

The University of Florida Board of Trustees 401(a) FICA Alternative and Special Pay Plan

Amended and Restated
Effective January 1, 2021

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Article I - Establishment of Plan

1.1 Establishment and History

The Plan was initially established effective as of January 1, 2006. The Plan has been subsequently amended and restated and is now being amended and restated effective as of January 1, 2021.

1.2 Governmental Plan

The Plan is intended to be a Governmental Plan pursuant to the provisions of Section 414(d) of the Internal Revenue Code and the related Trust shall be tax-exempt pursuant to the provisions of Section 501(a) of the Code.

Article II - Definitions

When used herein the following terms shall have the following meanings:

“Account” means the bookkeeping account or accounts established to reflect contributions made to the Plan on behalf of a Participant, and adjustments made in accordance with [Article VI](#).

“Adjustment Factor” means the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code, as applied to such items and in such manner as the Secretary shall provide.

“Administrator” or **“Plan Administrator”** means The University of Florida through the Office of Human Resources. The Administrator shall be responsible for administering the Plan.

“Aggregated Employer” means the Employer and any other corporation or business entity that must be aggregated with the Employer under Section 414(b), (c), (m), or (o) of the Code, or any other corporation or business entity as to which the Employer either directly or indirectly controls at least eighty percent (80%) of the directors or trustees. A director or trustee is controlled by an Employer if the Employer has the power to remove such director or trustee and to designate a new director or trustee.

“Annual Addition” means, for any Limitation Year, the sum of the following amounts credited to a Participant under the Plan or any other plan aggregated with the Plan under Section 415(c) of the Code:

- (a) Employer contributions, including Employee Nonelective Contributions and Special Pay Contributions as well as any other Employer contributions made under a plan required to be aggregated with the Plan under Section 415(c) of the Code;
- (b) Any after-tax Contributions;
- (c) Forfeitures allocated to the Participant's Account;
- (d) Amounts allocated to an individual medical account, as defined in Section 415(l)(2) of the Code, which is part of a pension or annuity plan, and amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in Section 419(e) of the Code; and
- (e) Allocations under a simplified employee pension.
- (f) Amounts described in [\(a\)](#), [\(b\)](#), [\(c\)](#), and [\(e\)](#) are annual additions for purposes of both [4.4\(a\)](#) and [\(b\)](#). Amounts described in [\(d\)](#) are annual additions solely for purposes of the dollar limitation under Section [4.4\(b\)](#).

“Beneficiary” means the beneficiary or beneficiaries designated under Section [3.2](#) to receive the amount, if any, payable under the Plan upon the death of a Participant.

“Board of Trustees” means the Board of Trustees of The University of Florida.

“Code” means the Internal Revenue Code of 1986, as now in effect or hereafter amended.

“415 Compensation” means wages within the meaning of Section 3401(a) of the Code and all other payments of compensation to an Employee by the Employer (in the course of Employer’s trade or business) for which the Employer is required to furnish the Employee a written statement under Sections 6041(d), 6051(a)(3), and 6052 of the Code. Compensation must be determined without regard to any rules under Section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Code).

- (a) Except as otherwise provided in Regulation Section 1.415(c)-2(e), Compensation for a Limitation Year is the compensation actually paid or made available during such Limitation Year. Compensation paid or made available during a Limitation Year shall include any elective deferral as defined in Section 402(g)(3) of the Code and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Section 125, 132(f)(4), or 457 of the Code. Any differential wage payment within the meaning of Section 3401(h) of the Code shall be included as Compensation.
- (b) Any payments made after Severance from Employment will not be considered Compensation, unless the payment may be treated as such in accordance with Regulation Section 1.415(c)-2(e)(3).

“Compensation” means with respect to each Participant for purposes of calculating and allocating contributions, wages, as defined in Section 3401(a) of the Code, and all other payments of Compensation to an Employee by the Employer for which the Employer is required to furnish the Employee a written statement under Sections 6041(d), 6051(a)(3), and 6052 of the Code. Compensation must be determined without regard to any rules under Section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment of services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Code).

In addition, Compensation shall include compensation that is not includible in a Participant’s gross income by reason of application of Sections 125 (including elective deferrals under Section 125), 402(g)(3), 457, and 132(f)(4) of the Code.

The annual Compensation of each Participant taken into account for all Plan purposes shall not exceed \$290,000 for the Plan Year beginning January 1, 2021, or as subsequently adjusted by the Secretary of the Treasury for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which Compensation is determined (the "determination period") beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the limit referred to above 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 other specific purposes described in the Plan, Compensation shall have the meanings set forth in the respective sections in which the term is referenced.

"Early Retirement Age" means the attainment of age fifty-five (55).

"Effective Date" means January 1, 2021, the date as of which the Plan, as amended and restated, is effective, except as otherwise noted herein. The Plan's original effective date is January 1, 2006.

"Eligible Employee" means any Employee of the Employer other than: (a) Leased Employee, (b) an Employee who is a nonresident alien deriving no earned income from the Employer which constitutes income from sources within the United States, (c) any person who is included in a unit of employees covered by an agreement recognized for purposes of collective bargaining with the Employer, provided retirement benefits have been the subject of good faith bargaining and such bargaining does not provide for coverage under the Plan, or (d) a resident of Puerto Rico. Notwithstanding any other provision of the Plan, the term Eligible Employee shall not include any Employee or other individual unless such individual is contemporaneously treated by the Employer as an Employee for purposes of the Plan (without regard to any subsequent recharacterization or inconsistent determination made by any person or entity or by any court, agency, or other authority with respect to such individual whenever effective).

"Employee" means any person employed by the Employer as a common law employee. An Independent Contractor is not an Employee.

"Employee Nonelective Contribution" means the required contribution under Section [4.1\(a\)](#).

"Employer" means The University of Florida Board of Trustees. The Employer is a state or local government entity as defined in Section 414(d) of the Code.

"Employment Commencement Date" means the date on which an Employee is first credited with an Hour of Service.

"Entry Date" means the Eligible Employee's Employment Commencement Date or Reemployment Commencement Date, as the case may be, or a date thereafter that is as soon as is administratively practicable.

"ERISA" means the Employee Retirement Income Security Act of 1974, as now in effect or as hereafter amended.

“Excess Deferrals” means Elective Deferral contributions of a Participant that exceed the dollar limits imposed by Section 402(g) of the Code.

“Governmental Plan” means a plan established under the provisions of Section 414(d) of the Code.

“Hour of Service” means the hours of employment with the Employer, as follows:

- (a) Hours Paid and Worked. Each hour for which an Employee is directly or indirectly paid or entitled to payment for the performance of duties for the Employer;
- (b) Hours Directly or Indirectly Paid but not Worked. Each hour for which an Employee is directly or indirectly paid or entitled to payment by the Employer on account of a period during which no duties are performed, whether or not the employment relationship has terminated, due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence, but not more than 501 such hours on account of any single continuous period during which no duties are performed; and
- (c) Back Pay. Each hour for which back pay, irrespective of mitigation of damages, has been awarded or agreed to by the Employer.
- (d) The same Hours of Service shall not be credited under more than one of the above clauses [\(a\)](#), [\(b\)](#), or [\(c\)](#); and each hour credited to an Employee under clause [\(a\)](#), [\(b\)](#), or [\(c\)](#) above shall be credited in accordance with Section 2530.200b-2(b) and (c) of the U.S. Department of Labor’s Regulations, which hereby are incorporated by reference.
- (e) Hours of Service shall be credited for any individual considered an Employee under Section 414(n) or Section 414(o) of the Code and the related Regulations. Pursuant to Section 414(n)(4)(B) of the Code, Hours of Service shall be determined by taking into account any period for which an Employee would have been a Leased Employee but for the fact that the Employee failed to perform services for the Employer on a substantially full-time basis for a period of at least one year.

“Independent Contractor” means any individual who is a signatory to a contract, letter of agreement, or other document that acknowledges his status as an independent contractor not entitled to benefits under the Plan or any individual who is not otherwise classified by the Employer as a common law employee, even if such independent contractor or other individual is later determined to be a common law employee.

“Investment Fund” means the investment funds established under [Article VI](#).

“Limitation Year” means the calendar year, unless otherwise selected by the Employer in a manner consistent with that described in Section 1.415-2(b)(2) of the Regulations.

“Leased Employee” means any individual (other than an Employee of the Employer) who, pursuant to an agreement between the recipient and any other person (the “leasing organization”), determined in accordance with Section 414(n)(6) of the Code performs services on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided to a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. Notwithstanding the foregoing, a leased employee shall not be considered an Employee if: leased employees do not constitute more than twenty percent (20%) of the recipient’s non-highly compensated workforce and the leased employee is covered by a money purchase pension plan providing (a) a nonintegrated employer contribution rate of at least ten percent (10%) of Compensation within the meaning of Section 415(c)(3) of the Code as defined in Section [4.4](#), (b) immediate participation, and (c) full and immediate vesting.

“Normal Retirement Age” means the attainment of age sixty-five (65).

“Participant” means (a) any Eligible Employee participating in the Plan as provided in [Article III](#), (b) any individual who has an account balance in the Plan on the Effective Date, or (c) any individual whose participation has not ceased under Section [3.4](#).

“Plan” means The University of Florida Board of Trustees 401(a) FICA Alternative and Special Pay Plan, as set forth herein and as amended from time to time.

“Plan Year” means the twelve (12) month period commencing on each January 1 and ending on the next following December 31.

“Reemployment Commencement Date” means the first date following a Break in Service on which the Eligible Employee again performs an Hour of Service.

“Regulations” means the Treasury regulations issued under the Code or any other applicable law by the Internal Revenue Service and any proposed or temporary regulations or rules pending the issuance of such regulations.

“Rollover Contribution” means a contribution made by a Participant under Section [4.3\(a\)](#).

“Severance from Employment” means the termination of the Employee’s employment relationship with the Employer. An Employee receiving differential wage payments within the meaning of Section 3401(h) of the Code shall be treated as not having incurred a Severance from Employment during the period the payments are being made.

“Sick Leave” means the amount under a separate plan or program maintained by the Employer or pursuant to applicable local or state law for which an Eligible Employee under Section [3.1\(c\)](#) is entitled to payment due to the Employee being physically or mentally unable to perform his duties or otherwise being absent from work due to medical reasons.

“Special Pay Contribution” means the contribution made by the Employer pursuant to Section [4.1\(b\)](#) on behalf of an Eligible Employee under Section [3.1\(c\)](#) for accrued but unused Sick Leave or Vacation Pay but only for which an Employee has no right to request a cash payment.

“Spouse” means the person to whom a Participant is legally married.

“Temporary Employee” means any Employee who is classified as a Temporary Employee by the Employer.

“Trust Agreement” means the separate agreement entered into between the Employer and the Trustee to carry out the purposes of the Plan, as such agreement may be amended from time to time.

“Trust Fund” means the assets of the Plan held in trust by the Trustee in accordance with the Trust Agreement.

“Trustee” means the trustee or trustees by whom the assets of the Plan are held in accordance with the Trust Agreement.

“Vacation Pay” means the amount under a separate plan or program maintained by the Employer or pursuant to applicable local or state law for which an Eligible Employee under Section [3.1\(c\)](#) is entitled to payment when the Employee is absent from work for vacation or holiday. Vacation Pay shall not include payment for which an Employee is entitled to payment while absent from work for jury duty, active military service, training, or sabbatical.

“Valuation Date” means any business day on which the New York Stock Exchange is open for and conducting business, or any more frequent date designated by the Plan Administrator.

Wherever used herein, the singular includes the plural and the masculine includes the feminine, unless the context clearly requires otherwise.

Article III - Eligibility and Participation

3.1 Eligibility

- (a) With respect to a Participant in the Plan on December 31, 2020, such Participant shall remain a Participant in the Plan on the Effective Date or will become a Participant in the Plan pursuant to the terms of the Plan as in effect on December 31, 2020, provided such Participant continues to meet the requirements of Section [3.1\(b\)](#) and/or [3.1\(c\)](#). With respect to any other Eligible Employee under Section [3.1\(b\)](#) and/or [3.1\(c\)](#), such Eligible Employee shall become eligible to participate in the Plan on the Eligible Employee's Entry Date.
- (b) An Eligible Employee who is classified as a Temporary Employee and who is not currently covered by and actively participating in a governmental retirement system shall make Employee Nonelective Contributions under Section [4.1\(a\)](#).
- (c) An Eligible Employee who is not currently covered by and actively participating in a government requirement system shall be eligible to make Special Pay Contributions under Section [4.1\(b\)](#).
- (d) An otherwise Eligible Employee under Section [3.1\(b\)](#) and/or [3.1\(c\)](#) who ceases to be covered by and actively participating in a government retirement system shall cease to be eligible to participate in the Plan but any Account attributable to such Participant shall continue to be maintained until such amounts are withdrawn or distributed under [Article VIII](#) or [Article IX](#).

3.2 Beneficiary Designation

Each Participant may designate as a primary and/or contingent Beneficiary any person, persons, or entity to receive benefits payable upon his death. A Participant may also at any time revoke or change his Beneficiary designation by filing a new designation. Any such designation, revocation, or change in Beneficiary shall be made in writing or electronically in accordance with the procedures of this Section [3.2](#) and those procedures established by the Plan Administrator.

- (a) If at the date of death of the Participant, there is no valid and current Beneficiary designation on file, or if no Beneficiary is living, then the death benefit which would have been payable to the Beneficiary shall be paid to the Participant's surviving Spouse, or if none, to the Participant's estate.
- (b) The interpretation of the Plan Administrator with respect to any Beneficiary designation, subject to applicable law, shall be binding and conclusive upon all parties, and no person who claims to be a Beneficiary, or any other person, shall have the right to question any action of the Plan Administrator, which in the judgment of the Plan Administrator fulfills the intent of the Participant who filed such designation.

3.3 Eligibility Upon Reemployment

Any person reemployed as an Eligible Employee shall become a Participant in the Plan on the Entry Date applicable to a reemployed Eligible Employee.

3.4 Termination of Participation

A Participant's participation shall cease upon distribution to him of his entire vested Account, or upon his death prior to such distribution.

Article IV - Contributions and Allocations

4.1 Contributions

- (a) Employee Nonelective Contributions. An Eligible Employee who meets the requirements of Section [3.1\(b\)](#) shall make a contribution to the Plan in the amount of 7.5% of Compensation each payroll period. Such contributions shall be treated as made by the Employer under Section 414(h)(2) of the Code. Such Eligible Employee shall not have an option to receive the amount of this contribution in cash and the Employer shall remit such contribution directly to the trustee.
- (b) Special Pay Contributions. For each Plan Year, the Employer shall make a contribution to the Plan on behalf of an Eligible Employee who meets the requirements of Section [3.1\(c\)](#) in the amount equal to 100% of the value of the Eligible Employee's accumulated and unused sick leave, where applicable, and/or unused vacation leave that is in excess of \$5,000, where applicable. Such contribution shall be made on behalf of an Eligible Employee who meets the requirements of Section [3.1\(c\)](#) regardless of whether or not such Eligible Employee incurred a Severance from Employment during the Plan Year.
- (c) Changes in a Participant's Compensation. The amount of contributions designated under Section [4.1\(a\)](#) or [\(b\)](#) shall automatically apply to increases and decreases in the Participant's Compensation.

4.2 Employer Matching Contributions

No matching contributions shall be permitted to be made by the Employer under this Plan.

4.3 Rollover Contributions

- (a) Rollover Contributions in General. An Eligible Employee may, by notice received by the Plan Administrator and under such terms and conditions as the Plan Administrator shall determine, make a Rollover Contribution to the Plan and Trust Fund. The Plan Administrator may require the individual to submit such evidence and documentation as the Plan Administrator determines necessary to be assured that the proposed contribution qualifies as a Rollover Contribution.

A Rollover Contribution is (1) a distribution that is an “eligible rollover distribution” (as defined in Section 402(c)(4) of the Code) from (i) a qualified plan described in Section 401(a) or 403(a) of the Code, (ii) an annuity contract described in Section 403(b) of the Code, (iii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state, or (iv) an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or (2) a direct rollover of an eligible rollover distribution from (i) a qualified plan described in Section 401(a) or 403(a) of the Code but not including after-tax employee contributions, (ii) an annuity contract described in Section 403(b) of the Code but not including after-tax employee contributions, (iii) an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state, or (iv) an individual retirement account or annuity described in Section 408(a) or (b) of the Code. Section 402(c)(9) of the Code shall apply in determining whether a distribution is a Rollover Contribution for purposes of this Section [4.3\(a\)](#).

- (b) Timing. In the case of a distribution described in [\(a\)](#) that is not a direct rollover, such distribution must be received by the Plan on or before the 60th day following the Employee’s receipt of the distribution from the distributing plan or contract.
- (c) Accounting for Rollover Contributions. The amount received under this Section [4.3](#) shall be transferred to the Plan and Trust Fund and credited to the Participant’s Rollover Contributions Account, as applicable, in accordance with [Article V](#).

4.4 Maximum Annual Additions

The Annual Addition to a Participant’s Accounts for any Limitation Year, when added to the annual additions for such year under any other defined contribution plans (including voluntary employee contribution accounts in a defined benefit plan and key employee accounts under a welfare benefit plan described in Section 419 of the Code as well as employer contributions allocated to an IRA) maintained by the Employer, shall not exceed the lesser of:

- (a) 100% of the Participant’s 415 Compensation as defined in Section 415(c)(3) of the Code for that Limitation Year, or
- (b) \$50,000 multiplied by the Adjustment Factor.

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

In the event that an excess over the amount of Annual Additions permitted for a Limitation Year under Section 415(c) of the Code is caused by the allocation of forfeitures, a reasonable error in estimating a Participant's 415 Compensation, in determining the amount of contributions that may be made with respect to the Participant for the Plan Year, or other circumstances approved by the Commissioner of Internal Revenue Service, the Administrator shall take whatever action is necessary to eliminate such excess, all in accordance with Section 415 of the Code and the Regulations thereunder.

If the limitations of this Section [4.4](#) are exceeded because a Participant is also participating in another plan required to be aggregated with this Plan for purposes of Section 415 of the Code, then the extent to which annual contribution under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Administrator in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Administrator will advise affected Participants of any additional limitation on their annual contribution required by this paragraph.

The Administrator may operationally implement an ordering rule procedure for distribution of Deferral Contributions in order to meet the provisions of this Section [4.4](#).

4.5 Return of Contributions to Employer

If a contribution is made due to a mistake of fact by the Employer, the Employer may request that the Trustee return the contribution, without any interest or gain but reduced by any investment loss allocable to the contribution. The return shall be made as soon as practicable within one year after the date the contribution was made. Any interest or gain attributable to the contribution that is returned to the Employer shall be used to reduce future Employer Contributions or for plan administrative expenses as determined in the sole discretion of the Plan Administrator.

Article V - Maintenance and Valuation of Accounts

5.1 Establishment of Accounts

The Administrator shall maintain an Account for each Participant for the purpose of accounting for the Participant's beneficial interest in the Plan. Each Account shall be adjusted to reflect administrative expenses and any distributions. Each Account may consist of such subaccounts that the Administrator deems appropriate or necessary for the proper administration of the Plan.

5.2 Valuation of Accounts

As of each Valuation Date, the Accounts of each Participant shall be adjusted to reflect contributions, withdrawals, distributions, or income earned or accrued paid from the assets of the Plan, any administrative fees assessed, and any increase or decrease in the fair market value of the assets of the Plan since the preceding Valuation Date.

Article VI - Investment of Contributions

6.1 Investment Funds

- (a) Contributions under the Plan made by or on behalf of a Participant under the Plan shall be invested in one or more Investment Funds, including a common investment trust, as selected by the Administrator and made available to a Participant under the Plan. The Administrator shall monitor the Investment Funds and may modify or eliminate such Investment Funds as it determines necessary or appropriate in the capacity of a fiduciary at any time.
- (b) Pending the investment of any amounts in an Investment Fund, the Trustee may invest assets of the Trust Fund temporarily in interest-bearing accounts, certificates of deposit, Treasury bills, commercial paper, money market funds, short-term obligations of the United States Government, short-term investment funds, or other short-term obligations selected by the Trustee. The Trustee may keep such amounts of cash, as it, in its sole discretion, shall deem necessary or advisable as part of such Funds, all within the limitations specified in the Trust Agreement or other agreements pertaining to recordkeeping and/or trust agreements entered into for the Plan.
- (c) All interest, dividends, and proceeds from the disposition of and other income received with respect to assets held with respect to each of the Investment Funds shall be reinvested in the respective Investment Fund and all expenses of the Trust that are properly allocable to a particular Investment Fund shall be so allocated and charged.
- (d) The Administrator may elect to terminate the Investment Fund with respect to receiving future contributions but may elect to keep existing amounts currently invested in such Investment Fund. Such amounts shall continue to be invested with such Investment Fund or, alternatively, the Administrator may elect to transfer all amounts to be invested in a new Investment Fund. Upon election by the Administrator to transfer all investments to a new Investment Fund, the existing Investment Fund will value all accounts on the selected date of transfer and make such transfers as directed by the Administrator.

6.2 Investment of Participant Accounts

A Participant may, electronically or telephonically, in accordance with applicable administrative procedures established by the Plan Administrator, specify the percentages of his Accounts that shall be invested in each Fund maintained under the Plan. If a Participant fails to make an election under this Section [6.2](#), all of his Accounts shall be invested in the Fund that the Administrator determines, in its sole discretion, is consistent with the prudent discharge of its fiduciary duties.

6.3 Changing Investment Elections – Future Contributions

A Participant may, electronically or telephonically, in accordance with applicable administrative procedures established by the Plan Administrator, change his investment election as to subsequent contributions, subject to the limitations of Section [6.2](#), as of any Valuation Date.

6.4 Transfer Among Investment Funds

A Participant may, electronically or telephonically, in accordance with applicable administrative procedures established by the Plan Administrator and subject to any restrictions that may be imposed by particular Investment Funds, elect to transfer all or a portion of the balance in all of his Accounts between and among Investment Funds as of any Valuation Date. The Plan Administrator, however, reserves the right, in its sole discretion, to implement reasonable restrictions on a Participant's right to transfer among Investment Funds.

Article VII - Vesting

7.1 Full Vesting in Designated Accounts

A Participant shall at all times have a one hundred percent (100%) nonforfeitable vested right to the value of all his Accounts.

Article VIII - Withdrawals During Employment

8.1 General Rules Applicable to All In-Service Withdrawals

The only in-service withdrawals permitted by the Plan are those described in this [Article VIII](#).

Each in-service withdrawal request must be filed in accordance with applicable administrative procedures established by the Plan Administrator. Each withdrawal shall be determined as of the Valuation Date as soon as practicable after the withdrawal request is approved and shall be drawn, to the extent available, pro rata from the Investment Funds in which the Account is invested or in which the Accounts are invested if the withdrawal is taken from multiple Accounts. Only a Participant who has not incurred a Severance from Employment may request an in-service withdrawal. A withdrawal under this [Article VIII](#) may be paid only in the form of a lump sum. Spousal consent shall not be required for any withdrawal under this [Article VIII](#).

8.2 Withdrawals of Accounts

A Participant may at any time withdraw amounts from his Account under the following conditions:

- (a) From the portion of his Account attributable to amounts contributed as Employee Nonelective Contributions if the Participant is no longer eligible to make Employee Nonelective Contributions;
- (b) From the portion of his Account attributable to amounts contributed as Special Pay Contributions if the Participant is participating in the DROP retirement program; and
- (c) From his account to any state retirement system in which he or she participates, and which is a qualified plan under Code Section 401(a), in order to purchase additional pension plan service credits in accordance with applicable state law and applicable administrative procedures established by the Plan Administrator.

Article IX - Distributions Upon Severance from Employment

9.1 Eligibility for Distribution

A Participant's vested Account shall become payable upon Severance from Employment for any reason, including death.

9.2 Forms of Payment

- (a) In a single lump sum payment; or
- (b) In a series of substantially equal periodic payments made no less frequently than annually over a term certain with such payments made monthly, quarterly, semi-annually, or annually.

9.3 Timing of Payment

Benefits that become payable in accordance with Section [9.1](#) shall be distributed as soon as administratively feasible after the Participant, or the Beneficiary, as the case may be, elects, in accordance with procedures established by the Plan Administrator to receive a distribution. If the vested value of the Participant's Account is more than \$5,000 at the time benefits become distributable in accordance with Section [9.1](#), the Participant must consent to the distribution. Such consent must be obtained within the one hundred and eighty (180) day period ending on the date the Participant elects to receive a distribution.

If the vested value of the Participant's Account is \$5,000 or less but greater than \$1,000 at the time benefits become distributable in accordance with Section [9.1](#) and the Participant does not elect to have such distribution paid in the manner described in Section [9.7](#) or to receive the lump sum directly as a lump sum payment described in Section [9.2\(a\)](#), the Plan Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

The vested value of the Participant's Account for this purpose shall be determined with regard to that portion of the Account that is attributable to Rollover Contributions (and earnings allocable thereto) within the meaning of Sections 401(c), 403(a)(4), 403(b)(8), and 457(e)(16) of the Code.

9.4 Minimum Distribution Requirements

The requirements of this Section [9.4](#) shall take precedence over any inconsistent provisions of the Plan. All distributions required under this Section [9.4](#) shall be determined and made in accordance with the Regulations under Section 401(a)(9) of the Code, including the minimum distribution incidental benefits requirement of Section 401(a)(9)(G) of the Code.

(a) Time and Manner of Distribution

- (i) The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "Required Beginning Date". The Required Beginning Date, for purposes of this Section [9.4](#), means April 1st of the calendar year following the later of (i) the calendar year in which the Participant attains age 72 (age 70½ for a Participant born before July 1, 1949), or (ii) the calendar year in which the Participant retires.
- (ii) If the Participant dies before distributions begin, the Participant's entire interest will be distributed to the Participant's Beneficiary in a single lump sum payment no later than December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(b) Required Minimum Distributions During Participant's Lifetime

- (i) 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 (as defined below in Section [9.4\(d\)\(iii\)](#)) by the distribution period in the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9 of the 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 Regulation Section 1.401(a)(9)-9 of the Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.
- (ii) Required minimum distributions will be determined under this Section [9.4\(b\)](#) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

(c) Required Minimum Distributions After Participant's Death

- (i) If the Participant dies on or after the date distributions begin, the Participant's entire remaining interest will be distributed to the Participant's Beneficiary in a single lump sum payment no later than December 31st of the calendar year immediately following the calendar year in which the Participant died.
- (ii) If the Participant dies before the date distributions begin, the Participant's entire interest will be distributed to the Participant's Beneficiary in a single lump sum payment no later than December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(d) Definitions

The following definitions apply for purposes of this Section [9.4](#):

- (i) **"Designated Beneficiary"** means the individual who is designated as the beneficiary under Section [3.2](#) of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Regulation Section 1.401(a)(9)-1, Q&A-4.
- (ii) **"Distribution Calendar Year"** means 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 [9.4\(a\)\(ii\)](#). 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 31st of that Distribution Calendar Year.

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

9.5 Special Timing Rules

Unless a Participant elects otherwise, his vested Account shall be distributed to him no later than sixty (60) days after the close of the Plan Year in which occurs the latest of his Normal Retirement Age (or age 65, if earlier), the tenth (10th) anniversary of the year in which he commenced participation in the Plan, or the date of his Severance from Employment. A Participant must, however, file a claim for benefits before benefits will be distributed to him in accordance with this Section [9.5](#).

The failure of a Participant to consent to a distribution while his benefit is immediately distributable within the meaning of Section 411(a)(11) of the Code shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this Section [9.5](#).

9.6 Proof of Death

The Plan Administrator may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of the Accounts of a deceased Participant as the Plan Administrator may deem proper, and its determination of death and of the right of that Beneficiary or other person to receive payment shall be conclusive.

9.7 Direct Rollovers

- (a) In General. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section [9.7](#), a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (b) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (no 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 (10) years or more; or any distribution to the extent such distribution is required under Section 401(a)(9) of the Code. A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of amounts which are not includible in gross income.

However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, to a defined contribution plan described in Section 401(a) or 403(a) of the Code, or to an annuity contract described in Section 403(b) of the Code 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 includible.

- (c) Eligible Retirement Plan. An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, a simple retirement account described in Section 408(p) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state and which agrees to separately account for amounts transferred into such plan for the Plan or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. An individual retirement plan described in Section 408A of the Code shall be an Eligible Retirement Plan. In the case of a Distributee who is a nonspousal beneficiary of a deceased Participant, an individual retirement plan described in Section 402(c)(8)(B)(i) or (ii) of the Code that is established for the purpose of receiving the distribution on behalf of the nonspousal beneficiary shall be an Eligible Retirement Plan.
- (d) Distributee. 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 Section 414(p) of the Code, are Distributees with regard to the interest of the Spouse or former Spouse. A Distributee includes an individual who is both: (1) a designated beneficiary as defined in Section 401(a)(9)(E) of the Code of a deceased Participant and (2) not the surviving spouse of the Participant.
- (e) Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

9.8 Ordering Rules for Distributions

The Plan Administrator may, but is not required to, operationally implement an ordering rule procedure for distributions made in accordance with [Article IX](#) and withdrawals made in accordance with [Article VIII](#). Such ordering rules may specify which type of contributions shall be distributed first. Furthermore, such procedure may permit the Participant to elect which type of contributions shall be distributed first.

9.9 Spousal Consent

No distribution provided for in this [Article IX](#), shall require the written consent of a Participant's Spouse.

Article X - Top Heavy Provisions

The Plan is a Governmental Plan and is not subject to the top heavy provisions of Section 416 of the Code.

Article XI - Administration of Plan

11.1 Records and Notices

The Administrator shall keep a record of all its proceedings and acts with respect to its administration of the Plan and shall maintain all such books of accounts, records, and other data as may be necessary for the proper administration of the Plan. The Administrator shall have the discretionary authority to interpret the provisions of the Plan. Any action taken by the Administrator which is authorized, permitted, or required by the Plan, is final and binding on the Administrator, all persons who have or claim an interest under the Plan, and all third parties dealing with the Administrator. The Administrator shall notify the Trustee of any action taken by the Administrator affecting the Trustee and its obligations or rights regarding the Plan and, when required, shall notify any other interested person or persons. All actions taken by the Administrator shall be consistent with any plan charter and/or any plan investment policy statement.

11.2 Powers and Duties

The Administrator has the following powers and duties, subject to any limitations or conditions as set forth in the plan charter and/or the Plan Investment Policy Statement:

- (a) To determine the rights of eligibility of an Employee to participate in the Plan, the value of a Participant's Account, and the nonforfeitable percentage of each Participant's Account;
- (b) To adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan provided the rules are not inconsistent with the terms of the Plan;
- (c) To construe and enforce the terms of the Plan and the rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation. If the terms of the Plan are unclear, the Administrator may interpret the Plan, provided such interpretation is consistent with the provisions of Section 401(a) of the Code and is performed in a uniform and nondiscriminatory manner;
- (d) To direct the Trustee as respects the crediting and distribution of the Trust Fund;
- (e) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;
- (f) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (g) To engage the service of agents whom it may deem advisable to assist it with the performance of its duties;

- (h) To establish, in its sole discretion, a nondiscriminatory policy which the Trustee must observe in making loans, if any, to Participants and Beneficiaries;
- (i) To establish procedures, in its sole discretion, to assess each Participant's and Beneficiaries' Account, a per capita annual administrative fee, to be assessed to each Participant's Account on a quarterly basis.
- (j) To delegate administrative authority and to establish rules of procedure for such Administrator, including rules regarding how such Administrator is to act, the vote required for action by the Administrator, and other procedures for the operation of the Administrator as deemed appropriate by the Administrator.

All rules, procedures, and decisions of the Administrator shall be uniformly and consistently applied to all Participants in similar circumstances. Such rules, procedures, and decisions so made shall be conclusive and binding on all persons having an interest in the Plan.

The Administrator and any representative that the Administrator chooses to assist it to carry out its responsibilities under the Plan shall have the maximum discretionary authority permitted by the law to interpret, construe, and administer the Plan, to make determinations regarding Plan participation, enrollment, and eligibility for benefits, to evaluate and determine the validity of benefit claims, and to resolve any and all claims and disputes regarding the rights and entitlements of individuals to participate in the Plan and to receive benefits and payments pursuant to the Plan. The decisions of the Administrator and its representatives shall be given the maximum deference permitted by law.

11.3 Compensation and Expenses

The Employer shall have discretion to pay or reimburse (or to direct an Employer to pay or reimburse) any reasonable costs and expenses of the Plan, including but not limited to any operational and administrative expenses of the Plan as well as compensation of fiduciaries and costs and expenses incurred by the Administrator as a result of the performance of its duties and responsibilities hereunder or as may be required to operate and administer the Plan. Operational and administrative costs may include, but are not limited to legal fees, accounting fees, consulting fees, Employee and Participant communication fees, and third-party administrator fees. Costs and expenses of the Administrator may include, but are not limited to fees to accountants, consultants, counsel, specialists, and other persons employed or appointed to operate and administer the Plan or to help the Administrator or Employers perform their duties and responsibilities hereunder. Any reasonable costs and expenses, including any operational and administrative costs and expenses, of the Plan not so paid or reimbursed shall be paid from the assets of the Plan. Any person who receives full-time pay for other services to an Employer shall not be entitled to any compensation for services to the Plan. The members of the Administrator shall not receive compensation with respect to their services for the Administrator but may be reimbursed for their expenses properly and actually incurred as members of the Administrator.

11.4 Claims Procedure

- (a) Definitions. For purposes of this Section [11.4](#), the following words or phrases in quotes when capitalized will have the meaning set forth below:
- (i) **“Adverse Benefit Determination”** means a denial, reduction, or the termination of, or a failure to provide or make payment (in whole or in part) with respect to a Claim for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a Participant’s or Beneficiary’s eligibility to participate in the Plan.
 - (ii) **“Claim”** means a request for a benefit or eligibility to participate in the Plan, made by a Claimant in accordance with the Plan’s procedures for filing Claims, as described in this Section [11.4](#).
 - (iii) **“Claimant”** is defined in Section [11.4\(b\)\(ii\)](#).
 - (iv) **“Claims Administrator”** means the Plan Administrator, or such other party designated by the Administrator to review Claims.
 - (v) **“Notice” or “Notification”** means the delivery or furnishing of information to an individual in a manner that would satisfies applicable Department of Labor regulations with respect to material required to be furnished or made available to an individual.
 - (vi) **“Relevant Documents”** include documents, records, or other information with respect to a Claim that:
 - (A) Were relied upon by the Claims Administrator in making the benefit determination;
 - (B) Were submitted to, considered by, or generated for, the Claims Administrator in the course of making the benefit determination, without regard to whether such documents, records, or other information were relied upon by the Claims Administrator in making the benefit determination;
 - (C) Demonstrate compliance with administrative processes and safeguards required in making the benefit determination; or
 - (D) Constitute a statement of policy or guidance with respect to the Plan concerning the denied benefit for the Participant’s circumstances, without regard to whether such advice was relied upon by the Claims Administrator in making the benefit determination.

- (b) Procedure for Filing a Claim. In order for a communication from a Claimant to constitute a valid Claim, it must satisfy the following paragraphs (i) and (ii) of this paragraph (b).
- (i) Any Claim submitted by a Claimant must be in writing on the appropriate Claim form (or in such other manner acceptable to the Claims Administrator) and delivered, along with any supporting comments, documents, records, and other information, to the Claims Administrator in person, or by mail postage paid, to the address for the Claims Administrator as may be provided to a Participant.
 - (ii) Claims and appeals of denied Claims may be pursued by a Participant or an authorized representative of the Participant (each of whom will be referred to in this section as a "Claimant"). However, the Claims Administrator may establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a Participant.
- (c) Initial Claim Review. The initial Claim review will be conducted by the Claims Administrator, with or without the presence of the Claimant, as determined by the Claims Administrator in its discretion. The Claims Administrator will consider the applicable terms and provisions of the Plan and amendments to the Plan, information and evidence that is presented by the Claimant, and any other information it deems relevant. In reviewing the Claim, the Claims Administrator will also consider and be consistent with prior determinations of Claims from other Claimants who were similarly situated, and which have been processed through the Plan's claims and appeals procedures within the past twenty-four (24) months.
- (d) Initial Benefit Determination.
- (i) The Claims Administrator will notify the Claimant of the Claim Administrator's determination within a reasonable period of time, but in any event (except as described in paragraph (ii) below) within ninety (90) days after receipt of the Claim by the Claims Administrator.
 - (ii) The Claims Administrator may extend the period for making the benefit determination by ninety (90) days if it determines that such an extension is necessary due to matters beyond the control of the Plan and if it notifies the Claimant, prior to the expiration of the initial ninety (90) day period, of circumstances requiring the extension of time and the date by which the Claims Administrator expects to render a decision.

(e) Manner and Content of Notification of Adverse Benefit Determination.

- (i) The Claims Administrator will provide a Claimant with written or electronic Notice of any Adverse Benefit Determination that would satisfy Department of Labor regulations.
- (ii) The Notification will set forth in a manner calculated to be understood by the Claimant:
 - (A) The specific reason or reasons for the Adverse Benefit Determination;
 - (B) Reference to the specific provision(s) of the Plan on which the determination is based;
 - (C) Description of any additional material or information necessary for the Claimant to perfect the Claim and an explanation of why such material or information is necessary; and
 - (D) A description of the Plan's review procedures and the time limits applicable to such procedures.

(f) Procedure for Filing a Review of an Adverse Benefit Determination.

- (i) Any appeal of an Adverse Benefit Determination by a Claimant must be brought to the Administrator within sixty (60) days after receipt of the Notice of the Adverse Benefit Determination. Failure to appeal within such sixty (60) day period will be deemed to be a failure to exhaust all administrative remedies under the Plan.

The appeal must be in writing, utilizing the appropriate form provided by the Administrator (or in such other manner acceptable to the Administrator); provided, however, that if the Administrator does not provide the appropriate form, no particular form is required to be utilized by the Participant. The appeal must be filed with the Administrator at the address listed in the Plan Summary or at the principal place of business of the Employer.
- (ii) A Claimant will have the opportunity to submit written comments, documents, records, and other information relating to the Claim.

- (g) Review Procedures for Adverse Benefit Determinations.
- (i) The Administrator will provide a review that takes into account all comments, documents, records, and other information submitted by the Claimant without regard to whether such information was submitted or considered in the initial benefit determination.
 - (ii) The review procedure may not require more than two levels of appeals of an Adverse Benefit Determination.
- (h) Timing and Notification of Benefit Determination on Review. The Administrator will make a determination on the appeal of the Adverse Benefit Determination no later than the date of the meeting of the Administrator that immediately follows the receipt of the appeal of the Adverse Benefit Determination, unless the appeal is filed within thirty (30) days preceding the date of such meeting. In such case, a benefit determination will be made by no later than the date of the second meeting of the Administrator following the receipt of the appeal of the Adverse Benefit Determination. If the Administrator determines that special circumstances require an extension of time for processing the appeal of the Adverse Benefit Determination, a benefit determination shall be rendered not later than the third meeting of the Administrator following receipt of the appeal of the Adverse Benefit Determination. If the Administrator determines that an extension is required, the Administrator shall provide the Claimant with written Notice of the extension, describing the special circumstances, and the date as of which the benefit determination will be made, prior to the commencement of the extension. The Administrator shall notify the Claimant, in accordance with (i) of this Section 11.4 as soon as possible, but not later than five (5) days after the benefit determination is made.

If such an extension is necessary due to a failure of the Claimant to submit the information necessary to decide the Claim, the period in which the Administrator is required to make a decision will be tolled from the date on which the notification is sent to the Claimant until the Claimant adequately responds to the request for additional information.

- (i) Manner and Content of Notification of Benefit Determination on Review.
 - (i) The Administrator will provide a written or electronic Notice of the Plan's benefit determination on review, in accordance with applicable Department of Labor regulations.
 - (ii) The Notification will set forth:
 - (A) The specific reason or reasons for the Adverse Benefit Determination;
 - (B) Reference to the specific provision(s) of the Plan on which the determination is based; and
 - (C) A statement that the Claimant is entitled to receive, upon request, and free of charge, reasonable access to and copies of all Relevant Documents.
- (j) Exhaustion of Administrative Remedies. The Claims procedures set forth in this Section [11.4](#) shall be strictly adhered to by each Participant or Beneficiary under the Plan and no judicial or arbitration proceedings with respect to any claim for Plan benefits hereunder shall be commenced by any such Participant or Beneficiary until the proceedings set forth herein have been exhausted in full.
- (k) Statute of Limitations. No cause of action may be brought by a Claimant who has received an Adverse Benefit Determination later than two (2) years following the date of such Adverse Benefit Determination.

Article XII - Management of Funds

12.1 Appointment of Trustees

Subject to the provisions of Section [12.4](#), the UF Sponsored Retirement Plans Advisory Group (the "Advisory Group") shall appoint one or more Trustees to receive and hold in trust all contributions paid into the Trust Fund. Such Trustee or Trustees shall serve at the pleasure of the Advisory Group and shall have such rights, powers, and duties as the Advisory Group shall from time to time determine including but not limited to those stated below.

12.2 Investment of Trust Fund by Trustees

All contributions made to the Trust Fund pursuant to the Plan shall be paid to the Trustees and, except as herein otherwise provided, shall be held, invested, and reinvested by the Trustees without distinction between principal and income in such securities or such other property, real or personal, wherever situated, as the Trustees shall deem advisable, including, but not limited to, shares of stock, common or preferred, whether or not listed on any exchange, participations in mutual investment funds, bonds and mortgages, and other evidences of indebtedness or ownership, and participations in any common trust fund established or maintained by the Trustees for the collective investment of fiduciary funds and shall not be limited by any state statute or judicial decision prescribing or limiting investments appropriate for Trustees. The Trustees shall hold and retain all the property and assets of the Trust Fund including income from investments and from all other sources, for the exclusive benefit of the Participants and their Beneficiaries, as provided herein, and for paying the costs and expenses of administering the Plan or Trust Fund, to the extent that the same are not paid by any Employer. Reasonable expenses attendant to qualified domestic relations order determinations shall be allocated to the Account of the Participant or Beneficiary seeking the determination.

12.3 Investment of Trust Fund by Investment Manager

The Employer may, in its sole discretion, enter into one or more agreements for the appointment of one or more Investment Managers to supervise and direct all the investment and reinvestment of a portion or all of the Trust Fund in accordance with the provisions of the Plan in the same manner and with the same powers, duties, obligations, responsibilities, and limitations as apply to the Trustees. As a condition to its appointment, an Investment Manager shall acknowledge in writing that it is a fiduciary with respect to the Trust Fund.

An Investment Manager so appointed shall be an investment advisor registered under the Investment Advisors Act of 1940, a bank as defined in such Act or an insurance Employer that is qualified to manage the assets of employee benefit plans pursuant to the laws of more than one state. The Trustees shall be bound by the supervision and direction of the Investment Manager, unless and until the Employer amends or revokes the appointment or authority of the Investment Manager.

The Employer may furnish an Investment Manager with written investment guidelines for investment of the Trust Fund assets, which guidelines may include directions with respect to diversification of the investments. Any Investment Manager shall receive such reasonable compensation chargeable against the Trust Fund or payable by each Employer as shall be agreed upon by the Employer. The Employer may revoke any agreement with the Investment Manager at any time by thirty (30) days' written notice to the Investment Manager. Any Investment Manager may resign by thirty (30) days' written notice to the Employer.

12.4 Exclusive Benefit Rule

Except as otherwise provided in the Plan, no part of the corpus or income of the assets of the Plan shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and other persons entitled to benefits under the Plan. No person shall have any interest in or right to any part of the earnings of the assets of the Plan, or any right in, or to, any part of the assets held under the Plan, except as and to the extent expressly provided in the Plan.

Article XIII - Amendment, Merger, Termination of Plan

13.1 Amendment of Plan

Subject to the provisions of Section [13.4](#), the Employer by action of its Board of Trustees, or its delegate, shall have the right at any time to amend the Plan, and retroactively if deemed necessary or appropriate, except that no such amendment shall make it possible for any part of the assets of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of persons entitled to benefits under the Plan. No amendment shall be made which has the effect of decreasing the balance of the Accounts of any Participant or of reducing the nonforfeitable percentage computed under the Plan as in effect on the date on which the amendment is adopted or, if later, the date on which the amendment becomes effective.

All such amendments shall be as set forth in an instrument in writing executed by an officer or other authorized representative of the Employer. Any amendment may be current, retroactive, or prospective, in each case as provided therein.

13.2 Merger or Consolidation

The Plan may not be merged or consolidated with, and its assets or liabilities may not be transferred to, any other plan unless each person entitled to benefits under the Plan would, if the resulting plan were then terminated, receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had then terminated.

13.3 Participating Employers

No employer who is not an Aggregated Employer of the Employer shall be permitted to adopt this Plan.

13.4 Termination of Plan

- (a) The Board of Trustees, or its delegate, may terminate the Plan or completely discontinue contributions under the Plan for any reason at any time. In the case of the termination or partial termination of the Plan, or of the complete discontinuance of Employer contributions to the Plan, affected Participants shall be one hundred percent (100%) vested in and have a nonforfeitable right to the total amount in all of their Accounts under the Plan as of the date of the termination or discontinuance. The total amount in each Participant's Account shall be distributed, as the Plan Administrator shall direct, to him or for his benefit or continued in trust for his benefit. The Board of Trustees shall be responsible for ensuring that any termination of the Plan is in compliance with any collective bargaining agreement.
- (b) The Plan will be deemed terminated (1) if and when the Employer is judicially declared bankrupt or executes a general assignment to or for the benefit of its creditors, (2) if and when the Employer is a party to a merger in which it is not the surviving organization unless the surviving organization adopts the Plan within sixty (60) days after the merger, or (3) upon dissolution of the Employer.

Article XIV - Miscellaneous Provisions

14.1 Limitation of Liability

Neither the Employer, any Employer, the Administrator, or any of their respective directors, trustees, members, officers, and employees, shall incur any liability for any act or failure to act unless such act or failure to act constitutes willful misconduct or gross negligence in relation to the Plan.

14.2 Indemnification

The Employer, by the adoption of this Plan, indemnifies and holds the Administrator, jointly and severally, harmless from the effects and consequences of their acts, omissions, and conduct in their official capacities, except to the extent that the effects and consequences result from their own willful misconduct, breach of good faith, or gross negligence in the performance of their duties. The foregoing right of indemnification will not be exclusive of other rights to which each such member may be entitled by any contract or other instrument or as a matter of law. The Employer shall purchase liability insurance to meet its indemnification obligations under this Plan.

The Employer shall purchase insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary. A fiduciary may purchase insurance to cover any potential fiduciary for his own account. An Employer or an employee organization may purchase insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to the Plan.

14.3 Nonalienation of Benefits

(a) None of the payments, benefits or rights of any Participant shall be subject to any claim of any creditor of such Participant and, in particular, shall be free from attachment, garnishment, trustee's process, or any other legal or equitable process available to any creditor of such Participant. No Participant shall have the right to alienate, commute, pledge, encumber, or assign any of the benefits or payments which he or she may expect to receive, contingently or otherwise, under the Plan, except the right to designate a Beneficiary or Beneficiaries as hereinbefore provided.

- (b) Section [14.3\(a\)](#) also shall 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, unless such order is a qualified domestic relations order as defined in Section 414(p) of the Code. For this purpose, on or after August 17, 2007, a domestic relations order that otherwise satisfies the requirements of a qualified domestic relations order as defined in Section 414(p) of the Code will not fail to be treated as a qualified domestic relations order (“QDRO”) solely because the order is issued after, or revises another domestic relations order or QDRO or solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant’s death.

Any fees associated with the review, processing, and administration of a qualified domestic relations order shall be charged against the Account of the affected Participant and the account of the affected Alternate Payee. The Plan’s qualified domestic relations order procedures are set forth in a separate document, which is incorporated herein as if its terms were fully set forth in this document.

14.4 Employment Not Guaranteed by Plan

Neither the establishment of the Plan nor its amendment nor the granting of a benefit pursuant to the Plan shall be construed as giving any Participant the right to continue as an Employee of an Employer, as limiting the rights of such Employer to dismiss or impose penalties upon the Participant or as modifying in any other way the terms of employment of any Participant.

14.5 Form of Communication

Any election, application, claim, notice, or other communication required or permitted to be made by or to a Participant, the Administrator, the Employer, or an Employer in writing shall be made in such form as the Administrator or the Employer as the case may be, shall prescribe.

Such communication shall be effective upon mailing if sent first class, postage prepaid, and addressed to the addressee at its principal office, or to the Participant at his last known address, or upon personal delivery, if delivered to an officer of the addressee or to the Participant, as the case may be.

Notwithstanding anything in the Plan to the contrary, any notice, form, or other communication hereunder shall be made in the manner prescribed by the Administrator in accordance with applicable law, which may include, in appropriate circumstances, communication by telephone or by electronic or other means.

14.6 Facility of Payment

If a Participant or Beneficiary entitled to receive payments hereunder is unable to care for his affairs because of illness, accident, or disability, and a duly qualified guardian or legal representative is appointed for such Participant or Beneficiary, the Administrator shall direct the Trustee to pay any amount to which the Participant or Beneficiary is entitled to such duly qualified guardian or legal representative upon claim of such guardian or legal representative.

If a duly qualified guardian or legal representative is not appointed for such Participant or Beneficiary, the Administrator shall direct the Trustee to pay any amount to which the Participant or Beneficiary is entitled to such person's Spouse, child, grandchild, parent, brother or sister, or to a person deemed by the Administrator to have incurred expense for such person entitled to payment. Any payment made pursuant to this Section [14.6](#) in good faith shall be a payment for the account of the Participant or Beneficiary and shall be a complete discharge from any liability of the Plan and the Administrator.

14.7 Reduction for Overpayment

The Administrator will, whenever it determines that a person has received a benefit payment under the Plan in excess of the amount to which the person is entitled under the terms of the Plan, make a reasonable attempt to collect such overpayment from the person. The amount of any overpayment may be set off against further amounts payable to or on account of the person who received the overpayment.

14.8 Unclaimed Benefits

If the Administrator cannot ascertain the whereabouts of any person to whom a payment is due under the Plan, and if, after five (5) years from the date such payment is due, a notice of such payment due is mailed to the last known address of such person, as shown on the records of the Employer, and within three (3) months after such mailing such person has not made written claim therefore, the Administrator, if it so elects, may direct that such payment and all remaining payments otherwise due to such person be cancelled on the records of the Plan and the amount thereof shall be used to reduce future Employer Contributions or for plan administrative expenses as determined in the sole discretion of the Plan Administrator and upon such cancellation, the Plan shall have no further liability therefore except that, in the event such person later notifies the Administrator of his whereabouts and requests the payment or payments due to him, the amount so applied shall be paid to him as provided in [Article IX](#) without adjustment for gains and losses.

14.9 Payments to Minors and Incompetents

If the Administrator receives evidence satisfactory to it that any person entitled to receive any benefit under the Plan is, at the time when such benefit is payable, a minor or physically or mentally incompetent to receive such benefit and to give a valid release therefore, and that another individual or institution is then maintaining or has custody of such person, and that no guardian or other representative of the estate of such person has been duly appointed, the Administrator may authorize payment of such benefit otherwise payable to such person to such other individual or institution, and the release to such other individual or institution will be a valid and complete discharge for the purpose of such benefit.

14.10 Reliance on Information Provided to the Plan

Notwithstanding anything contained herein to the contrary, if an individual is provided a statement in confirmation of any election or information provided to the Plan by such individual hereunder, the election or information reflected on such confirmation statement will be deemed to be accurate and may be conclusively relied upon for all purposes hereunder unless the individual timely demonstrates to the Administrator, in the form and manner established by the Administrator, that the election or information reflected on the confirmation statement is not what the individual originally delivered to the Administrator.

14.11 Service in More Than One Fiduciary Capacity

Any individual, entity, or group of persons may serve in more than one fiduciary capacity with respect to the Plan.

14.12 Binding Effect of Employer's Actions

Each Employer shall be bound by any and all decisions and actions taken by the Employer hereunder.

14.13 Military Service

Notwithstanding any other provision of the Plan to the contrary, service credit and contributions with respect to qualified Military Service will be provided in accordance with Section 414(u) of the Code.

14.14 Limitation of Rights

Neither the Employer nor the Administrator represents or guarantees that the value of a Participant's Account(s) shall at any time equal or exceed the amount previously contributed thereto. Neither the establishment of the Plan nor any modification thereof, nor the creating of any account, nor the payment of any benefits shall be construed as giving to any Participant or other person any legal or equitable right against the Employer except as provided in the Plan.

14.15 Limitation of Third Party Rights

Nothing expressed or implied in the Plan is intended or will be construed to confer upon or give to any person, firm, or association other than the Employer, the Participants or Beneficiaries, and their successors in interest, any right, remedy, or claim under or by reason of this Plan except pursuant to a QDRO.

14.16 Governmental Plan

Notwithstanding any other provision of this Plan, it is the intention of the Employer that the Plan is intended to be a governmental plan as that term is defined in the Code and ERISA, that the Plan is not subject to certain Code rules that might otherwise apply to a non-governmental plan, and that any reference in the Plan to any ERISA or Code provisions that otherwise would not apply to a governmental plan are used in the Plan voluntarily and for the Plan's convenience and do not constitute any election that the Plan will be required to be subject to ERISA or such provisions.

14.17 Invalid Provisions

In case any provision of this Plan is held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining parts of the Plan. The Plan will be construed and enforced as if the illegal and invalid provisions had never been included.

14.18 One Plan

This Plan may be executed in any number of counterparts, each of which will be deemed an original and the counterparts will constitute one and the same instrument and may be sufficiently evidenced by any one counterpart.

14.19 Use and Form of Words

Whenever any words are used herein in the masculine gender, they will be construed as though they were also used in the feminine gender in all cases where that gender would apply, and vice versa. Whenever any words are used herein in the singular form, they will be construed as though they were also used in the plural form in all cases where the plural form would apply, and vice versa.

14.20 Headings

Headings to Articles and Sections are inserted solely for convenience and reference, and in the case of any conflict, the text, rather than the headings, shall control.

14.21 Authorization

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by any officer thereunto authorized by the Employer.

14.22 Governing Law

The provisions of this Plan, and the rights and obligations herein created, will be governed by and construed according to the federal laws governing employee benefit plans under the Code and to the extent not preempted by Federal law, shall be interpreted according to the substantive law of the State of Florida.

14.23 Receipt and Release

Any final payments or distribution to any Participant, his Beneficiary or his legal representative in accordance with the Plan shall be in full satisfaction of all claims against the Administrator and the Employer.

14.24 Forum and Venue

Any judicial action related to the provisions of this Plan, and the rights and obligations herein created shall be brought in a court, either federal or state, as may be applicable, located in Alachua County, Florida.

IN WITNESS WHEREOF, and as evidence of the adoption of the Plan, the undersigned officer duly authorized has appended his or her signature this 24th day of November, 2021.

University of Florida, Board of Trustees

By:  _____
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Title: Vice President for UF Human Resources