

Ferris State University
Section 415(m)
Qualified Governmental
Excess Benefit Arrangement

Restated January 1, 2017





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INTRODUCTION

The purpose of this Arrangement is to provide additional deferred compensation for employees that would otherwise be payable under the terms of the Ferris State University Section 403(b) Retirement Plan and the Kendall College of Art & Design of Ferris State University Section 403(b) Retirement Plan, but for the limits of Section 415(c) of the Internal Revenue Code applicable to the Plans.

The Arrangement is intended to constitute a qualified governmental excess benefit arrangement within the meaning of Section 415(m)(3) of the Code, its regulations and other applicable law.

The Employer is eligible to adopt this Arrangement because it is a State university.

ARTICLE I - DEFINITIONS

- 1.1 Arrangement means the Ferris State University Qualified Governmental Excess Benefit Arrangement set forth in this document, as amended from time to time.
- 1.2 **Beneficiary** means the individual, trustee, estate or legal entity entitled to receive benefits under this Arrangement that become payable in the event of the Participant's death.
- 1.3 *Code* means the Internal Revenue Code of 1986, as amended.
- 1.4 Compensation means the individual's Recognized Compensation as defined in the applicable section of the related Plan, subject to the limitations of Section 401(a)(17) of the Code.
- 1.5 *Effective Date* means January 1, 2017.
- 1.6 *Employer* means Ferris State University, the entity that has adopted this Arrangement and the related Plans.
- 1.7 Investment Options means the accounts offered by TIAA and any other investment alternatives made available by any other Investment Sponsor and designated pursuant to the terms of this Arrangement and either of the related Plans as being available under this Arrangement and the respective Plan. Unless the Employer otherwise elects, all such accounts offered by TIAA and CREF and any such accounts offered by TIAA and CREF in the future will automatically be made available to all Participants in the future.
- 1.8 Investment Sponsors means TIAA and any other insurance company, regulated investment company, or other entity providing Investment Options under the Arrangement and either Plan.
- 1.9 Participant means an eligible employee or former eligible employee who becomes a Participant in the Arrangement in accordance with Article II. An employee shall cease to be a Participant when he or she no longer has any interest in contracts or accounts under the Arrangement. An "Active Participant" means a Participant who is an employee other than one who is no longer an eligible employee.
- 1.10 Plan or Plans means the Ferris State University Section 403(b) Retirement Plan and the Kendall College of Art & Design of Ferris State University Section 403(b) Retirement Plan, or each of them, which are both related to this Arrangement, as each may be amended from time to time.
- 1.11 Plan Year means the period beginning each January 1 and ending each December 31.

1.12 TIAA means the Teachers Insurance and Annuity Association.

ARTICLE II – PARTICIPATION IN THE ARRANGEMENT

2.1 Eligibility. All employees of the Employer shall participate in the Arrangement if they are participants in either Plan and the annual additions to the applicable Plan or Plans for any period for the employee exceed the Section 415 limitations applicable to the Plan or Plans (i.e., the net amount determined in accordance with Sections 3.1 and 3.2 of this Arrangement exceeds zero for the period).

ARTICLE III – CONTRIBUTIONS

- 3.1 Commencement of Contributions. Notwithstanding anything herein to the contrary, contributions to this Arrangement for a Participant shall commence only when the contributions under Section 3.2 for the Participant, in the aggregate, exceed the limits described in Section 415(c) of the Code.
- 2.2 Employer Contributions. Employer contributions to the Arrangement for each Participant for each Plan Year, beginning with the Plan Year that includes the Effective Date, shall be determined for each Participant by subtracting the amount determined under subsection (b) applicable to the Participant from the amount determined under subsection (a) applicable to the Participant.
 - (a) The amount determined under this subsection (a) for a Participant is calculated by multiplying the employer contribution rate specified in the applicable Plan (or otherwise applicable to the Participant under a governing collective bargaining agreement or other contract) for the Plan Year by the Participant's Compensation earned during the Plan Year, disregarding any limitations on employer contributions that would be applicable under the Plan or Plans as necessary to limit annual additions within the Plan or Plans to the amount defined in Section 415(c) of the Code.
 - (b) The amount determined under this subsection (b) is the actual employer contribution to the applicable Plan or Plans for the Participant for the Plan Year as limited by Section 415(c) of the Code.

Contributions to the Arrangement of the amount determined pursuant to this Section 3.2 shall then commence when the annual additions under the Plan or Plans for the Participant exceed the limits in Section 415(c) of the Code.

3.3 Vesting. A Participant shall be vested in his or her accrued benefits under this Arrangement on the same basis as provided in the Plan in which the Participant participates.

ARTICLE IV - INVESTMENTS

- 4.1 Investment Credits. Contributions under this Arrangement may be invested in the same form and manner as contributions under the Plan in which the Participant participates or in a different manner as permitted by the Employer from time to time. If contributions under this Arrangement are invested in the same form and manner as contributions under the Plan in which the Participant participates, all product and investment elections under the Plan shall apply equally under this Arrangement.
- 4.2 Unfunded Status. While the contributions on behalf of each Participant will receive credits equal to the amount of the earnings, dividends and other proceeds under the TIAA contracts, all contracts shall be the general assets of the Employer, subject to all claims of its creditors, and shall not be a trust fund or collateral security for the Employer's obligation to pay the Participant the amount accrued under this arrangement.

ARTICLE V - PAYMENT OF BENEFITS

5.1 **Benefit Amounts.** The amount of benefits payable to or on behalf of a Participant under this Arrangement shall be equal to the contributions made on behalf of the Participant, increased or decreased as appropriate by the Participant's investment factor.

A Participant's investment factor is equal to the return that would have been realized on the contributions made on behalf of the Participant had those amounts been invested in accordance with the Participant's investment instructions under the applicable Plan.

- 5.2 **Commencement of Benefits.** Payment of benefits to a Participant will begin coincident with the payment of benefits as determined under the applicable Plan.
- Election of Form of Payment. Subject to the rules of the Investment Sponsor, a Participant or Beneficiary may elect the form of distribution of his or her benefits and may revoke that election, with or without a new election, at any time at least thirty days before his or her benefits begin, or such other time as permitted by the Employer or its designee, by notifying the Employer or its designee in writing of his or her election.
- 5.4 Forms of Payments. The forms of benefit payments under the Arrangement shall follow the form of benefit payment under the applicable Plan, subject to the limitations of the applicable Investment Sponsor.
- 5.5 Beneficiary Designation. A Participant may designate a Beneficiary, and may amend or revoke such designation, at any time prior to commencement of benefits, in writing, in a form approved by the Employer or its designee. Such designation, amendment or revocation shall be effective upon satisfactory receipt by the Employer or its designee.

Failure to Designate a Beneficiary. Benefits shall be paid to the Participant's estate if, prior to the date a Participant commences to receive payment of benefits under the Arrangement, the Participant has not designated a Beneficiary or no designated Beneficiary survives the Participant and benefits are payable following the Participant's death.

ARTICLE VI – ADMINISTRATION OF THE ARRANGEMENT

- Employer Responsibilities. The Employer is responsible for the interpretation of the Arrangement and for performing other duties required for the operation of the Arrangement. Any action taken on any matter by the Employer shall be made in its sole and absolute discretion based on this Arrangement document, and shall be final, conclusive, and binding on all parties. In order to discharge its duties, the Employer has the power and authority to delegate ministerial duties and to employ such outside professionals as may be required for administration of the Arrangement. The Employer also has authority to enter into agreements necessary to implement this Arrangement.
- Accounts and Expenses. The Employer shall establish and maintain contracts and/or accounts on behalf of each Participant. Such Participant's contracts and/or accounts shall be valued in accordance with the rules of the Investment Option. Each Participant shall receive a written notice of his or her contract value or account balance following such valuation or valuations, provided that such notice shall not be required to be given more than one time per calendar quarter. Each Participant's contract value and account balance shall reflect the aggregate of the contributions made on his or her behalf, and shall also reflect the investment experience credited to such contracts and/or accounts and expense charges applied to, and distributions made from, such contract and/or account.
- 6.3 Investments. A Participant may request that amounts contributed to the Arrangement on his or her behalf be allocated among the available Investment Options established under the Arrangement. The Investment Options shall include the Investment Options made available by TIAA that are utilized in the respective Plan or Plans, and may, in addition, include Investment Options made available by additional approved Investment Sponsors. The initial allocation request may be made at the time of enrollment. Once made, an investment allocation request shall remain in effect for all subsequent contributions until changed by the Participant. A Participant may change his or her investment allocation by submitting a written or electronic request to the Employer or its designee on such form as may be required by the Employer or its designee. Such changes shall become effective as soon as administratively feasible after the Employer or its designee receives a satisfactory written request. Although the Employer intends to invest contributions according to the Participant's requests, it reserves the right to invest without regard to such requests.

ARTICLE VII – AMENDMENT OR TERMINATION OF THE ARRANGEMENT

Amendment and Termination. While it is expected that this Arrangement will continue indefinitely, the Employer reserves the right at any time to amend, otherwise modify, or terminate the Arrangement without any liability for such action. No amendment shall increase the duties or responsibilities of any Investment Sponsor without its prior consent thereto in writing. In the event of a termination of the Arrangement, the Employer shall notify Participants of the termination.

ARTICLE VIII – MISCELLANEOUS

- 8.1 Arrangement Non-Contractual. Nothing contained in this Arrangement will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Employer, and nothing contained in this Arrangement will be construed as a commitment on the part of the Employer to continue the employment or the rate of compensation of any person for any period. All employees of the Employer will remain subject to discharge to the same extent as if the Arrangement had never been put into effect.
- 8.2 Claims of Other Persons. The provisions of the Arrangement will in no event be construed as giving any Participant or any other person, firm, corporation or other legal entity, any legal or equitable right against the Employer, its officers, employees, directors or trustees, except the rights as are specifically provided for in this Arrangement or created in accordance with the terms and provisions of this Arrangement.
- 8.3 Assignments. No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily, other than as provided under Section 401(a)(13) of the Code. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order.
- Contracts. The terms of each arrangement pursuant to which an Investment Option is offered hereunder, the terms of a trust in which an Investment Option may be held, and any contract issued on behalf of a Participant or certificate issued to a Participant, are a part of the Arrangement as if fully set forth in this Arrangement document. The provisions of each such arrangement are incorporated by reference into this Arrangement. If there is any inconsistency or ambiguity between the terms of this Arrangement and those of any contract, certificate or trust, if any, associated with this Arrangement, the terms of this Arrangement control.
- 8.5 **Pronouns.** Whenever used in this document, the masculine pronoun is deemed to include the feminine, and vice-versa. The singular form, whenever used, shall mean or include the plural form where applicable, and vice versa.

- 8.6 Representations. The Employer 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 Arrangement. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Employer does not represent or guarantee investment returns with respect to any Investment Options and shall not be required to restore any loss that may result from such investment or lack of investment.
- 8.7 **Severability.** If a court of competent jurisdiction holds any provision of this Arrangement to be invalid or unenforceable, the remaining provisions of the Arrangement shall continue to be fully effective.
- 8.8 Applicable Law. This Arrangement shall be construed in accordance with applicable Federal law and, to the extent otherwise applicable, the laws of the State of Michigan.

Executed:

Ferris State University

By: Jung & Acoly (JORRY L. SCOBY

Dated: December 21, 2017