

**Ferris State University
and Kendall College of Art & Design
Section 457(b)
Deferred Compensation Plan**

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TABLE OF CONTENTS

INTRODUCTION	1
ARTICLE I - ESTABLISHMENT OF PLAN	1
1.01 Exclusive Benefit of Employees and Their Beneficiaries	1
1.02 Investment Vehicles.	1
1.03 Compliance with Code.....	1
1.04 Effective Date	1
ARTICLE II - DEFINITIONS	1
2.01 Account.....	1
2.02 Alternate Payee	1
2.03 Beneficiary.....	2
2.04 Code.....	2
2.05 Compensation	2
2.06 Elective Deferral	3
2.07 Eligible Employee	3
2.08 Eligible Retirement Plan	3
2.09 Eligible Rollover Distribution	4
2.10 Employee.....	4
2.11 Investment Sponsor.....	4
2.12 Normal Retirement Age	4
2.13 Participant.....	4
2.14 Plan	4
2.15 Plan Administrator	4
2.16 Plan Year.....	4
2.17 Qualified Domestic Relations Order or "QDRO"	4
2.18 Severance from Employment	4
2.19 Unforeseeable Emergency	5
2.20 Valuation Date	5
2.21 Voluntary Salary Deferral Agreement	5
ARTICLE III - ELIGIBILITY AND PARTICIPATION IN THE PLAN	5
3.01 Eligibility Requirements	5
3.02 Enrollment in Plan	5
3.03 Cessation.....	6
3.04 Reemployment	6
ARTICLE IV - CONTRIBUTIONS TO THE PLAN	6
4.01 Elective Deferrals	6
4.02 Employer Non-Elective Contributions	9
4.03 Employer Matching Contributions.....	9
4.04 Direct Plan-To-Plan Transfers	9
4.05 Rollovers.....	9

4.06	Excess Deferrals	9
4.07	Uniformed Services	9
4.08	Transmittal of Deferrals	10
4.09	Mistaken Contributions	10
ARTICLE V - ACCOUNTS		10
5.01	Participant Accounts	10
5.02	Allocations	10
5.03	Vesting.....	10
ARTICLE VI - INVESTMENT OF FUNDS		10
6.01	Funding Vehicles	10
6.02	Investment Sponsor.....	11
6.03	Authorized Investments	11
6.04	Participant Investment Direction	12
6.05	Losses Under the Plan	13
6.06	Conflict.....	13
6.07	Loans.....	13
ARTICLE VII - DISTRIBUTIONS		15
7.01	Distribution Events.....	15
7.02	Method of Distribution.....	16
7.03	Valuation for Distributions.....	17
7.04	Commencement of Distribution	17
7.05	Election of Method of Distribution	20
7.06	Facility of Payment	21
ARTICLE VIII - ADMINISTRATION		21
8.01	Duties, Powers, and Responsibilities of the University	21
8.02	Duties, Powers and Responsibilities of the Plan Administrator.....	22
8.03	Indemnification	23
8.04	Claims Procedure	23
8.05	Participant's Responsibilities	24
ARTICLE IX - ADMINISTRATION OF INVESTMENT VEHICLES		24
9.01	Duties/Powers – Investment Sponsor.....	24
9.02	Limitation on Duties and Powers	26
9.03	Accounting.....	27
9.04	Appointment, Resignation, and Removal - Investment Sponsor.....	27
9.05	Action.....	28
9.06	Exculpation	28
ARTICLE X - AMENDMENT, MERGER, SUSEPNSION, TERMINATION		28
10.01	Amendment.....	28
10.02	Merger.....	29

10.03	Suspension	29
10.04	Termination	29
ARTICLE XI - GENERAL PROVISIONS		29
11.01	Nonalienation	29
11.02	No Effect Upon Employment Relationship	29
11.03	Interest in Employer Assets	30
11.04	Representations	30
11.05	Construction	30
11.06	Severability	30
11.07	Binding Effect	30
11.08	Choice of Law	30
11.09	Entire Agreement	30

INTRODUCTION

Ferris State University, a Michigan Public University, amends and restates the **Ferris State University Section 457(b) Retirement Plan** to become the **Ferris State University and Kendall College of Art & Design Section 457(b) Deferred Compensation Plan** (the Plan). The University has established the plan in order to permit deferred compensation for employees covered under the Plan.

ARTICLE I

ESTABLISHMENT OF PLAN

1.01 **Exclusive Benefit of Employees and Their Beneficiaries.** This nonqualified deferred compensation plan is established for the exclusive benefit of Eligible Employees of Ferris State University (the University) and their beneficiaries.

1.02 **Investment Vehicles.** Each Investment Sponsor declares that plan assets delivered to it will be held and administered under the terms of this Plan. Each investment vehicle is established for the exclusive benefit of Participants and their beneficiaries. The assets of the Plan may not be diverted for other purposes.

1.03 **Compliance with Code.** The Plan is intended to constitute a nonqualified deferred compensation plan of a governmental entity within the meaning of Code Section 457(b), regulations issued under Section 457(b) and other applicable law. Ferris State University is a Code Section 170(b)(1)(A)(ii) public educational organization and a public university created by the State of Michigan.

1.04 **Effective Date.** This amended and restated Plan is effective December 1, 2016.

ARTICLE II

DEFINITIONS

2.01 **Account** means an account maintained for each Participant reflecting the Participant's entire interest in the Plan. Contributions and investment experience are credited to a Participant's Account as described in Article IV. Administrative expenses and distributions, if any, are debited to a Participant's Account as described in Article IV and Article VII.

2.02 **Alternate Payee** means an individual who is entitled to payment from a Participant's Account pursuant to a Qualified Domestic Relations Order.

2.03 **Beneficiary** means the individual, trustee, estate or legal entity entitled to receive benefits under this Plan that become payable in the event of the Participant's death. Beneficiary includes a beneficiary of a Participant, a Participant's estate, or any other person whose interest in the Plan is derived from the Participant, including an Alternate Payee.

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

2.05 **Compensation** means, except as modified below, the total cash earnings paid to a Participant in a Plan Year for personal services performed for the University as an Eligible Employee that are required to be reported under Code Sections 6041, 6051, and 6052 (wages, tips and other compensation as reported on Form W-2) for the Participant without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

(a) **Included Amounts.** Compensation includes:

(i) **Pre-Tax Amounts.** Elective contributions that are excluded from gross income by Code Sections 125, 132(f)(4), 402(g)(3), 414(h)(2), or 457 and Deemed 125 Compensation;

(ii) **Differential Wage Payments.** Differential wage payments as defined under Code Section 3401(h)(2) made with respect to any period the Participant is performing Qualified Military Service; and

(iii) **Compensation Paid After Employment Terminates.** The following amounts paid after employment terminates provided they are paid by the later of 2 1/2 months after the date of termination or the end of the Plan Year that includes the date of termination;

(A) **Regular Compensation.** Regular compensation for services performed during the Participant's regular working hours, or compensation for services performed outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, provided they would have been made and included in Compensation had the Participant continued in employment with the Employer; and

(B) **Leave Cashouts.** Payments made for unused accrued bona fide sick, vacation, or other leave that the

Participant would have been able to use if employment had continued.

(b) **Excluded Amounts.** Compensation excludes amounts paid after termination of employment other than those included under (a)(iii) above (including, but not limited to, lump sum or installment severance payments) even if paid by the later of 2 1/2 months after the date employment terminates or the end of the Plan Year that includes the date of termination.

(c) **Maximum.** Compensation for any Plan Year may not exceed the Annual Compensation Limit. "Annual Compensation Limit" means \$260,000 (as adjusted under Code Section 401(a)(17)(B) for calendar years beginning after December 31, 2016).

2.06 **Elective Deferral** means the annual amount of Compensation that a Participant elects to defer pursuant to a properly executed Voluntary Salary Deferral Agreement.

2.07 **Eligible Employee** means any person who performs services for the University and who is eligible to participate in this Plan. Eligible Employees do not include any individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole and absolute discretion, a leased employee (as defined in the Code), a non-resident alien employee (employment as a nonresident alien with no earned income from sources within the United States), a student employee (employment as a student performing services described in Code Section 3121(b)(10)), a trustee of the University, any individual who is performing services for the University pursuant to an agreement that provides that the individual is not eligible to participate in this Plan, or any individual whose terms and conditions of employment are determined through collective bargaining unless the applicable collective bargaining agreement provides for coverage in this Plan or the applicable bargaining representative authorizes participation in this Plan.

If an individual is not classified as an Eligible Employee by the University and is subsequently reclassified as an Eligible Employee by any overriding governmental or regulatory authority, the individual will be deemed to have become an Eligible Employee prospectively only, effective as of the date of the reclassification (and not retroactive to the date on which he or she was found to have first become eligible for any other purposes), and then only if he or she otherwise satisfies the requirements of this Plan.

2.08 **Eligible Retirement Plan** means any account, annuity, plan or trust described in IRC Section 402(c)(8)(B).

2.09 **Eligible Rollover Distribution** means any distribution in the form of an eligible rollover distribution defined in IRC Section 402(c)(4).

2.10 **Employee** means any person who performs services for the University to whom Compensation is paid on a regular basis. Employee also includes any leased employee as defined in Section 414(n) of the Code. The term Employee does not include any individual classified by the University as an independent contractor or a trustee of the University, in accordance with its general administrative policies or otherwise.

2.11 **Investment Sponsor** means any insurance company, regulated investment company, or other entity providing an investment vehicle under the Plan.

2.12 **Normal Retirement Age** means age 65.

2.13 **Participant** means any Eligible Employee who has begun to participate in this Plan as provided in Article III. An individual remains a Participant, regardless of whether the individual is an Eligible Employee of the University, if there remain any amounts credited to his or her Account.

2.14 **Plan** means the Ferris State University 457 Retirement Plan set forth in this document, as amended from time to time.

2.15 **Plan Administrator** means the individuals or committee appointed by the University to administer the Plan. If the University fails to make an appointment, the University is the Plan Administrator.

2.16 **Plan Year** means the twelve consecutive month period ending December 31.

2.17 **Qualified Domestic Relations Order or "QDRO"** means any judgment, decree or order as defined in IRC Section 414(p). To be qualified, the domestic relations order must be issued by a state court of competent jurisdiction; specify an alternate payee who is the spouse, former spouse, child or dependent of the Participant; relate to alimony, support of a child or dependent, or a division of marital property; provide the name and address of the Participant and alternate payee, the amount or percentage of the Account to be distributed, the date to determine the percentage to be distributed and instructions regarding the timing and method of distribution; and not require payment of more than the Participant's Account balance, a form, commencement or duration of payment not permitted by the Plan, or cancellation of the prior rights of an alternate payee.

2.18 **Severance from Employment** means a voluntary or involuntary termination of the Participant's employment relationship with the University for any reason, including disability, or for no reason. For purposes of this definition, an approved leave of absence by an employee does not constitute a Severance from Employment.

2.19 **Spouse.** "Spouse" (or "spouse") means the Participant's husband or wife (of either sex) at any specified time. A former Spouse shall not be a Spouse or surviving Spouse except to the extent designated in an EDRO.

2.20 **Unforeseeable Emergency** means a severe financial hardship of the Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse or the Participant's or Beneficiary's dependent (as defined in Section 152 of the Code, without regard to subsections (b)(1), (b)(2) or (d)(1)(B)); loss of the Participant's or Beneficiary's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary, as defined in Treas. Reg. Section 1.457-6(c)(2) and any successor regulations or guidance of similar import. Except in extraordinary circumstances, the purchase of a home and the payment of college tuition may not be considered an Unforeseeable Emergency.

The Plan Administrator is solely responsible, in its sole discretion, for determining the existence of an Unforeseeable Emergency.

2.21 **Valuation Date** means each December 31 and any other interim date during the Plan Year on which a valuation of assets held under the Plan is made.

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

ARTICLE III

ELIGIBILITY AND PARTICIPATION IN THE PLAN

3.01 **Eligibility Requirements.** Any Employee who is classified as an Eligible Employee is eligible to participate in this Plan. Each Employee who has previously made contributions to a 457 investment vehicle sponsored by the University will continue as a Participant under this Plan.

3.02 **Enrollment in Plan.** Any Eligible Employee who elects to become a Participant must complete and return the applicable forms, including a Voluntary Salary Deferral Agreement. Enrollment is effective on or after the first day of the month following the date the enrollment forms are properly completed by the Employee and accepted by the Plan Administrator or, if a Salary Deferral

Agreement and the other applicable forms are completed prior to the Eligible Employee's date of hire, enrollment is effective at the date of hire.

3.03 **Cessation.** An Employee's participation in this Plan will end at the earlier of the Participant's forfeiture of all benefits under the Plan or the date that the Participant is no longer an Employee and has been paid the full amount due under this Plan.

3.04 **Reemployment.** A former Participant who is reemployed by the University re-enters the plan as though the person was a newly hired Employee.

ARTICLE IV

CONTRIBUTIONS TO THE PLAN

4.01 **Elective Deferrals.** An Eligible Employee may elect to make Elective Deferrals to the Plan pursuant to a properly executed Voluntary Salary Deferral Agreement as required by the Plan Administrator. Elective Deferrals may be made up to the maximum amount permitted by law and as permitted under the terms of the Plan. The Plan Administrator may set minimum Elective Deferral amounts, which will be disclosed in the enrollment materials for the Plan. An election must be made before the first day of any calendar month in which the Compensation to be deferred is paid or made available. An election will remain in effect until it is modified or terminated, or the Participant is no longer an Employee. The Plan Administrator may, but is not required to, modify a Participant's election to comply with deferral limitations.

(a) Modifications to Amount Deferred. A Participant may elect to change his or her Elective Deferral rate with respect to future Compensation by submitting new, properly executed forms as required by the Plan Administrator. The change will not be effective until accepted and approved by the Plan Administrator. Once approved and accepted, the change will take effect as soon as administratively practicable but not earlier than the first pay period commencing with or during the first month following receipt by the Plan Administrator.

(b) Termination of Deferral. A Participant may terminate his or her election to have Compensation deferred by notifying the Plan Administrator in writing. The Plan Administrator may require the Participant to complete specific forms relating to the Termination. The termination will take effect as soon as administratively practicable, but not earlier than the first pay period commencing with or during the first month following receipt by the Plan Administrator of the appropriate forms.

(c) Maximum Deferral Amounts. Except as provided in Section 4.01(e) or (f), the maximum dollar amount that a Participant may defer may not exceed the lesser of:

(i) 457(e) Limit. The applicable dollar amount set forth in Code Section 457(e)(15) (\$18,000 for 2017 and thereafter, as adjusted for cost of living under Code Section 457(e)(15)(B)); or

(ii) Includible Compensation. 100% of the Participant's Compensation for the year.

However, notwithstanding the preceding limitations, for one or more of the Participant's last three taxable years ending before the Participant attains the Normal Retirement Age, the maximum dollar amount that a Participant may defer may not exceed the lesser of:

(iii) Twice the Dollar Amount. Twice the 457(e) Limit provided above in subsection (i); or

(iv) Additional Amount. The sum of:

(1) Amount Determined Above. The amount determined under subsections (i) and (ii), above, plus

(2) Unused Amount. So much of the amount determined under subsections (i) and (ii), above, determined for taxable years before the taxable year as has not previously been used by the Participant.

(d) Catch-Up Deferral for Individuals Age 50 or Older. Any Participant who will reach age 50 before the end of the calendar year may elect to defer an additional amount under Code Section 457(e)(18) (\$6,000 for 2017 and thereafter as adjusted for cost of living under Code Section 414(v)(2)(C)). However, the amount of this Catch-Up Deferral may not be greater than the amount by which the Participant's Includable Compensation exceeds the Participant's Elective Deferrals under Code Sections 401(k), 402(g), 403(b), 408(k), 408(p) or 457. This Catch-Up Deferral is not available in any year in which the special Code Section 457(b)(3) catch-up deferral is available to the Participant under any other Section 457(b) plan and is greater than the amount permitted under this subsection.

(e) Coordination with Other Plans. If a Participant participates in more than one Code Section 457(b) plan, the maximum deferral under all such plans may not exceed the maximum deferral amount set forth in Section 4.01(c) above.

(f) Deferrals of Sick Pay, Vacation Pay and Back Pay. Subject to the remaining limitations of this Plan, and except as provided in

subsection (ii), a Participant who has not had a Severance from Employment may elect to defer accumulated sick pay, accumulated vacation pay, and back pay ("Accumulated Pay") under this Plan.

(i) Deferral Before Month of Scheduled Payment. Accumulated Pay may be deferred for any calendar month only if:

(1) *Agreement.* A Voluntary Salary Deferral Agreement providing for the deferral is entered into before the beginning of the month in which the Accumulated Pay would otherwise be paid or made available to the Participant; and

(2) *Employee.* The Participant is an Employee in the month that the Accumulated Pay would otherwise be paid or made available.

(ii) Deferral During Month of Scheduled Payment. If Accumulated Pay is payable before the Participant has a Severance from Employment, the requirements of subsection (i) are deemed satisfied if the Voluntary Salary Deferral Agreement is entered into before the Accumulated Pay is "currently available" (as defined in the regulations under Section 401(k) of the Code).

Accumulated Pay that is not yet payable is not currently available and may be deferred by a Participant in the month the Participant retires or otherwise incurs a Severance from Employment if a Voluntary Salary Deferral Agreement providing for the deferral is entered into during the month of retirement or Severance from Employment, provided that:

(1) *Election.* The election is made before the date the Accumulated Pay would otherwise have been payable; and

(2) *Employee.* The Participant does not cease to be an Employee before the Accumulated Pay is currently available.

(g) Additional Rules. In addition, deferrals may be made for former Employees with respect to compensation described in Treas. Reg. Section 1.415(c)-2(e)(3)(ii) (relating to certain compensation paid within 2 1/2 months following Severance from Employment), compensation described in Treas. Reg. Section 1.415(c)-2(g)(4) (relating to compensation paid to participants who are permanently and totally disabled), and compensation relating to qualified military service under Code Section 414(u).

Therefore, under Treas. Reg. Section 1.415(c)-2(e)(3)(ii), a Participant may elect to defer Accumulated Pay if an agreement providing for the deferral is entered into before the beginning of the month in which the Accumulated Pay will be currently available, and the Accumulated Pay would otherwise be payable within 2 ½ months following the Severance from Employment.

4.02 Employer Non-Elective Contributions. The University will not make non-elective contributions to this Plan.

4.03 Employer Matching Contributions. The University will not make matching contributions to this Plan.

4.04 Direct Plan-To-Plan Transfers. A Participant may elect to directly transfer to this Plan amounts that the Participant has contributed to, and that are being held in, an Eligible Retirement Plan. The Plan Administrator may request proof that the plan from which the amounts are to be transferred is an Eligible Retirement Plan, and other information or documentation it deems necessary. The amount transferred from the other plan will not count toward the Participant's annual deferral maximum, except that amounts contributed to both plans during the calendar year will be taken into account.

4.05 Rollovers. If a Participant is entitled to receive, and elects to receive, a distribution from an Eligible Retirement Plan, the Participant may transfer that amount to this Plan, provided that the rollover is made either directly from the other plan or by the Participant within sixty days of receipt. Any such rollover contributions will be accounted for separately upon acceptance as a rollover under this Plan. Rollover contributions to the Plan on or after January 1, 2006 are not subject to the restrictions on distributions applicable to other amounts held under the Plan, and such rollover contributions may be distributed at any time.

4.06 Excess Deferrals. If a Participant's deferrals for a taxable year exceed the Plan's maximum deferral amounts set forth in 4.01(c) above, or the limits for deferrals to all plans set forth in 4.01(f) above, the excess deferral will be distributed to the Participant, with allocable net income, as soon as administratively practicable after the University determines that the amount is an excess deferral. If a Participant contributes to more than one Plan investment vehicle, the Plan Administrator may, at its sole discretion, determine the amount, source and timing of the amount to be returned from each investment vehicle consistent with Code Section 457 and its regulations.

4.07 Uniformed Services. A Participant who returns from qualified military service within the time limits established by USERRA is entitled to make additional deferrals under Code Section 414(u) to make up for deferral contributions that he or she would have been entitled to make if the Participant

had continued to be employed by the University during the period of qualified military service.

4.08 **Transmittal of Deferrals.** The University must transmit Participant deferral amounts to the appropriate trusts as soon as administratively feasible, but not later than fifteen (15) business days after the end of the month in which the deferral amount would have been paid to the Participant absent participation in this Plan.

4.09 **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt of a proper request approved by the Plan Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable to it) will be returned directly to the Participant or, to the extent required or permitted by the Plan Administrator, to the Employer.

ARTICLE V

ACCOUNTS

5.01 **Participant Accounts.** The Plan Administrator will establish and maintain a separate Account for each Participant as a record of the aggregate Elective Deferrals, transferred assets, investment allocations, earnings and any other information deemed necessary to administer the Participant's Account.

5.02 **Allocations.** Contributions will be allocated to each Participant's Account as soon as administratively feasible following the University's transmittal of contributions. The Investment Sponsor may deduct any applicable administrative expense charges from a Participant's allocation.

5.03 **Vesting.** A Participant is fully vested in the amounts credited to his or her Account at all times.

ARTICLE VI

INVESTMENT OF FUNDS

6.01 **Funding Vehicles.** Plan Assets will be held in one of the following investment vehicles:

- (a) Trust. A Trust described in Code Section 457(g) and Treas. Reg. Section 1.457-8, created by the terms of this document or a separate document approved by the University.

(b) Custodial Account. A Custodial Account described in Code Section 401(f) maintained by a bank or an entity that meets the requirements of a non-bank trustee under Treas. Reg. Sections 1.408-2(e)(2) through (6). A Custodial Account established under this Plan will be treated as a Trust.

(c) Annuity Contract. An Annuity Contract described in Code Section 401(f) and Treas. Reg. Section 1.401(f)-1.

6.02 Investment Sponsor. The University may establish contracts with Investment Sponsors to provide investment vehicles. An Investment Sponsor will have complete authority and responsibility for the custody of plan assets transmitted to it.

6.03 Authorized Investments. Plan assets may be invested and reinvested in any of the following investments authorized by the University: common or preferred stocks, bonds, mortgages, leases, notes, debentures, mutual funds, guaranteed investment contracts and other contracts and funds of insurance companies, other securities, and other real or personal property, including, without limitation, the investments described in (a) below.

(a) Specific Investments.

(i) Interest-Bearing Deposits. Plan assets may be invested in deposits, certificates, or share accounts of a bank, savings and loan association, credit union, or similar financial institution, including a fiduciary, if the deposits bear a reasonable rate of interest, whether or not the deposits or certificates are insured or guaranteed by an agency of the United States Government.

(ii) Pooled Investment Funds. Plan assets may be invested through ownership of assets or shares in a common trust fund, pooled investment fund, mutual fund, or other commingled investment, including any pooled or common fund or mutual fund maintained, sponsored, or provided investment management services by, or otherwise associated with, a Trustee or custodian, or affiliate of the Trustee or custodian, that allows participation or investment by a trust fund established under a 457 plan. For this purpose, the terms and provisions of the declaration of trust or other governing documents through which the common trust fund, pooled investment fund or mutual fund is maintained are incorporated in, and made applicable to, this Plan.

(iii) Right To Hold Cash. An Investment Sponsor may hold a reasonable portion of the trust in cash or interest bearing

obligations pending allocation, investment or payment of expenses and distributions.

(iv) Commingled Investment. Plan assets may be commingled for investment without distinction between principal and income.

(b) Prohibited Investments. Plan assets shall not be invested in:

(i) Collectibles. Collectibles as defined in Code Section 408(m).

(ii) Michigan Restrictions. Investments not permitted by governing law providing for the investment of public employee retirement systems (MCLA 38.1132 et. seq.)

(iii) Unrelated Business. An asset that requires an Investment Sponsor to carry on a business within the meaning of Treas. Regulation 301.7701-2.

6.04 Participant Investment Direction. Participants must provide investment direction under the following rules:

(a) Choices. A Participant may only choose among investments permitted under this Article VI and designated by the Plan Administrator in Appendix A.

(b) Direction. A Participant may elect and change investment direction by the means established by the Investment Sponsor and acceptable to the Plan Administrator. An investment direction will be prospective only, will become effective as soon as administratively feasible and will remain in effect until modified or revoked. An Investment Sponsor may rely upon the investment direction and, to the extent not implemented by the direction itself, will implement the direction under its procedures established for that purpose. During any period in which there is a change in investment alternatives, the Investment Sponsor may hold amounts in cash pending implementation of the conversion. Although the University intends to invest contributions according to the Participants' requests, it reserves the right to invest without regard to such requests.

(c) Commingling. Funds or assets invested under this provision may be commingled with other funds or assets similarly invested for investment purposes.

(d) Default Investment Direction. In the event that a Participant declines or fails to provide investment directions with respect to his or her Account, the Plan Administrator will determine the appropriate manner in which such assets are to be invested, and the University, the Plan

Administrator and their agents shall be fully protected with regard to such action. Any subsequent designation of investment vehicles by the Participant will be effective with respect to future Elective Deferrals and all amounts previously invested by the Plan Administrator.

(e) Additional Terms and Conditions. The Investment Sponsor and Plan Administrator may formulate additional terms and conditions for investment direction by the Participants as necessary or appropriate.

6.05 Losses Under the Plan. The University, the Plan Administrator, any trustee or custodian of the assets of the Plan and any employee of each will not be accountable or liable for any investment losses to a Participant's Account incurred by virtue of implementing the directions (or lack of directions) of the Participant with respect to the investment of the Account or due to any reasonable administrative delay in implementing such directions.

6.06 Conflict. The terms of a Custodial Account, Annuity Contract or Trust will control if there is a conflict, inconsistency or ambiguity between the Plan and the investment terms of the investment vehicle unless the terms would cause the Plan to violate governing law. In that case, the Plan will control any conflict, inconsistency or ambiguity between the Plan and the provisions of an investment vehicle.

6.07 Loans. A Participant may request a loan from his or her Account before Distribution payments begin. The availability and terms of any loan will be determined under loan procedures established by the Investment Sponsor. Loans will be available to Participants on a reasonably equivalent basis, but the Investment Sponsor may take into account a Participant's credit rating, financial need, and ability to repay the loan.

(a) Separate Investment. The loan will be a separate investment of the Participant's Account as of the date of the loan. Interest on the loan and repayments of principal will be credited directly to the Participant's Account.

(b) Fees and Charges. Any special fees and charges resulting from the loan will be charged to the Participant's Account.

(c) Promissory Note. The loan must be documented by a written promissory note providing for at least equal quarterly payments of principal and interest.

(i) Interest Rate. The loan must bear a reasonable rate of interest.

(ii) Term of Loan. The term of the loan may not exceed five years unless the loan is used to acquire or construct the Participant's principal residence. A loan must have a stated

maturity date not later than the date of the first expected distribution to the Participant.

(d) Amount. All outstanding loans to the Participant may not exceed the lesser of \$50,000 or one-half of the Participant's vested Account balance.

(i) Exception. If the Participant's interest in the Plan is less than \$20,000, the limit is the lesser of \$10,000 or the Participant's nonforfeitable interest in the Plan.

(ii) Reduction of \$50,000 Limit. The \$50,000 limit is reduced by the excess of the highest outstanding balance of all prior loans to the Participant under all Section 457(b) plans and all qualified retirement plans of the University and each related employer during the one-year period ending on the day before the date of the new loan, over the outstanding balance of all prior loans to the Participant on the date of the new loan.

(e) Default. Upon default, the entire loan is due. The security interest may not be foreclosed until distribution would be permitted under Article VII. At that time, the Investment Sponsor may exercise its right of setoff and equitably charge the Participant's vested Account balance by reducing it by the unpaid balance.

(f) Early Due Date. If all or a part of the loan is outstanding on the date the first distribution is to be made to the Participant or a Beneficiary after the Participant's employment terminates or this Plan terminates, the loan is due and payable. Unless paid, the remaining balance of the loan and all accrued and unpaid interest will be deducted from the Participant's vested Account balance before the first distribution is made.

(g) Suspension of Loan Payments. If permitted by the Plan Administrator, loan payments will be suspended for a period that a Participant is on a leave of absence either without Compensation or at a level of Compensation that is less than the amount of the installment payments required under the terms of the loan.

(i) Length of Suspension/Due Date.

(1) Military Leave of Absence. If a Participant is performing service in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code), whether or not Qualified Military Service, loan payments will be suspended until the end of the leave of absence. The loan, including accrued interest, must be repaid by the end of the

period that equals the original term of the loan plus the period of military service.

(2) *General Leave of Absence.* For all other leaves of absences, loan payments will be suspended for the period of the leave of absence, but not longer than one year. The loan, including accrued interest, must be repaid by the latest date permitted under (c)(ii) above.

(ii) *Payments on Resumption.* The installment payments due at the end of the suspension must be at least equal to, and as frequent as, those required under the original terms of the loan. If installment payments are not increased on resumption of payment, the Participant must repay the entire remaining balance of the loan on the due date specified in (i) above.

ARTICLE VII

DISTRIBUTIONS

7.01 **Distribution Events.** The Plan Administrator must distribute a Participant's Account as provided in Section 7.04 and may distribute a Participant's Account when one of the following events occurs:

(a) Severance from Employment. The Participant retires, becomes disabled, or otherwise has a severance of employment with the University.

(b) Age 70-1/2. The Participant attains age 70-1/2.

(c) Death. The Participant dies.

(d) Unforeseeable Emergency. The Participant submits a written request to the Plan Administrator accompanied by evidence acceptable to the Plan Administrator demonstrating that the circumstances qualify as an Unforeseeable Emergency. If the request is granted, the Plan Administrator will impose a 12-month suspension period during which the Participant may not authorize Elective Deferrals.

(e) QDRO. The Plan Administrator receives a domestic relations order and determines the order qualifies as a QDRO.

(f) **Small Balance In-Service Distribution.** A Participant elects to receive an in-service distribution in an amount of \$5000 or less (or the dollar limit under Section 411(a)(11) of the Code, if greater), provided that the amount is not attributable to a rollover

contribution, the Participant has not elected to defer any Compensation to the plan for the two year period ending on the date of distribution, and the Participant has not previously received a small balance in-service distribution or a cash-out distribution.]

(g) Plan Termination. The University terminates the Plan.

(h) **Purchase of Permissive Service Credit**. The Participant elects to have all or a portion of his or her Account directly transferred to a defined benefit governmental plan for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) or as repayment of a cash-out from such a plan (as defined in Code Section 415(k)(3)), to the extent permitted by that plan.]

7.02 **Method of Distribution**. Distribution will be made in a manner that complies with Code Section 401(a)(9) and regulations thereunder. Benefit payments may be paid in the following ways:

(a) Lump Sum Distribution. A single payment or, if necessary, one or more payments within one taxable year to the recipient.

(b) Installments. A series of scheduled payments made over a period of time. Installment payments must comply with the requirements of Code Section 401(a)(9), which requires that installment payments may not exceed:

(i) Life Expectancy. The life expectancy of the Participant;

(ii) Life Expectancies. The life expectancies of the Participant and his or her designated Beneficiary;

(iii) Period Certain – Participant. A period certain not extending beyond the life expectancy of the Participant; or

(iv) Period Certain – Multiple. A period certain not extending beyond the life expectancies of the Participant and his or her designated Beneficiary.

(c) Direct Transfer/Rollover.

(i) Direct Transfer. In the case of a Severance from Employment, a direct transfer to another eligible governmental deferred compensation plan in which the former Participant has become a participant as an employee of the plan sponsor of that plan, if the plan receiving such amounts provides for acceptance of such transfers, the Participant gives satisfactory written direction to the Plan Administrator for such a transfer and the Participant whose

amounts deferred are being transferred has an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant immediately before the transfer.

(ii) Eligible Rollover Distribution. An Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee.

(d) Partial Payment. Irregular, nonperiodic payments.

The Plan may have more than one Investment Sponsor, and each Investment Sponsor may have different options available. All forms of payment will be subject to the limitations of the applicable Investment Sponsor.

7.03 Valuation for Distributions. Except as otherwise required by a particular investment vehicle, the value of a Participant's account will be equal to the balance of his or her account as of the Valuation Date occurring on the date of distribution or, if no valuation occurs on such date, as of the Valuation Date immediately preceding the date of distribution.

7.04 Commencement of Distribution.

(a) Required Beginning Date. A Participant must commence distribution of benefits no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2 or, if later, April 1 of the calendar year following the calendar year in which the Participant separates from service.

(b) Severance From Employment. Following a Severance from Employment, a Participant may elect to immediately commence distribution under one of the distribution options, or may elect once to defer distribution until the Required Beginning Date.

(c) Attaining Age 70-1/2. A Participant who has not severed employment may elect to commence distribution under one of the distribution options upon attaining age 70-1/2.

(d) Death of Participant.

(i) Death Before Commencement of Distribution. If the Participant dies before he or she has elected to commence distribution:

(1) Participant's Spouse as Beneficiary. If the Beneficiary is the Participant's spouse, distribution under one of the distribution options must begin following the calendar year in which the Participant died or, if later, December 31 of the calendar year in which the Participant

would have attained age 70-1/2. Under the installment option, the spouse will receive substantially equal annual payments for the rest of his or her life or for a period not extending beyond his or her life expectancy.

(2) *Non-Spouse Beneficiary.* If the Beneficiary is not the Participant's spouse, the Beneficiary must elect a form of distribution that will result in a complete distribution of the Participant's Account by December 31 of the Calendar Year in which the fifth anniversary of the date of the Participant's death occurs.

(3) *Failure to Elect Distribution.* If the Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(ii) *Death After Commencement of Distribution.* If the Participant dies after he or she has begun to receive benefits under one of the distribution options:

(1) *Participant's Spouse as Beneficiary.* The remaining portion of the Participant's interest must continue to be distributed as least as rapidly as the method of distribution being used prior to the Participant's death.

(2) *Non-Spouse Beneficiary.* The remaining portion of the Participant's interest must continue to be distributed at least as rapidly as the method of distribution being used prior to the Participant's death and payments must be completed on or before the fifth anniversary of the Participant's death.

(3) *No Liability.* Neither the University nor the Plan Administrator will be liable to the Beneficiary for the amount of any payment made in the name of the Participant before the Plan Administrator receives proof of death of the Participant.

(iii) *Failure to Designate Beneficiary.* A Participant may designate or change a Beneficiary by filing a signed designation acceptable to the Plan Administrator with the Plan Administrator. If a Participant fails to designate a Beneficiary, the Beneficiary will be the Participant's spouse at the time of the Participant's death. If the Participant is not survived by a spouse, the Beneficiary for each

date of distribution will be the first of the following classes with a living member on the date of distribution:

(1) *Children.* The Participant's children, including those by adoption, dividing the distribution equally among the Participant's children with the living issue of any deceased child taking their parent's share by right of representation.

(2) *Parents.* The Participant's parents, dividing the distribution equally if both parents are living.

(3) *Brothers and Sisters.* The Participant's brothers and sisters, dividing the distribution equally among the Participant's living brothers and sisters.

If a deceased Participant has no surviving Beneficiary described above, the remaining balance will be paid to the Participant's estate, if then under active administration of a probate or similar court, or, if not, to those Persons who would then take the Participant's personal property and in the proportions provided under the Michigan intestate laws in effect at the time of the distribution as though the Participant had died at that time.

(iv) *Death of Beneficiary.* If distribution is being made to a Beneficiary who dies before distribution is complete, the remaining amount in the Account shall be paid to a successor Beneficiary. If distribution is made to more than one Beneficiary, distribution will continue to the survivor or survivors of them, and any remaining amount in the Account upon the death of the last survivor will be paid to the successor Beneficiary. Survivors include the issue of any deceased child who will take the deceased child's share by right of representation.

(v) *Determination.* The Plan Administrator will apply the rules of this section to determine the proper persons to whom payment should be made. The decision of the Plan Administrator will be final and binding on all persons.

(e) *Unforeseeable Emergency.* A distribution for an Unforeseeable Emergency will take place within sixty (60) days after the date on which the Plan Administrator approves the Participant's request for withdrawal. Distribution is limited to an amount sufficient to meet the Unforeseeable Emergency. The Plan Administrator has sole discretion to determine the manner of withdrawal. A distribution for an Unforeseeable Emergency may not be made to the extent that the emergency is or may be relieved through reimbursement or compensation from insurance or

otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the Plan.

(f) Qualified Domestic Relations Orders. Upon receiving a QDRO, the University and the Plan Administrator will comply with its provisions, including an order requiring the distribution of a Participant's benefits to an Alternate Payee in advance of the general rules for distributions set forth here. To the extent required in a QDRO, any portion of a Participant's benefits may be paid to (or a portion of a Participant's Account may be set aside for the benefit of) the Participant's spouse, former spouse or other Alternate Payee.

(i) Determination of Qualification. Upon receipt of notification of any judgment, decree or order that relates to the provision of child support, alimony payments, or marital property rights of a spouse, former spouse, child, or other dependent of a Participant and that is made pursuant to a state domestic relations and/or community property law ("Court Order"), the Plan Administrator will within a reasonable period of time determine whether the Court Order satisfies the requirements to be a Qualified Domestic Relations Order as defined in IRC Section 414(p).

(ii) Segregation of Account. The Plan Administrator may segregate in a separate Account in the Plan the amounts that will be payable to the Alternate Payee pursuant to a QDRO.

(iii) Status, Rights and Privileges of Alternate Payees. Except as otherwise provided here, an Alternate Payee has the status and rights of a Beneficiary under this Plan to the exclusion of all other rights associated with Participants under this Plan, including the right to receive payment under the terms of the QDRO at the time and manner specified in such QDRO (provided, however, that the payment may not be made in a form that is not available to Participants under the Plan), and the right to direct the manner in which Plan amounts allocated to the Alternate Payee are invested.

(iv) QDRO Expenses. Any expense related to the administration of a QDRO will be assessed against the Participant's Account.

7.05 Election of Method of Distribution. Subject to the rules of the Investment Sponsors, the Participant may elect the time and method of distribution consistent with the requirements in this Article. A Participant may make one election to defer distribution, which the Participant must submit to the

Plan Administrator using a form acceptable to the Plan Administrator. A Participant may revoke his or her election, with or without a new election, at any time at least thirty days before his or her benefits begin, or such other time permitted by the Plan Administrator, by notifying the Plan Administrator in writing of his or her election. If a Participant or Beneficiary fails to elect a form of payment in a timely manner, the Plan Administrator will distribute the benefits in a lump sum.

7.06 Facility of Payment. A payment under this section fully discharges the University and the applicable Investment Sponsor from all future liability with respect to that payment.

(a) Incapacity. If a recipient entitled to a payment is legally, physically, or mentally incapable of receiving or acknowledging payment, the Plan Administrator may direct the payment to the recipient, to the recipient's legal representative or any other person who is legally entitled to receive payments on behalf of the recipient under the laws of the state in which the recipient resides, or by expending the payment directly for the benefit of the recipient. A payment made to any person other than the recipient must be used for the recipient's exclusive benefit.

(b) Legal Representative. The University is not required to commence probate proceedings or to secure the appointment of a legal representative.

(c) Determination. The University may act upon affidavits in making any determinations. In relying upon the affidavits or having made a reasonable effort to locate any person entitled to payment, the University may direct payment to a successor Beneficiary or another person. A person omitted from payment has no rights on account of payments so made.

ARTICLE VIII

ADMINISTRATION

8.01 Duties, Powers, and Responsibilities of the University.

(a) Required. The University is responsible for designating particular Investment Sponsors and investment vehicles that will be available under this Plan and transmitting Participant Elective Deferrals to the applicable Investment Sponsors. The University will serve as the agent for service of process, and is responsible for amending and terminating this Plan.

(b) Discretionary. The University may appoint a Plan Administrator. In the absence of an appointment, the University will serve as the Plan Administrator. The University may also pay administrative expenses incurred in the operation, administration, management and control of the Plan.

(c) Action by the University. When the University acts with respect to the Plan, its action will be taken by its Board of Trustees unless the Board has delegated the power or responsibility to one or more persons identified by its resolution.

8.02 Duties, Powers and Responsibilities of the Plan Administrator.

The Plan Administrator is responsible for the day-to-day operation and management of the Plan. The Plan Administrator may delegate to any person or persons the authority to sign any documents on its behalf or to perform any acts within its authority as set forth here. Except to the extent properly delegated, the Plan Administrator shall have the following duties, powers and responsibilities and must:

(a) Plan Interpretation. Interpret this instrument (including resolving an inconsistency or ambiguity or correcting an error or an omission);

(b) Participant Rights. Determine the rights of Participants and Beneficiaries under the terms of this Plan (including the right to suspend benefits until such rights have been determined);

(c) Compliance. Determine and maintain records demonstrating that the Plan complies with limitations and tests under the Code and Regulations;

(d) Errors. Correct any error in Participants' Accounts to the extent possible by making adjustments to the Account;

(e) Claims/Elections. Establish or approve the manner of making an election, designation, application, claim for benefits, and review of claims;

(f) Benefit Payments. Provide notice of benefits and notices of taxability required by the Code and direct the time that payments are to be made or to begin, and the elected form of distribution;

(g) QDRO. Establish procedures to determine whether an order is a QDRO and notify the Participant and Alternate Payee of the determination;

(h) Administrative Information. Obtain to the extent reasonably possible all information necessary for the proper administration of this Plan;

(i) Recordkeeping. Establish procedures for and supervise the establishment and maintenance of all records necessary and appropriate for the proper administration of this Plan;

(j) Reporting and Disclosure. Prepare and file annual and periodic reports or disclosure documents required by the Code and Regulations;

(k) Advisers. Employ or contract with attorneys, actuaries, accountants, clerical employees, agents, or other Persons who are necessary for operation, administration, and management of this Plan;

(l) Other Powers and Duties. Exercise all other powers and duties necessary or appropriate under this Plan, except those powers and duties allocated to another named fiduciary.

All decisions or actions of the Plan Administrator with respect to any question arising out of the administration, interpretation and application of the Plan and the rules and regulations promulgated under it shall be final, conclusive and binding upon all persons having any interest in the Plan.

8.03 Indemnification. The University shall indemnify and hold harmless each member of the Board of Trustees and each Employee to whom duties or other responsibilities for the operation and administration of this Plan and any related Trust, Custodial Account or Annuity Contract have been assigned or delegated, from any and all claims, losses, damages, expenses, and liabilities arising from any action or failure to act with respect to any matter related to this Plan or Trust, Custodial Account or Annuity Contract, unless the action or inaction is due to gross negligence or willful misconduct.

The University may purchase and maintain liability insurance covering itself, any related employer, and any other person against claims, losses, damages, expenses, and liabilities arising from the performance or failure to perform any power, duty, or responsibility with respect to this Plan and any Trust, Custodial Account or Annuity Contract.

8.04 Claims Procedure. The Plan Administrator will decide all issues arising from the administration of this Plan.

(a) Initial Decision. Upon receiving a written request by a Participant or Beneficiary (Applicant), the Plan Administrator will make an initial decision and communicate the decision to the Applicant within 90 days. If the initial decision requires a longer period, the Plan Administrator will notify the Applicant that the 90-day period is extended to 180 days.

(b) Method. The Plan Administrator's decision will be in writing. The decision will set forth the decision and the specific reason for the decision; specific reference to the Plan provisions on which the decision is based; a description of additional material, information, or acts that may change or modify the decision; and an explanation of the procedure for further review of the decision.

(c) Further Review. Within 60 days of receipt of the initial written decision, the Applicant, or the Applicant's authorized representative, may make a request for redetermination by the Plan Administrator. The Applicant (or the authorized representative) may review all pertinent documents and submit issues, comments, and arguments.

(d) Redetermination. Within 60 days of receiving an application for redetermination, unless special circumstances require a longer period of time (but not longer than 120 days after receipt of the application), the Plan Administrator will provide the Applicant with its final decision, setting forth specific reasons for the decision with specific reference to Plan provisions on which the decision is based.

8.05 Participant's Responsibilities. All requests for action of any kind by a Participant or Beneficiary under this plan shall be in writing (or its permitted electronic equivalent) and executed (or electronically affirmed) by the Participant or Beneficiary.

ARTICLE IX

ADMINISTRATION OF INVESTMENT VEHICLES

9.01 Duties/Powers – Investment Sponsor.

(a) Duties. Each Investment Sponsor has the following duties:

(i) Control and Invest Assets. To maintain custody of plan assets directed to it and to invest those assets under its procedures in accordance with Participant investment directions;

(ii) Pay Benefits. To pay benefits permitted by the Plan or required by the Code; and

(iii) Records/Reports. To maintain records and to prepare and file reports required by law, the Code or Regulations, other than those for which the Plan Administrator is responsible under the terms of this Plan.

(b) Powers. Each Investment Sponsor has the following powers:

(i) Control Property. To hold Plan assets forwarded to it as directed by the Participant;

(ii) Asset Investment. To invest Plan assets subject to the limitations in this Plan;

(iii) Disposition. To sell, convey, transfer, exchange, partition, lease for any term as directed by a Participant or otherwise dispose of a Plan asset;

(iv) Agents, Advisers, and Counsel. To employ and to compensate from assets it holds, agents, advisers, and legal counsel reasonably necessary in managing the investment vehicle and advising the Investment Sponsor as to its powers, duties, and liabilities;

(v) Claims. To prosecute, defend, settle, arbitrate, compromise, or abandon all claims and demands in favor of or against any investment, with or without the assistance of legal counsel;

(vi) Vote Securities. To vote a corporation's stock or other securities, either in person or by proxy, for any purpose as directed by a Participant or under procedures established under the investment vehicle disclosed to the Participant;

(vii) Exercise Rights. To exercise, refrain from the exercise of, or convey a conversion privilege or subscription right applicable to a Plan asset as directed by a Participant or under procedures established under the investment vehicle disclosed to the Participant;

(viii) Collection. To demand, collect, and receive the principal, dividends, interest, income, and all other moneys or other property due upon Plan assets;

(ix) Change of Structure. To consent to, oppose, or take another action in connection with a bankruptcy, composition, arrangement, reorganization, consolidation, merger, liquidation, readjustment of the financial structure, or sale of assets of a corporation or other organization, the securities of which may constitute a portion of Plan assets as directed by a Participant or under procedures established under the investment vehicle disclosed to the Participant;

(x) Issue, Hold, or Register Securities. To cause securities or other property forming part of the Trust, Custodial Account or Annuity Contract to be issued, held, or registered in the individual name of the Investment Sponsor, in the name of its nominee or in such form that title will pass by delivery, provided that the records of the Investment Sponsor shall indicate the ownership of the property or security;

(xi) Distributions. To make distributions required by the Plan or permitted by the Plan upon a Participant's election;

(xii) Expenses. To pay from the investment vehicle all reasonable fees, taxes, commissions, charges, premiums and other expenses and reasonable fees of the Investment Sponsor and any other custodian or investment manager, incurred in connection with the administration of Plan assets;

(xiii) Insure Assets. To insure Plan assets through a policy or contract of insurance;

(xiv) Incorporate. To incorporate (or participate in an incorporation) under the laws of any state for the purpose of acquiring and holding title to any Plan assets;

(xv) Depository. To keep any Plan asset on deposit with a custodian in the United States; and

(xvi) Other Acts. To perform all other acts it deems necessary, suitable, or desirable for the control and investment of Plan assets and discharge of its duties.

9.02 **Limitation on Duties and Powers.**

(a) Duties of the University or Plan Administrator. Unless properly delegated and assumed by its agreement, an Investment Sponsor is not required to exercise a duty or power of the University or the Plan Administrator.

(b) Limited Duties/Powers. An Investment Sponsor is not required to exercise discretionary authority or control with respect to investment of the assets subject to the Participant's direction or to render advice regarding investment of those assets. An Investment Sponsor is not liable for the investment performance of the assets subject to direction by the Participant. The Participant shall not have authority to exercise the duties or powers of the Investment Sponsor.

(c) Transfer. If Plan assets are transferred to another investment vehicle, that Investment Sponsor shall have the enumerated duties and powers with respect to those assets.

9.03 **Accounting**. Each Investment Sponsor must maintain accurate and detailed records of all investments, receipts, disbursements, and other transactions for its Trust, Custodial Account or Annuity Contract. The records shall be available for inspection at all reasonable times by the Plan Administrator.

(a) Report. As soon as administratively feasible after each Valuation Date and each other date agreed to by the Plan Administrator and the Investment Sponsor, the Investment Sponsor must prepare and furnish to the Plan Administrator a statement of account.

(b) Judicial Settlement. Any dispute concerning the Investment Sponsor's records or statement of account may be settled by a suit for an accounting brought by a person having an interest in the investment vehicle.

The accounting and reporting responsibilities do not apply with respect to assets held by another Investment Sponsor except to the extent assumed by the Investment Sponsor at the direction of the Plan Administrator.

9.04 **Appointment, Resignation, and Removal - Investment Sponsor**. Each Investment Sponsor must be an individual or eligible corporation that controls a qualified investment vehicle.

(a) Resignation. An Investment Sponsor may resign with at least 60 days' written notice to the Plan Administrator and affected Participants, effective as of the date specified in the notice.

(b) Removal. The University may remove an Investment Sponsor with at least 60 days' written notice to the Investment Sponsor and Participants, effective as of the date specified in the notice.

(c) Successor. At least 10 days before the effective date of a resignation or removal, the University must designate a successor Investment Sponsor and deliver notice of the designation to the Investment Sponsor and Participants.

(d) Effective Date of Resignation or Removal. The resignation or removal of an Investment Sponsor may not be effective before a designation of a successor is made. The parties, by agreement, may waive the time requirements.

(e) Procedure Upon Transfer. Upon the resignation or removal of an Investment Sponsor, the Investment Sponsor must pay from the

investment vehicle all undisputed accrued fees and expenses, including its fees, and, as of the effective date of its resignation or removal, deliver a statement of account to the Plan Administrator and the successor.

(f) Earlier Transfer. In order to facilitate the prompt transfer of Plan assets to a successor, the Plan Administrator and the Investment Sponsor may agree upon a procedure by which the Investment Sponsor delivers assets (less a reasonable reserve for fees and expenses) to the successor as soon as administratively feasible after receipt of notice of designation of the successor. The Administrator and the Investment Sponsor may agree to the transfer of assets to the successor pending preparation and approval of the final accountings.

(g) Final Transfer. As soon as administratively feasible, the Investment Sponsor must deliver the remaining assets to the successor, together with records maintained by the Investment Sponsor.

(h) In Kind Transfer. The Investment Sponsor must consult with affected Participants concerning the liquidation of assets to be transferred for the purpose of determining the feasibility of the transfer of assets in kind before implementing the liquidation.

(i) Limitation on Liability of Successor. A successor Investment Sponsor is not liable for the acts or omissions of any prior Investment Sponsor.

9.05 Action. A corporate Investment Sponsor must act either by a resolution of its board of directors or by a written instrument executed by one of its authorized officers. Any other Investment Sponsor must act by a written instrument executed by an individual authorized to act on behalf of the Investment Sponsor.

9.06 Exculpation. A transfer agent, brokerage, clearing house, insurance company, or any other person that is not an Investment Sponsor and who has paid money or delivered property to an Investment Sponsor is not responsible for its application or for determining the propriety of the actions of the Investment Sponsor concerning the money or other property.

ARTICLE X

AMENDMENT, MERGER, SUSPENSION, TERMINATION

10.01 Amendment. The University may amend the Plan. A Plan amendment may not reduce a Participant's Account, alter the duties, responsibilities or liabilities of an Investment Sponsor without the consent of the

Investment Sponsor, or violate the exclusive benefit or non-diversion limitations of the Plan.

10.02 **Merger.** The Plan may be merged or consolidated or its assets or liabilities may be transferred to another plan if the University and any successor employer authorize the merger and each Participant's Account balance, after the merger or consolidation, is equal to the Account balance the Participant would have been entitled to receive if the Plan had terminated on the date of the merger or consolidation.

10.03 **Suspension.** The Plan Administrator may temporarily suspend acceptance of Elective Deferrals as necessary to facilitate appropriate administration of this Plan or to comply with any Federal, state or local law. The Plan Administrator will provide written notice of any suspension to all Participants. No suspension may deprive a Participant or Beneficiary of any right or benefit to which the Participant or Beneficiary is entitled under this Plan immediately prior to the effective date of the suspension.

10.04 **Termination.** The University may terminate the Plan. Upon termination, the Plan Administrator must direct the Investment Sponsors to make distribution to Participants (or Beneficiaries) under Article VII. The University may not receive any Plan asset upon termination.

ARTICLE XI

GENERAL PROVISIONS

11.01 **Nonalienation.** The benefits payable under this Plan and any related Trust, Custodial Account or Annuity Contract may not be subject, in any manner, to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, whether voluntary or involuntary, including any liability for alimony or child support, before actual receipt by a Participant or a Beneficiary, except under a QDRO. Any attempt to transfer any benefit payable under this Agreement in violation of this prohibition is void. The right of a Participant or Beneficiary to receive a benefit under this Agreement may not be considered an asset of a Participant or Beneficiary in the event of divorce, insolvency, or bankruptcy.

11.02 **No Effect Upon Employment Relationship.** The adoption of this Plan does not create a contract of employment between the University and any Employee, confer upon any Employee a legal right to continuation of employment, limit or qualify the right of the University to discharge or retire any Employee at will, or affect the right of any Employee to remain in service after the Employee's Normal Retirement Date.

11.03 Interest in Employer Assets. This Plan and any Trust, Custodial Account or Annuity Contract do not give any Employee, Participant, or Beneficiary an interest in the assets or the business affairs of the University, or the right to examine the books and records of the University. A Participant's rights are solely those granted by this instrument. However, neither the vesting nor the insolvency provisions of this Plan and any related Trust, Custodial Account or Annuity Contract diminish the right of a Participant or Beneficiary to pursue a contractual right under this Plan or rights as a general creditor of the University for benefits under the Plan.

11.04 Representations. The University does not represent or guarantee that any particular Federal or State income, payroll, personal property or other tax consequence will result from participation in this Plan. Each Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Further, the University does not represent or guarantee investment returns with respect to any investment vehicles and will not be required to restore any loss which may result from any investment or lack of investment.

11.05 Construction. The singular includes the plural, and the plural includes the singular, unless the context clearly indicates the contrary. Capitalized terms (except those at the beginning of a sentence or part of a heading) have the meaning specified in this Plan. If a capitalized term is not defined, the term has the generally accepted meaning of the term. If a term that is defined does not have the first letter capitalized, and the definition is applicable at that location in this Plan, the term has the stated definition.

11.06 Severability. If any provision of this Plan is invalid, unenforceable, or disqualified under the Code, ERISA, or Regulations for any period of time, the affected provisions is ineffective but the remaining provisions are unaffected.

11.07 Binding Effect. If the University is merged or consolidated into or with any other entity, or substantially all of its assets are transferred to another entity, the provisions of this Agreement are binding upon and inure to the benefit of the entity resulting from the merger or consolidation or to which the assets are transferred. This provision also applies in the event of any subsequent merger, consolidation or transfer. This Agreement is binding upon all heirs, successors, and assigns of the University and each Participant.

11.08 Choice of Law. This Plan has been entered into in the State of Michigan and, except as required to maintain compliance with the requirements of Code Section 457, the laws of the State of Michigan govern the validity, interpretation and performance of this Plan.

11.09 Entire Agreement. This instrument, together with each Trust, Custodial Agreement and Annuity Contract holding Plan assets, constitutes the entire Plan. No party is bound by any terms, conditions, statements or

representations not contained in this Plan, one of those documents or a properly executed amendment of each.

Ferris State University has executed this Agreement as of this ____ day of _____, 2016.

FERRIS STATE UNIVERSITY

By: _____

Its: _____