan while covered under the Employer's long-term disability policy as described in Exhibit C for which the Participant did or does not have compensation under Code Section 415 (to the extent Code Section 415 was in effect and to the extent the Plan Administrator is able to make such determination) when such contribution was made who has an account balance in the Plan attributable to such amounts as of such date as determined by the Plan Administrator shall forfeit such contributions as adjusted for earnings/losses. Such forfeited amounts shall be held in a suspense account to reduce future contributions by the Institution to the Plan.

(ii) The amount of contribution made or to be made to the Plan on behalf of a Participant who was or is covered under the Employer's long-term disability policy as described in Exhibit C shall be determined under the Employer's long-term disability policy as described in Exhibit C and shall be credited to Teachers Insurance Annuity Association of America ("TIAA") and College Retirement Equities Fund ("CREF") annuities only for so long as the contribution is provided for under the Employer's long-term disability policy as described in Exhibit C.

(iii) For purposes of Section 3.2(e), a Participant includes any Employee or former Employee who was or is covered under the Employer's long term disability

policy as described in Exhibit C and received or receives a contribution to the Plan as determined under Section 3.2(e)(ii).

**3.2A Employer Contributions for Employees Who Become Disabled on or After October 1, 2013**

Notwithstanding any provision of the Plan to the contrary, any Employee who becomes disabled on or after October 1, 2013, shall not be entitled to have any contributions made to this Plan which would have previously been provided by the monthly annuity premium benefit through the Employer's long-term disability policy.

**3.3 Allocation of Plan Contributions**

Plan contributions shall be forwarded to the Fund Sponsor(s) for the Funding Vehicle(s) selected by a Participant, or, if so directed by a Participant, invested pursuant to a self-directed brokerage option in Funding Vehicles as offered by the Fund Sponsor through the Plan, in accordance with the procedures established by the Institution. At least as frequently as once a month, a Participant may change his or her allocation of future Plan contributions to such Funding Vehicles.

**3.4 Payments**

Plan contributions shall be remitted on a monthly basis to the Fund Sponsor(s) selected by the Participants in accordance with procedures established by the Institution.

Any determination by the Institution as to the amount of Plan contributions which is evidenced by a remittance and a statement certified and delivered to the Fund Sponsor(s), is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other persons claiming an interest in or derived from the contributions payment.

Plan contributions shall be considered credited immediately to the Participant upon verification of procedures for reconciliation established between the Institution and Fund Sponsor(s).

### **3.5 Reporting**

Records for each Participant under this Plan are maintained on the basis of the Plan Year. On a quarterly basis, the Fund Sponsor(s) will send each Participant and the Institution a report summarizing the status of his or her Accumulation Account(s) as of March 31, June 30, September 30, and December 31, each year. Similar reports, illustrations, or telephone verification may be obtained by a Participant upon termination of employment or at any other time agreed to by the Fund Sponsor(s).

### **3.6 Limitations**

Notwithstanding anything to the contrary contained in this Plan, the obligation of the Institution to make contributions is subject to the provisions relating to the amendment and termination of the Plan; provided that no amendment or termination will affect any obligation of the Institution to make contributions with respect to Compensation earned by Participants prior to the date of amendment or termination.

### **3.7 No Reversion**

Under no circumstances or conditions will any contribution of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, in the event that Plan contributions are made by the Institution by mistake of fact, these Plan contributions may be returned to the Institution within one year of the date that Plan contributions were made.

### **3.8 Maximum Contribution**

For Limitation Years beginning on or after January 1, 1998, notwithstanding anything contained in this Plan document to the contrary, the total Annual Additions made on behalf of any Participant for any year will not exceed the amount permitted under Code section 415. The

limitations of Code section 415 are hereby incorporated by reference. The increase in the Code section 415 limitations resulting from the amendment of Code section 415(c) shall be effective with respect to this Plan for Limitation Years beginning on and after January 1, 2002. For Limitation Years beginning on or after January 1, 2002, except for catch up contributions described in Code section 414(v), if applicable, the annual addition that may be contributed or allocated to a Participant's account under the Plan for any Limitation Year shall not exceed the lesser of:

- (a) \$40,000, as adjusted for increases in the cost-of-living under Code section 415(d), or
- (b) 100 percent of the Participant's compensation (as defined herein) for the Limitation Year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code section 401(h) or Code section 419A(f)(2)) which is otherwise treated as an Annual Addition.

For Limitation Years beginning before July 1, 2007, if Annual Additions exceed the limitations, the excess amounts will be held unallocated in a suspense account and will be applied to reduce further contributions by the Institution to the Plan. If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for the purposes of Code section 415, then the extent to which annual contributions under this Plan will be reduced will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

For Limitation Years beginning on or after July 1, 2007, if Annual Additions exceed the limitations described above, then the Plan may only correct such excess in accordance with the

Employee Plans Compliance Resolution System and/or the preamble of section 1.415(c)-1 of the Treasury regulations or any subsequent guidance.

For Limitation Years beginning before July 1, 2007, for the purposes of calculating the limits of Code section 415, compensation means a Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan, to the extent the amounts are includible in gross income, and other items of compensation described in section 1.415-2(d)(2) of the Treasury regulations, and excluding the following:

- (a) Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; and
- (b) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in section 403(b) of the Code (whether or not the amounts are actually excluded from the gross income of the employee).

However, effective January 1, 1998, for this purpose, compensation shall include amounts not includable in the gross income of the Employee under Code sections 125, 132(f), 402(e)(3), 402(h), 403(b), or 457(b).

For Limitation Years beginning on or after July 1, 2007, for the purposes of calculating the limits of Code section 415, compensation means a Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan, to the extent the amounts

are includible in gross income, and other items of compensation described in section 1.415(c)-2(b) of the Treasury regulations, and excluding the following:

- (a) Employer contributions (other than elective contributions described in Code sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) to a plan of deferred compensation (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent such contributions are not includible in the employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible) in gross income when distributed from a plan of deferred compensation (whether or not qualified); and
- (b) Other amounts which receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in Code Section 125); and
- (c) Other items of remuneration that are similar to any of the items listed in (a) through (b).

However, for this purpose, compensation shall include amounts not includable in the gross income of the Employee under Code sections 125, 132(f), 402(e)(3), 402(h), 402(k), 403(b), or 457(b).

For Limitation Years beginning on or after July 1, 2006, compensation for a Limitation Year shall also include compensation paid by the later of 2-1/2 months after an Employee's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, if the payment is regular compensation for services during the Employee's regular working hours, or compensation for

services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer.

For Limitation Years beginning on or after July 1, 2006, with respect to (a) below, and for Limitation Years beginning on or after July 1, 2007, with respect to (b) below, any payments not described in the paragraph above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2-1/2 months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except

- (a) payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code section 414(u)(5)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; and
- (b) any salary continuation payments paid to a Participant who is permanently and totally disabled, as defined in Code Section 22(e)(3), provided, salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period provided the contributions made with respect to such compensation are nonforfeitable when made.

For Limitation Years beginning on or after July 1, 2007, back pay, within the meaning of section 1.415(c)-2(g)(8) of the Treasury regulations, shall be treated as compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in compensation.

For years beginning after December 31, 2008, compensation shall also include differential wage payments under Code section 414(u)(12).

Notwithstanding the above or anything in the Plan to the contrary, for purposes of Code Section 415, compensation shall include (a) effective for years beginning after 1975, amounts described in Code sections 104(a)(3), 105(a), or 105(h), but only to the extent that amounts are included in the gross income of the employee and (b) effective for tax years beginning after December 31, 1981, compensation that the Participant would have received for the year if the Participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled, if such compensation is greater than the Participant's compensation determined without this provision for a Participant who is permanently and totally disabled, as defined in Code section 415(c)(3), and provided the Plan otherwise meets the requirements of Code section 415(c)(3) and the regulations thereunder including that the contributions when made with respect to such Participant are nonforfeitable when made.

### **3.9 Contributions For A Period of Military Service**

Notwithstanding any provision of the Plan to the contrary,

- (a) effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u); and
- (b) in addition, the survivors of any Participant who dies on or after January 1, 2007 while performing qualified military service, are entitled to any additional benefits (other than contributions relating to the period of qualified military service, but including vesting service credit for such period and any ancillary life insurance or other survivor benefits) that would have been provided under the Plan had the Participant resumed employment on the day preceding the Participant's death and then terminated employment on account of death.



**3.10 Forfeitures**

Forfeitures created pursuant to Section 3.2(b)(ii) shall be transferred to and maintained in a Forfeiture Account which is hereby created. Forfeiture Account amounts shall first be used to pay Plan fees and expenses and second to reduce Employer Contributions.

## ARTICLE IV.

### FUND SPONSORS/FUNDING VEHICLES

#### 4.1 Fund Sponsor

Plan contributions and/or Participants' Accumulation Accounts are invested with the Fund Sponsor in one or more of its Funding Vehicles available to Participants under the Plan. The Fund Sponsor is Teachers Insurance and Annuity Association/College Retirement Equities Fund (TIAA/CREF). Notwithstanding the prior sentences, Fidelity Investments and The Vanguard Group were Fund Sponsors effective close of business, December 31, 2000, and remain Fund Sponsors through the date of transfer of assets to TIAA-CREF on or about July 15, 2015.

#### 4.2 Fund Transfers

Subject to initial administrative enrollment procedures and rules established by the Institution in conjunction with the Fund Sponsor for transfers, and in accordance with the provisions of the Code for maintaining the tax deferral of Plan contributions and the Accumulation Account(s), Participants, Beneficiaries or alternate payees may elect to transfer all or a portion of the balance in their Accumulation Account(s) between the Fund Sponsor's Funding Vehicles or to a self-directed brokerage option in Funding Vehicles as offered by the Fund Sponsor through the Plan, within the procedures established by the Fund Sponsor and to the extent permitted by the particular Funding Vehicles.

Transfers as described can be initiated by the Participants, Beneficiaries or alternate payees at any time within the constraints of the administrative rules, procedures, contracting, and deadlines established between the Institution and Fund Sponsor.

### **4.3 Transfers From Other Plans**

The Plan may accept rollovers or transfers for deposits to Accumulation Accounts of Participants from another plan that is eligible for treatment as a rollover amount under section 402 of the Code. The Plan Administrator may develop such procedures and require such information from the distributing plan as it deems necessary to reasonably conclude that a potential rollover contribution is a valid rollover contribution under section 1.401(a)(31)-1, Q&A-14(b)(2), of the Treasury regulations. The Fund Sponsor(s) will accept such amounts under this Plan provided the transfer to this Plan is made either within 60 days of the receipt of the distribution to the Participant or effective July 1, 2003, directly from the other plan. The Plan will not accept a Participant rollover contribution that is comprised of after-tax employee contributions.

### **4.4 Transfer Rules**

The fund transfer provisions of Section 4.2 (to the extent applicable) will continue to govern funds accumulated under the Plan until all funds are distributed or used to purchase an annuity.

**ARTICLE V.**

**VESTING**

**5.1 Plan Contributions**

Plan contributions shall be non-forfeitable when such Plan contributions are made.

## ARTICLE VI.

### BENEFITS

#### 6.1 Retirement Benefits

Following:

(i) from July 1, 1989 to December 31, 1992, retirement or earlier termination of employment;

(ii) from January 1, 1993 to December 9, 1998, a Separation from Employment, Retirement (the date in which age 55 is obtained and a Separation from Employment has occurred), or Disability (permanently and totally disabled as defined in Code Section 22(e)(3), Separated from Employment and receiving benefits from the University's "Long Term Disability" insurance policy); and

(iii) from December 10, 1998 on, a Separation from Employment or a Distributable Event;

and to the extent permitted by the Fund Sponsor(s), a Participant may elect to receive benefits under any of the options set forth in the contracts between the Fund Sponsor(s) and Participants and/or the Institution. Options offered and made available under the Plan are:

- (a) Single life annuities as provided under the Funding Vehicle's contract;
- (b) Joint and survivors annuities as provided under the Funding Vehicle's contract;
- (c) Fixed period payments as provided under the Funding Vehicle's contract;
- (d) Cash withdrawals as provided under the Funding Vehicle's contract;
- (e) Any other annuity or cash withdrawal option as provided under the Funding Vehicle's contract; or
- (f) Transfers of Accumulation Account(s) to another 401(a) qualified retirement plan or individual retirement account.

Any single option may be elected by the Participant or a combination thereof.

**6.1A Phased Retirement and Special Early Retirement for Faculty**

The University of Colorado has established or may establish phased retirement and special early retirement programs that are open to:

- (a) from January 28, 2000 through June 5, 2007, full-time members of the University faculty who are at least 55 years of age and whose combination of age and years of full-time service at the University total at least 75; qualifications and conditions of participation in the program are described in the Administrative Policy Statement, "Phased Retirement Programs for Faculty," attached hereto and incorporated in this Optional Retirement Plan document as Exhibit B-1;
- (b) effective June 6, 2007, members of the University faculty who are employed at fifty percent (50%) time or greater and (i) will be at least 55 years of age by the end of the period of the phased retirement program, and (ii) whose combination of age and years of half-time or greater service at the University total at least 65; qualifications and conditions of participation in the program are described in the Administrative Policy Statement, "Faculty Retirement Agreements," attached hereto and incorporated in this Optional Retirement Plan document as Exhibit B-2, (or any successor Administrative Policy Statement adopted pursuant to Regent Policy 11 which shall also be attached hereto and incorporated in this Optional Retirement Plan document as part of Exhibit B-2); and
- (c) Participants under such terms and conditions that may hereafter be set forth in any Administrative Policy Statement adopted pursuant to Regent Policy 11 which shall also be attached hereto and incorporated in this Option Retirement Plan document as part of Exhibit B-2.

## **6.2 Death Benefits**

In the event a Participant dies prior to commencement of retirement benefit payments, the full current value of the Accumulation Account(s) is then payable to the Beneficiary or Beneficiaries named by the Participant, under one of the payment options offered by the Fund Sponsor(s).

## **6.3 Payment of Benefit**

Payment of benefits to a Participant or Beneficiary is the responsibility of the Fund Sponsor(s) holding the Participant's Accumulation Account(s). Payment of benefits is not the responsibility of the Institution.

Effective January 1, 2007, the nonspouse beneficiary may elect a direct rollover of a lump-sum payment pursuant to the provisions of Section 6.7 of the Plan.

If the Plan Administrator receives an order by a court of competent jurisdiction or a power of attorney that provides any person entitled to receive a benefit under this Plan is incapable of personally receiving and giving a valid receipt of such payment, the Fund Sponsor shall make payment to a duly appointed guardian or other legal representative of such person. Any such payment shall be payment for the account of such person and a complete discharge of any liability of the Plan, the Board, the Trustee(s), the Fund Sponsor, the Plan Administrator, its designee and the employees and agents of the Fund Sponsor or the Plan Administrator. However, the Plan Administrator and/or its designee reserves the right to obtain periodic evidence that the Beneficiary is still living.

## **6.4 Application for Benefits**

Procedures for receipt of benefits are initiated by contacting the Fund Sponsor(s) directly. Benefits will be payable by the Fund Sponsor(s) upon receipt of a satisfactorily completed

application for benefits and required supporting documents. The necessary forms will be provided upon request to the Participant, the surviving spouse, or the Beneficiary by the Fund Sponsor(s).

## **6.5 Distribution Requirement**

The requirement of this Section applies to any distribution of a Participant's Accumulation Account(s). Required minimum distributions will in all cases be made in accordance with Code section 401(a)(9) and the Treasury regulations thereunder including the Final Treasury Regulations under Code section 401(a)(9): (i) published April 17, 2002 and effective January 1, 2003, and (ii) published June 15, 2004 and effective June 15, 2004, and applicable for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003.

Effective September 8, 2009, notwithstanding anything in the Plan to the contrary, the Plan which is a governmental plan (within the meaning of Code section 414(d)) is treated as having complied with Code section 401(a)(9) for all years to which Code section 401(a)(9) applies to the Plan if the Plan complies with a reasonable and good faith interpretation of Code section 401(a)(9).

### **(a) Limits on Settlement Options**

For Participants electing an annuity for all or some portion of a retirement benefit, distributions may only be made over one of the following periods (or combination thereof):

- (i) The life of the Participant;
  - (ii) The life of the Participant and a designated Beneficiary;
  - (iii) A period certain of not extending beyond the life expectancy of the Participant;
- or



- (iv) A period certain of not extending beyond the joint and last survivor life expectancy of the Participant and Designated Beneficiary.

(b) Commencement of Benefit

If a Participant elects to defer distribution, nevertheless, distribution to a Participant must begin on or before April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains age 70 ½, or (ii) the calendar year in which the Participant's employment with the Employer ends. A Participant who elects to defer receipt of a benefit may not do so to the extent that he or she is creating a death benefit that is more than incidental. Effective January 1, 2009, no minimum distribution is required for calendar year 2009 in accordance with Code Section 401(a)(9)(H).

(c) Death Distribution

Upon the death of the Participant the following distribution provisions will take effect:

- (i) If the Participant dies after distribution of his or her Accumulation Account(s) has begun, the remaining portion of the Accumulation Account(s) will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.
- (ii) If the Participant dies before distribution commences, then his or her entire interest will be distributed or will begin to be distributed, no later than:
  - (A) December 31 of the calendar year immediately following the calendar year in which the Participant died, or

- (B) December 31 of the calendar year immediately following the calendar year in which the Participant would have attained age 70  $\frac{1}{2}$ , if later (but only if the Participant's surviving spouse is the Participant's sole Designated Beneficiary).

However, 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 anniversary of the Participant's death.

Notwithstanding the foregoing, a Designated Beneficiary may elect to receive a distribution of his or her entire interest no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under this subsection in the absence of such election or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death.

If the spouse is the Participant's sole Designated Beneficiary and the spouse dies before payments begin, subsequent distributions are required under this subsection (ii) (except for paragraph B) as if the surviving spouse was the Participant.

- (iii) 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:

- (A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (B) 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 for each subsequent calendar year.
- (C) 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 for each subsequent year.

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 for each subsequent year.

- (iv) For the purposes of this Section 6.5, distribution of a Participant's interest is considered to begin on the Participant's Required Beginning Date (or, if the last sentence of subsection (ii) applies, the date distribution is required to begin to the surviving spouse pursuant to subsection (ii)). 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 (ii)(B)), the date distributions are considered to begin is the date distributions actually commence.

(d) Lifetime Distributions

- (i) If a Participant does not receive an immediate distribution of the Participant's Accumulation Account(s) in a single sum or in an annuity purchased from an insurance company on or before the Required Beginning Date and begins receiving payments under paragraph (b) above, then during the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

- (A) The quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in section, 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

- (B) If the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the 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.

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 regulations.

Required minimum distributions will be determined under this subsection (i) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

- (ii) If the Participant dies before the date distributions begin, the minimum amount that will be distributed shall be calculated as follows:

(A) If 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 subsection (c)(iii).

(B) If 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 anniversary of the Participant's death.

If 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 subsection (c)(ii)(A), this subsection will apply as if the surviving spouse were the Participant.

(e) Incidental Death Benefit

Any distribution required under the incidental death benefit requirements of Code section 401(a)(9)(G) shall be treated as a distribution required under Code section 401(a)(9).

(f) Definitions

For the purposes of this Section 6.5:

- (i) "Designated Beneficiary" shall mean the individual who is designated as the Beneficiary under Section 11.3 and is the designated beneficiary under Code section 401(a)(9) and Treasury regulation section 1.401(a)(9)-4.
- (ii) "Distribution Calendar Year" shall mean a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first 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 distribution calendar year is the calendar year in which distributions are required to begin under Section 6.5(c)(ii). 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.

- (iii) "Participant's Account Balance" shall mean the balance of the Participant's Accumulation Account(s) 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 contribution made and allocated or forfeitures allocated to the Accumulation Accounts 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.
- (iv) "Required Beginning Date" shall mean the date described in Section 6.5(b) as the date by which payment of benefits must commence.

(g) Special Rules

If the Participant's benefit in the Plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the Participant under the Plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the Plan is not aggregated with the other separate accounts under the Plan in order to determine whether the distributions from such separate account under the Plan satisfy Code section 401(a)(9).

## **6.6 Repurchase**

A Participant's Accumulation Account(s) may be received in a single sum through repurchase, described as follows: in the event a Participant in this Plan separates from employment for reasons other than retirement and requests a repurchase of his or her Accumulation Account(s) in the Plan, the Institution will approve such repurchase for payment in a single sum.

Upon repurchase, the Participant's Accumulation Account(s) total value will be payable by the Fund Sponsor(s) upon Institution approval. Fund Sponsor(s) will initiate payments under the appropriate sections of the Code for taxation and reporting.

## **6.7 Direct Rollover**

The following will apply:

(a) This section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 6.7, a distributee, including a nonspouse designated beneficiary, to the extent permitted under subsection (b)(v) of this Section, may elect, at the time and in the manner prescribed by the Plan Administrator (as defined in Section 8.1), to have any portion of an eligible rollover distribution paid directly to (i) an eligible retirement plan, or (ii) effective for distributions after December 31, 2007, a Roth IRA described in Code section 408A, subject to any limitations described in Code section 408A(c), specified by the distributee in a direct rollover.

(b) For purposes of this Section 6.7 the following definitions apply:

(i) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, but does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint



lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); and the portion of any distribution that is not includible in gross income; provided, however, that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income and effective for distributions after January 1, 2011, any other distribution(s) that is reasonably expected to total less than \$200 during a year. However, such portion may be transferred only to:

- (A) an individual retirement account or annuity described in Code section 408(a) or 408(b);
- (B) effective from January 1, 2002 through December 31, 2006, in a direct trustee-to-trustee transfer, a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or
- (C) effective on or after January 1, 2007, in a direct trustee-to-trustee transfer, a qualified trust, or an annuity contract described in Code section 403(b), and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

Effective for distributions after December 31, 2007, such after-tax portion may also be directly transferred to a Roth IRA described in Code section 408A, subject to any limitations described in Code section 408A(c).

Notwithstanding the foregoing, effective January 1, 2009, if all or a portion of a distribution during 2009 is treated as an eligible rollover distribution pursuant to Code section 402(c)(4) but would not be so treated if the minimum distribution requirements under Code section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of Code section 401(a)(31), Code section 3405(c) or Code section 402(f).

- (ii) An eligible retirement plan is an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), or a qualified trust described in Code section 401(a), that accepts the distributee's eligible rollover distribution. For purposes of this Section, effective January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Code section 403(b) and an eligible plan under 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 and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

- (iii) A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective for distributions after December 31, 2006, a distributee also includes the Participant's nonspouse designated beneficiary, pursuant to Code section 401(a)(9)(E).
- (iv) A direct rollover is a payment by the Plan directly to the eligible retirement plan specified by the distributee, or, on or after January 1, 2008, to a Roth IRA under Code section 408A, as specified by the distributee (assuming the distributee otherwise meets the Roth IRA requirements).
- (v) Effective for distributions after December 31, 2006, in the case of a nonspouse designated beneficiary (which includes certain trusts described in Code 402(c)(11)(B)), any portion of a payment may be made as a direct rollover to an individual retirement account or annuity (other than an endowment contract) described in Code section 408(a) or (b) ("IRA") that is established on behalf of such designated beneficiary, that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11), and that must be titled in the name of the deceased Employee, for the benefit of the beneficiary. Also, in this case, the determination of any required minimum distribution under Code section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395, as clarified by the Special Edition dated February 13, 2007, of Employee Plans News of the Internal Revenue Service Tax Exempt and Government Entity Division. The required minimum

distribution rules of Code section 401(a)(9)(B) (other than clause iv thereof) apply to the transferee IRA. Furthermore, to the extent permitted or required under WRERA, Notice 2008-30, 2008-12 I.R.B. 638 and/or any other regulatory guidance, effective for distributions after December 31, 2007, a nonspouse designated beneficiary (as described in and in accordance with Code section 402(c)(11)) may directly rollover a distribution to a Roth IRA.

(vi) At least thirty (30) days before and, effective for years beginning after December 31, 2006, not more than one hundred eighty (180) days before the date of distribution, the distributee (other than a nonspouse designated beneficiary for distributions made after December 31, 2006 but prior to July 1, 2010) must be provided with a notice of rights which satisfies Code section 402(f) as to rollover options and tax effects. If a distribution is one to which Code sections 401(a)(11) and 417 do not apply, such distribution may commence less than thirty (30) days after the notice required under section 1.411(a)-11(c) of the Treasury regulations is given, provided that:

(A) the Plan Administrator clearly informs the distributee that the distributee has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(B) the distributee, after receiving the notice, affirmatively, elects a distribution.

(vii) For distributions after December 31, 2006, but prior to July 1, 2010, a distribution with respect to a nonspouse designated beneficiary shall be made in accordance with Notice 2007-7, Q&A15, 2007-5 I.R.B. 395. Effective for Plan

Years beginning after December 31, 2009, a distribution with respect to a nonspouse designated beneficiary shall be subject to Code sections 401(a)(31), 402(f), and 3405(c).

- (c) Effective for distributions on or after January 1, 2015, for purposes of determining the portion of a disbursement of benefits from the Plan to a distributee that is not includible in gross income under Code Section 72, the guidance under I.R.S. Notice 2014-54 shall be followed.

## ARTICLE VII.

### GENERAL PROVISIONS AND LIMITATIONS REGARDING BENEFITS

#### 7.1 Non-Alienation of Retirement Rights or Benefits

No benefit under the Plan must be at any time subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect.

However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is

- (a) a "domestic relations order" under Colorado Revised Statutes ("CRS") section 14-10-113(6) provided that for an alternate payee who does not also meet the definition of an alternate payee under Code section 414(p), the payment(s) shall not commence to such person until the payment(s) commence to the Participant, and/or
- (b) a domestic relations order under Code Section 414(p)(11) as further described in Section 7.2.

The Plan Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "domestic relations order," a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

Notwithstanding the above, the interests of each Participant or Beneficiary under the Plan which are in pay status are subject to writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, for restitution for theft, embezzlement, misappropriation, or wrongful conversion of public property, or in the event of a judgment for a willful and intentional violation of fiduciary duties to a public pension plan where the offender or a related party received direct financial gain.

## 7.2 Qualified Domestic Relations Order Distribution

Notwithstanding any provisions in this Plan to the contrary, the Institution shall approve

- (a) payments to an “alternate payee” pursuant to a “domestic relations order” as defined in, and in accordance with, CRS Section 14-10-113(6), provided that for an alternate payee who does not also meet the definition of an alternate payee under Code section 414(p) the payment(s) shall not commence to such person until the payment(s) commence to the Participant, and/or
- (b) a domestic relations order which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant, and which is made pursuant to a state domestic relations order in accordance with applicable provisions of Code section 414(p)(11), and such payments shall not be deemed a prohibited alienation of benefits.

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any “alternate payee” under Code section 414(p) under a qualified domestic relations order under Code section 414(p). Furthermore, a distribution to an “alternate payee” under Code section 414(p) shall be permitted if such distribution is authorized by a qualified domestic relations order under Code section 414(p), even if the affected Participant has not separated from service and has not reached the “earliest retirement age” under Code section 414(p) under the Plan.

**ARTICLE VIII.**  
**ADMINISTRATION**

**8.1 Plan Administrator**

The University of Colorado – System Administration is the Plan Administrator of the Plan.

Employee Services is responsible for enrolling Participants and for performing duties as required for the operation of the Plan.

**8.2 Authority of the University of Colorado – System Administration**

The University of Colorado – System Administration, which is the Plan Administrator for purposes of the Plan, has all the powers and authority expressly conferred upon herein and further has the sole right to interpret and construe the Plan, and to determine any disputes arising under it. In addition, the Plan Administrator, in consultation with Institution counsel, has the authority to make changes to the Plan to comply with statutory or regulatory changes and to make other necessary or advisable changes to the Plan, other than changes in plan coverages. In exercising these powers and authority, the University of Colorado – System Administration will at all times exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The University of Colorado – System Administration may employ attorneys, agents, and accountants, as it finds necessary or advisable to assist in carrying out its duties. The University of Colorado – System Administration will be a “named fiduciary” for purposes of determining eligibility, and computing and making Plan contributions. The University of Colorado – System Administration, may designate a person or persons to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.



### **8.3 Action of the University of Colorado – System Administration**

Any act authorized, permitted, or required to be taken by the University of Colorado – System Administration under the Plan, may be taken by a majority of the members of the Board, by vote at a meeting. All notices, advice, direction, certification, approvals, and instructions required or authorized to be given by the University of Colorado – System Administration under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or any member or members as may be designated by an instrument in writing, signed by all members, as having authority to execute the documents on its behalf, or (ii) a person who becomes authorized to act for the University of Colorado – System Administration in accordance with the provisions of Section 8.2. Any action taken by the University of Colorado-System Administration which is authorized, permitted or required under the Plan and is in accordance with the Fund Sponsors' contractual obligations is final and binding upon the University of Colorado-System Administration, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the University of Colorado – System Administration.

### **8.4 Indemnification**

The members of the University of Colorado-System Administration, or any other person or persons (other than the Fund Sponsors) to whom any power, authority, or responsibility of the Board is delegated pursuant to Section 8.2, are entitled to defense and indemnification as provided in State law and in the policies of the University of Colorado.

### **8.5 Trust Fund**

As part of this Plan, a trust shall be maintained to hold and account for the assets of the Plan; such trust may consist of one or more custodial accounts and/or annuity contracts treated as qualified trusts under Code section 401 pursuant to Treasury regulation section 1.401(f)-1 (“Deemed Trustees”) and The University of Colorado Optional Retirement Plan Trust Agreement, custodial agreement(s), annuity contract(s) and/or Funding Vehicle(s) are incorporated herein by reference.

The University of Colorado has the authority and duty to appoint the Trustee(s) and/or Deemed Trustees and appoint successors at any time.

Any assets of the Plan may be invested in a common/collective trust or in a group trust that satisfies the requirements of Revenue Ruling 81-100, as further amended by Revenue Ruling 2004-67, Revenue Ruling 2008-40, and Revenue Ruling 2011-1, and as subsequently amended by future guidance. Each such common/collective trust or group trust is adopted with respect to any monies invested therein, as part of the Plan, its trust, Trust Fund, custodial account, annuity contract and/or Funding Vehicle and each such declaration of trust or trust agreement and related adoption, participation, investment management, subtrust or other agreements, as amended from time to time, with respect to any monies invested therein, are incorporated by reference into the Plan, The University of Colorado Optional Retirement Plan Trust Agreement, custodial agreement(s), annuity contract(s) and/or Funding Vehicle(s), at such time as an investment in such common/collective trust or group trust is made.

#### **8.6 Trustee(s)**

The Trustee and/or Deemed Trustees under Section 8.5 shall have responsibility for the administration of the Participants' Accumulation Accounts, the investments of Trust Fund assets, and the distribution of the Trust Fund assets in accordance with the terms of the Plan.

## ARTICLE IX.

### AMENDMENTS AND TERMINATION

#### 9.1 Amendments and Termination

While it is expected that this Plan will continue indefinitely, the Board reserves the right at any time to take any of the following actions by a majority of the members of the Board, by a vote at a meeting: amend, otherwise modify, or terminate the Plan, or discontinue any further contributions or payments under the Plan. Furthermore, a delegate of the Board may amend the Plan. In the event of a termination of the Plan or discontinuance of Plan contributions, the University of Colorado – System Administration will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent funded.

#### 9.2 Limitations

Notwithstanding the provisions of Section 9.1, the following conditions and limitations apply:

- (a) No amendment will be made which will operate to recapture for the University of Colorado – System Administration any contributions previously made under this Plan. However, contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan. In addition, contributions by the Institution, which were made based on a mistake of fact, may be returned to the Institution within one year of the date on which the contribution was made.
- (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as contributions made under the Plan are concerned. Any determination or recommendation(s) by the Internal Revenue Service or the University of Colorado–System Administration’s counsel will be sufficient as to the necessity of the amendment.

### **9.3 Plan Qualification**

Any modification of the Plan may be made retroactive, as necessary or appropriate, to establish and maintain a “qualified plan” pursuant to section 401(a) of the Code and regulations thereunder.

## ARTICLE X.

### MISCELLANEOUS

#### 10.1 Plan Non-Contractual

Nothing contained in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing contained in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of Compensation of any person for any period, and all Employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.

#### 10.2 Claims of Other Persons

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

#### 10.3 Governing Law

Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Colorado. Notwithstanding any provision in the Plan to the contrary, effective June 26, 2013, the terms "husband," "wife," "husband and wife," "marriage," and "spouse" shall be defined and construed in accordance with federal tax law, including I.R.S. Revenue Ruling 2013-17 and I.R.S. Notice 2014-19 and subsequent regulations and rulings.

#### 10.4 Merger, Consolidation, or Transfer to or from Plan

- (a) The Plan will not be merged or consolidated with any other Plan, nor will any of its assets or liabilities be transferred to another Plan, unless, immediately after a merger, consolidation, or transfer of assets or liabilities, each Participant would receive a benefit under the Plan which is at least equal to the benefit he or she would have received immediately prior to a merger, consolidation, or transfer of assets or liabilities (assuming in each instance that the Plan had then terminated). Notwithstanding the preceding sentence and/or Section 7.1, for a Participant described in Section 11.13(i), the Plan Administrator may cause a trust-to-trust transfer of all or a portion of a Participant's Accumulation Accounts to PERA upon written request by such Participant on such form(s) as provided by the Plan Administrator and upon approval of such transfer by the Plan Administrator.
- (b) Notwithstanding the first sentence in Section 10.4(a), at the direction of the Plan Administrator, for Employee(s) who are participants or beneficiaries in another qualified plan under Code section 401(a), the Plan Administrator may permit a transfer of assets to the Plan only if the other plan provides for the direct transfer of all or a portion of each person's interest therein to the Plan and such person is an employee or former employee of the Institution. The transferred amount shall be allocated to a Participant's Accumulation Account. The Plan Administrator accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Plan Administrator accepting such transferred amounts may require such documentation from the other plan as it deems necessary to confirm that the other plan is a plan that satisfies Code section 401(a).

### **10.5 Electronic Media**

Effective for applicable notices, elections and consents provided or made for a Participant, Beneficiary, alternate payee or individual entitled to benefits under the Plan, on or after July 1, 2011, the use of electronic media to provide such applicable notices and make such elections and consents, as described in Treasury regulation section 1.401(a)-21 is permitted.

### **10.6 Revenue Credit Account**

The assets in the Revenue Credit Account(s) shall be used as directed by the University, (a) to pay reasonable and necessary expenses of the Plan and/or (b) be allocated to the Accumulation Accounts. The terms of each revenue credit account agreement for the Plan, as amended from time to time, are hereby incorporated by reference into the Plan. To the extent not specified in the revenue credit account agreement, the assets of the Revenue Credit Account shall be invested as determined by the University and any assets allocated to the Accumulation Accounts from the Revenue Credit Account shall be invested in the Plan's default investment.

### **10.7 Unallocated Account**

The account representing forfeited excess allocations including amounts due to contributions in excess of the Code section 401(a)(17) limitation (adjusted for earnings and losses allocable thereto). The amounts in this Unallocated Account shall be used to reduce Employer Contributions in the current year or succeeding year(s). While such amounts remain in the Unallocated Account, the Institution is not permitted to make contributions to the Plan.

## ARTICLE XI.

### DEFINITIONS

#### 11.1 Accumulation Account

“Accumulation Account” means the separate account established for each Participant, which may include accounts for the Participant’s Beneficiary or Alternate Payee. The value of a Participant’s Accumulation Account is adjusted for all Plan contributions, distributions (including, but not limited to, any transfers, withdrawals, or repurchase payments), expense charges, and net income, gains and/or losses, which may also be referred to as investment earnings. It may also include any amounts transferred from other qualified plans in which the Participant formerly participated subject to rules established by the Plan.

#### 11.2 Annual Additions

“Annual Additions” means the amount allocated to a Participant’s account under this Plan or any other defined contribution plan of the Institution during the Limitation Year that constitutes: (a) Employer contributions; (b) Employee contributions; (c) forfeitures, if any; and (d) individual medical account amounts as defined in Code section 415(l)(1) and 419A(d)(2), if any. The direct transfer of a benefit or employee contributions from a qualified plan to the Plan does not give rise to an Annual Addition.

#### 11.3 Beneficiary

“Beneficiary” means the individual, institution, trust or estate designated by the Participant to receive benefits. If the Participant has not designated a Beneficiary or if no Beneficiary is living to receive benefits, then the Plan Administrator shall pay such benefits, or cause such benefits to be paid in the following priorities:

- (a) for a married Participant,



- (i) to the Participant's surviving spouse, then
  - (ii) to the Participant's issue by representation, as defined in the Colorado Probate Code or, if no such issue survives the Participant, then
  - (iii) to the Participant's father and mother, in equal shares, or all to the survivor or, if neither, survives the Participant, then
  - (iv) to the personal representative of the Participant's estate;
- (b) for a Participant with a partner in a civil union under the Colorado Civil Union Act, Colorado Revised Statutes Section 14-15-101 et seq., as may be amended from time to time:
- (i) to the Participant's partner in a civil union, then
  - (ii) to the Participant's issue by representation, as defined in the Colorado Probate Code or, if no such issue survives the Participant, then.
  - (iii) to the Participant's father and mother, in equal shares, or all to the survivor or, if neither, survives the Participant, then
  - (iv) to the personal representative of the Participant's estate;
- (c) for a Participant not described in subsections (a) or (b) above,
- (i) to the Participant's issue by representation, as defined in the Colorado Probate Code or, if no such issue survives the Participant, then
  - (ii) to the Participant's father and mother, in equal shares, or all to the survivor or, if neither, survives the Participant, then
  - (iii) to the personal representative of the Participant's estate.

#### **11.4 Board**

“Board” means the University of Colorado Board of Regents.

### **11.5 Break in Service**

A "Break in Service" means a Period of Severance of at least 6 consecutive months or, in the case of an Employee who is absent from service for maternity or paternity reasons, a Period of Severance of at least 12 consecutive months. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (a) by reason of pregnancy of the individual, (b) by reason of the birth of a child to the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child or a period beginning immediately following such birth or placement.

### **11.6 Code**

"Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code includes not only the section but also any comparable section or sections of any future legislation that amends, supplements, or supersedes the section.

### **11.7 Compensation**

For Participants of medical faculty practice plans with the Institution, "Compensation" has the meaning in the next paragraph. For all other Participants, "compensation" means the University approved annual base salary but excludes any early or other retirement incentive payments, accrued sick leave paid upon separation from service, perquisites and similar payments, permitted salary enhancements from outside sources or contracts (except as may be specifically included below under this Section 11.7), taxable moving expenses and includes accrued vacation pay paid upon separation from service, additional compensation for teaching assignments and certain salary enhancements from outside sources or contracts for the athletic coaches and furthermore, includes compensation that is not currently includible in the Participant's gross income: (a) because of the application of Code sections 125, 403(b), or, effective July 1, 2001, Code section 132(f) or 401(k), or effective January 1, 2000, Code section 457(b) through a salary reduction

agreement; or (b) effective July 1, 1989, because contributions are picked up by the Employer through the application of Code section 414(h).

For Participants of medical faculty practice plans with the Institution, Compensation includes University of Colorado annual base salary, and compensation received as a result of participation in the Faculty Practice Plans, but excludes any early or other retirement incentive payments. For faculty in the School of Medicine, Compensation includes "Base," "Supplement," and "Incentive" payments, per the "BSI" compensation plan, but excludes any early or other retirement incentive payments.

Effective July 1, 2008, Compensation shall also include Compensation (as defined above), for services, paid by the later of 2½ months after an Employee's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, if it is a payment described above that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer.

Effective July 1, 2008, any payments not described in the paragraph above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the Treasury regulations, shall be treated as Compensation for the year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

For years beginning after December 31, 2008, Compensation shall also include differential wage payments under Code section 414(u)(12).

In addition to other applicable limitations stated in the Plan, and notwithstanding any other provisions of the Plan to the contrary, for Employees who became Participants of the Plan for Plan Years beginning on or after July 1, 1996, the annual Compensation of each Employee taken into account under the Plan shall not exceed the Annual Compensation Limit. For Plan Years beginning on or after January 1, 1994 and before January 1, 2002, the Annual Compensation Limit is \$150,000, as adjusted by the Secretary of the Treasury for increases to the cost of living in accordance with Code section 401(a)(17)(B). For Plan Years beginning on and after January 1, 2002, the Annual Compensation Limit shall be \$200,000, as adjusted for increases in the cost of living in accordance with Code section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the Annual Compensation Limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For Plan Years beginning on or before July 1, 1996, any reference in this Plan to the limitation under Code section 401(a)(17) shall mean the Annual Compensation Limit stated in this provision.

If Compensation for any prior determination period is taken into account on determining an Employee's benefits accruing in the current Plan Year, the Compensation from that prior

determination period is subject to the Annual Compensation Limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after July 1, 1996, and before January 1, 2002, the Annual Compensation Limit is \$150,000.

Notwithstanding the above, Employees who became Participants in the Plan before the first day of the Plan Year beginning on or after July 1, 1996, will be subject to the Annual Compensation Limit of \$235,840, the amount that was allowed to be taken into account under the Plan as in effect on July 1, 1993. Effective for Plan Years beginning on or after January 1, 2000, for this purpose, the Annual Compensation Limit is \$235,840, as adjusted by the Secretary of the Treasury for increases to the cost of living in accordance with Code section 401(a)(17)(B). In determining the compensation of a Participant for this limitation, the rules of Code section 414(q)(4) shall apply.

#### **11.8 Date of Appointment**

“Date of Appointment” means the later of (i) the date of Institution approval of the Employee’s appointment, employment, reappointment or reemployment with the Institution, or (ii) the effective date of the appointment, employment reappointment or reemployment with the Institution.

#### **11.9 Date of Employment or Reemployment**

“Date of Employment or Reemployment” means the effective date of the appointment for a faculty member. For all other Employees, the Date of Employment or Reemployment is the first day upon which an Hour of Service for performance of his or her duties as an Eligible Employee is completed.

#### **11.10 Distributable Event**

“Distributable Event” means, effective December 10, 1998:

- (a) The Participant’s attainment of Normal Retirement Age; or
- (b) The Participant’s Retirement (from December 10, 1998 through June 30, 2008) or Early Retirement (effective July 1, 2008).

#### **11.11 Early Retirement**

“Early Retirement” means the date on which a Participant has attained at least age 50 and has had a Separation from Employment.

#### **11.12 Effective Date**

“Effective Date” means January 1, 2016. The original effective date is January 1, 1924.

#### **11.13 Eligible Employee**

“Eligible Employee” means any Employee who is a University faculty member, officer, or administrator, appointed to or holding a 50% (half-time) or more University position who is eligible for Plan participation, as described in Exhibit A (Eligibility Matrix), except an Employee described below:

- (a) An Employee who occupies a full-time or part-time position in the state personnel system;
- (b) An Employee whose appointment is temporary or less than a twelve (12) month continuous appointment;
- (c) A leased Employee;
- (d) Prior to July 1, 2013, an Employee who holds a temporary non-resident visa;
- (e) An Employee covered by a collective bargaining agreement which does not provide for participation in the Plan;

- (f) An Employee whose employment is conditional upon his or her status as a student at the University;
- (g) An Employee who would be an Eligible Employee but for (i) prior to August 5, 2009, his or her irrevocable election with the Institution to participate in PERA or, (ii) on or after August 5, 2009, his or her irrevocable written election with the Institution to participate in PERA, made in accordance with section 23-20-139, Colorado Revised Statutes. An Employee who prior to August 5, 2009, made such irrevocable election with the Institution to participate in PERA or, on or after August 5, 2009, makes such irrevocable written election with the Institution in accordance with section 23-20-139, Colorado Revised Statutes to participate in PERA, will be considered to always have been ineligible to participate in the Plan;
- (h) Effective October 1, 2009, a PERA retiree (as defined in Article 51 of Title 24 of the Colorado Revised Statutes); or
- (i) An individual hired by the Employer prior to August 5, 2009 who (i) was an active PERA member on his or her date of hire with the Employer, and (ii) enters into a written agreement with both PERA and the Employer to participate in PERA.

The term "Eligible Employee" will also include any person who is participating in a phased retirement program as described in Section 6.1A, in accordance with the applicable program. The term "Eligible Employee" also will not include any person on the payroll of a third party with whom the Employer has contracted for the provision of said person's services. In addition, any person who pursuant to a written contract with the Employer that provides that he is an independent contractor and not an employee shall be excluded from the definition of Eligible Employee during the period such written contract is in effect. The Employer's employment classification of a person shall be binding and conclusive for all purposes of the Plan and shall remain in effect regardless of any contrary classification or reclassification of such person by any

other person or entity, including without limitation, the Internal Revenue Service or a court of competent jurisdiction.

#### **11.14 Eligible Employer**

“Eligible Employer” means any “educational organization” or any “teaching institution” as defined in Code section 170(b)(1)(A)(ii) or any “nonprofit research organization.”

#### **11.15 Employee**

“Employee” means any person employed by the Employer as a common law employee and any leased employee within the meaning of Code section 414(n)(2). However, if leased employees constitute twenty percent (20%) or less of the Employer’s non-highly compensated work force, the term of “Employee” shall not include, any leased employee who is covered by a plan maintained by the leasing organization which meets the requirements of Code section 414(n)(5).

#### **11.16 Employer or University**

“Employer” or “University” means the University of Colorado.

#### **11.17 Fund Sponsor**

“Fund Sponsor” means companies or other entities listed in Section 4.1 that make available Funding Vehicles to Participants under the Plan.

#### **11.18 Funding Vehicle**

“Funding Vehicle” means, to the extent permissible for a plan qualified under Code Section 401(a) which does not create or result in a prohibited transaction under Code Section 503, and in each case as made available by the Fund Sponsor for the purpose of funding accrued benefits under this Plan:



- (a) any deferred annuity or participation units in investments issued by the Fund Sponsor; or
- (b) any security, including, without limitation, securities of open-end registered investment companies (mutual funds), exchange-traded funds, and interests in any common/collective trust or group trust that satisfies the requirements of Revenue Ruling 81-100, as further amended by Revenue Ruling 2004-67, Revenue Ruling 2008-40, and Revenue Ruling 2011-1, and as subsequently amended by future guidance.

**11.19 Hour of Service**

For the purpose of this Plan, an “Hour of Service” means each hour for which an Employee is paid or is entitled to payment of duties for the Employer. Except as provided in Article II, for purposes of determining an Employee’s initial or continued eligibility to participate in the Plan, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee’s Date of Employment or Reemployment and ending on the date a Break in Service begins. An Employee will also receive credit for any Period of Severance of less than six (6) consecutive months. Fractional periods of a year will be expressed in terms of days.

For purposes of determining an Eligible Employee’s date of participation in this Plan, an Eligible Employee on a sabbatical or leave of absence will receive credit for the period of time of the Eligible Employee’s sabbatical or leave of absence.

**11.20 Institution**

“Institution” means the employment unit(s) under the jurisdiction of the Board, which employs the Participants in this Plan, namely:

University of Colorado – Boulder Campus

University of Colorado – System Administration

University of Colorado – Colorado Springs Campus

University of Colorado – Denver and Anschutz Medical Campus

### 11.21 Limitation Year

“Limitation Year” means a calendar year.

### 11.22 Normal Retirement Age

“Normal Retirement Age” means:

- (a) The date on which a Participant has attained at least age 59½ (and the date on which the Participant has attained at least age 59½ and has had a Separation from Employment from July 1, 2008 through February 28, 2010);
- (b) Effective December 10, 1998, for a full-time tenured, tenure track and non-tenure track faculty member, the date on which the Participant (i) has attained at least age 55, (ii) whose combination of age and years of service total at least 75, and (iii) who meets the requirements of and participates in the Phased Retirement Program of 1998;
- (c) Effective January 28, 2000, for a full-time member of the University faculty, the date on which a Participant: (i) has attained at least age 55, (ii) has met Rule of 75 where a combination of age and years of full-time service at the University total at least 75, and (iii) meets the requirements of and participates in the phased retirement program as described in Exhibit B-1 attached hereto and incorporated in this Optional Retirement Plan document; or
- (d) Effective June 6, 2007, age 59½, for a faculty member (i) whose combination of age and years of half-time or greater service at the University (including services at other higher education institutions in accordance with the phased retirement program) total at least 65, and (ii) meets the qualifications and conditions of participation and participates in the program are described in the Administrative Policy Statement, “Faculty Retirement Agreements,” (or any successor Administrative Policy Statement adopted pursuant to Regent Policy 11 which shall also be attached hereto and incorporated in this Optional

Retirement Plan as part of Exhibit B-2) attached hereto and incorporated in this Optional Retirement Plan document as Exhibit B-2.

### **11.23 Participant**

“Participant” means any Eligible Employee of the Institution who participates in the Plan in accordance with Article II.

### **11.24 PERA or Public Employees Retirement Association**

“PERA” means the defined benefit retirement plan for eligible public employees in the State of Colorado provided by the Public Employees Retirement Association under Title 24, Article 51 of the Colorado Revised Statutes.

### **11.25 Period of Severance**

“Period of Severance” means a continuous period of time during which an Employee is absent from service. Such period begins on the earlier of (a) the date an Employee quits, retires, is discharged, or (b) the last day of an authorized leave.

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### **11.26 Plan**

“Plan” means this University of Colorado Optional Retirement Plan which was previously established as the University of Colorado TIAA-CREF Retirement Plan.

### **11.27 Plan Year**

“Plan Year” means the short plan year beginning on July 1, 2013, and ending on December 31, 2013, and thereafter means the twelve consecutive month period beginning on January 1, and ending on December 31.

**11.28 Revenue Credit Account(s)**

“Revenue Credit Account(s)” shall mean a suspense account or accounts established under the Plan which is funded by revenue generated from the Plan and deposited to such account(s).

**11.29 Separation from Employment**

“Separation from Employment” means the date a Participant ceases to be an Employee of the Institution.

**11.30 Unallocated Account**

“Unallocated Account” shall mean a suspense account established under the Plan which is funded by forfeited excess allocations and deposited to such account.

**11.31 Year of Service**

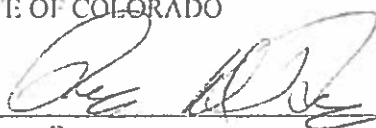
“Year of Service” means the 12-consecutive month period beginning on the date the Eligible Employee first performs an Hour of Service while holding a visa other than a temporary non-resident visa.

Employer Identification Number 84-6000555

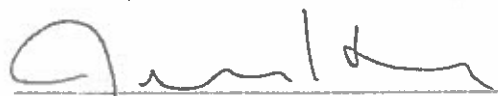
Plan Number [001]

The President of the University of Colorado has caused this instrument to be executed this 19<sup>th</sup> day of December, 2015.

THE REGENTS OF  
THE UNIVERSITY OF COLORADO,  
A BODY CORPORATE AND A STATE  
INSTITUTION OF HIGHER EDUCATION OF  
THE STATE OF COLORADO

By:   
Name: Bruce Benson  
Title: President  
Date: December 19, 2015

Approved as to Legal Sufficiency  
Office of University Counsel

By:   
Name: Jeremy Hueth  
Title: Managing Associate University Counsel  
Special Assistant Attorney General  
Date: December 18, 2015