

070199

OPTIONAL RETIREMENT PROGRAM  
OF  
THE UNIVERSITY OF NORTH CAROLINA

Effective Date  
July 1, 1985

Amended and Restated  
July 1, 1999

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## INTRODUCTION

The University of North Carolina adopted an Optional Retirement Program effective January 14, 1972. That Program was implemented pursuant to Internal Revenue Code (IRC) Section 403(b), requiring both employer and participant contributions.

Effective July 1, 1985, the Optional Retirement Program substantially remained the same except for the operative provisions of the IRC under which it was to qualify. As of said July 1, 1985, the plan was amended to comply with IRC Sections 403(a) and 414(h). The plan was subsequently amended and restated effective July 1, 1989.

The amended and restated money purchase plan herein contained incorporates amendments, effective July 1, 1995, to the earlier plan provisions, rather than constitutes a replacement to such plan. The plan provisions in effect immediately prior to these July 1, 1995 amendments but modified by Section 6.02 of this amended and restated Plan shall remain in effect for those Participants who are not actively employed by the participating Employing Institutions at any time after July 1, 1995. The assets held under the Contracts shall continue to be held pursuant to the Plan as herein amended.

It is intended that this amended and restated Plan, together with the Contracts, meet all the requirements of the Internal Revenue Code of 1986 ("IRC"), as amended, and the Plan shall be interpreted, wherever possible, to comply with the terms of the IRC and all formal regulations and rulings issued under the IRC and amendments thereto.

Effective July 1, 1999, the plan was amended and restated to incorporate the amendment adopted on November 14, 1997 and to include mutual funds as plan investments, and, as such, said mutual funds shall be held in trust pursuant to IRC Section 401(a).

Effective July 1, 1999, the Plan as amended and restated has the terms and provisions hereinafter set forth.

## ARTICLE II

### DEFINITIONS

As used herein, unless otherwise required by the context, the following words and phrases shall have the meanings indicated:

- 1.01 Adjustment. means the net increases and decreases in the market value of the Investment Fund during a Plan Year or other period exclusive of any Contribution during such year or other period. Such increases and decreases shall include such items as realized or unrealized investment gains and losses and investment income and may include expenses of administering the Investment Fund and the Plan.
- 1.02 Affiliate. means an instrumentality of the State of North Carolina which has not adopted the Plan.
- 1.03 Annual Additions. means for any Employee in any Limitation Year, the sum of (a) Contributions made by the Employing Institution, (b) Contributions made by the Employee and (c) such other amounts as may be applicable pursuant to IRC Sections 415(c)(2) and 419(e).
- 1.04 Beneficiary. means any person designated by a Participant or otherwise entitled to receive benefits that may become payable hereunder after the death of such Participant.

1.05 Board. means the Board of Governors of The University of North Carolina.

1.06 Compensation. means, for any Employee, total earnings, prior to withholding, as reported on Form W-2, paid to him by the Employing Institution as well as (a) any portion of said Employee's pay which would be due and payable had he not signed a salary reduction agreement in order to participate in a tax sheltered annuity program pursuant to IRC Section 403(b), (b) any portion of an Employee's pay which is contributed by The University pursuant to IRC Section 414(h) and (c) any other amounts which the Employee could have elected to receive as cash in the current year as taxable income prior to having such amount contributed to a plan which is maintained pursuant to IRC Section 401(k) and in lieu of a non-taxable benefit under a plan which is maintained pursuant to IRC Section 125. Compensation shall exclude extraordinary compensation such as the imputed value of group life insurance and any University Contributions to this or any other employee benefit program.

1.06(a) Effective for Plan Years commencing on or after July 1, 1989, in no event shall Compensation



during a Plan Year exceed two hundred thousand dollars (\$200,000) or such other adjusted amount as may be determined by the Secretary of the Treasury pursuant to IRC Section 401(a)(17), provided that the increase determined as of any January 1 of a calendar year by the Secretary of the Treasury shall be effective for Plan Years beginning in such calendar year. If the adjusted two hundred thousand dollar (\$200,000) limit is exceeded, as a result of the application of such rules, then the limitation shall be prorated among the affected individuals in proportion to each such individual's Compensation as determined under this Section prior to the application of the limit.

1.06(b) Effective for Plan Years commencing on or after July 1, 1994, the two hundred thousand dollar (\$200,000) limit referenced in subsection 1.06(a) shall be one hundred fifty thousand dollars (\$150,000) (or such other adjusted amount as may be determined by the Secretary of Treasury pursuant to IRC Section 401(a)(17)).

- 1.06(c) Notwithstanding subsections 1.06(a) and (b), in the case of an "Eligible Participant", the dollar limitation herein provided in subsection 1.06(b) shall not apply to the extent the amount of Compensation which is allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under subsection 1.06(a) as in effect on July 1, 1993.
- 1.06(d) For purposes of this Section 1.06, "Eligible Participant" shall mean an individual who first became a Participant on or before December 31, 1995.
- 1.06(e) Subsections 1.06(b), (c), and (d) shall have no force and effect and shall not be considered an amendment to this Plan until the first day of the Plan Year commencing on or after December 31, 1995.
- 1.06(f) For Plan Years commencing on and after January 1, 1997, in determining the Compensation of an Employee for purposes of applying the IRC Section 401(a)(17) limit, the family aggregation rules of

IRS Section 414(g)(6) as in effect prior to  
January 1, 1997 shall no longer apply.

- 1.07 Contract(s). means any type of annuity contract(s) issued by an Insurance Company(ies) to effect the purposes of the Plan.
- 1.08 Contributions. means payments as provided herein by The University and/or the Participants to the Insurance Company(ies) or Trustee for the purpose of providing the benefits under this Plan.
- 1.09 Defined Benefit Plan. means a plan established and qualified under IRC Section 401 or 403(a), except to the extent it is, or is treated as, a Defined Contribution Plan.
- 1.10 Defined Contribution Plan. means a plan which is established and qualified under IRC Section 401 or 403(a), which provides for an individual account for each participant therein and for benefits based solely on the amount contributed to each participant's account and any income and expenses or gains or losses (both realized and unrealized) which may be allocated to such accounts.

- 1.11 Effective Date. means July 1, 1985, or such later date as of which an Employing Institution shall adopt the Plan for its Employees.
- 1.12 Employee. means any of the administrators or faculty of the University with the rank of instructor or above who (i) had been Participants of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought participation under Article II. For purposes of this Plan, Employee shall only include those employed in permanent job positions at least three-quarter (3/4) time for nine (9) months per calendar year.
- 1.13 Employee Account. means that portion of a person's Individual Account attributable to (a) the Employee's Contribution allocated to such Participant pursuant to Section 3.03 and (b) the Participant's proportionate share of the adjustments attributable to his Employee Account.
- 1.14 Employee Contributions. means Contributions made by an Employee pursuant to Section 3.03.
- 1.15 Employing Institution. means, collectively or individually, as the context may indicate, The University or any of its constituent institutions.

1.16 Eligible Service. means the completion of the number of months during a contract year of the Participant sufficient to satisfy the service requirement of the employment agreement for that contract year. Service completed during a contract year totaling less than the total months of the contract year shall be credited as a fraction whose numerator is the number of months of completed service during the contract year and whose denominator is the number of months of that contract year.

1.17 Fiduciary. means The University, the Board and any individual, corporation, firm, or other entity which has responsibility for the management of the Plan or the disposition of its assets.

1.18 Forfeiture. means any amount held upon the termination of participation of a Participant which he is not entitled to receive as a distribution in accordance with the terms of Section 4.01.

1.19 Former Participant. means a Participant whose participation in the Plan has terminated and who has not received payment of his entire vested Individual Account.

1.20 Individual Account. means the detailed record kept of the amounts credited or charged to each Participant in

accordance with the terms hereof. Such Individual Account is comprised of a University Account and an Employee Account.

1.21 Insurance Company(ies). means, effective July 1, 1992, the Teachers Insurance and Annuity Association-College Retirement Equities Fund, Lincoln National Life Insurance Company, and The Variable Annuity Life Insurance Company.

1.22 Investment Fund. means an Investment Fund described in Article V.

1.23 IRC. means the Internal Revenue Code of 1986, as amended. Any reference to any section of the IRC shall be deemed to include any applicable regulations and rulings pertaining to such section and shall also be deemed a reference to comparable provisions of future laws.

1.24 Like Retirement Plan. means a retirement plan of an institution or organization of higher education in which the former Participant participates through one or more annuity contracts of companies with whom the former Participant participated in the Plan, or in which he could have participated if the former Participant had continued participation in the Plan.

1.25 Limitation Year. means the twelve (12) month period commencing July 1 and ending June 30.

However, for the period commencing July 1, 1996, the Limitation Year shall be the six (6) month period ending December 31, 1996. Thereafter, the Limitation Year shall mean the twelve (12) month period beginning on January 1, and ending December 31.

1.26 Maximum Compensation. means Compensation as defined in Section 1.06 but limited according to subsection 3.07(b). Notwithstanding these provisions, this definition shall be interpreted consistent with IRC Section 415. Further, such law and related regulations shall be controlling in all determinations under this definition, inclusive of any provisions and requirements stated in such law and regulations but not expressly set out in this plan document.

1.27 Mutual Fund. means any regulated investment company within the meaning of Code Section 851(a) which issues only redeemable stock.

1.28 Participant. means any Employee who becomes a Participant as provided in Article II.

1.29 Plan or Program. means the Optional Retirement Program of The University of North Carolina, as contained herein or as duly amended, including the Appendix (“The University of North Carolina Qualified Governmental Excess Benefit Arrangement”).

1.30 Plan Administrator. means that person who has been named by the President of The University to administer the Plan. If a Plan Administrator is not so appointed, The University shall be deemed the Plan Administrator with respect to the pertinent Employing Institution.

1.31 Plan Year. means for periods prior to July 1, 1996, the twelve (12) month period beginning on July 1 and ending on June 30. Effective January 1, 1997, Plan Year means the six (6) month period commencing on July 1, 1996, and ending on December 31, 1996. Commencing January 1, 1997, Plan Year shall mean each twelve (12) month period beginning on January 1 and ending on December 31.

1.32 Retires or Retired. means the status of a former Participant who either:  
1.32(a) has announced in writing to the General Administration of the Employing Institution that



he has retired or has ceased indefinitely to be employed; or

1.32(b) during the twelve (12) month period immediately following the end of participation in the Plan (1) has not actively become the common-law employee of a Subsequent Employer, and (2) has not become enrolled in a timely manner in a Like Retirement Plan of the Subsequent Employer.

1.33 Retirement System. means The Teachers' and State Employees' Retirement System of North Carolina.

1.34 Subsequent Employer. means an employer with whom the Participant commences employment service next following service under the Plan with an Employing Institution.

1.35 Timely Enroll or Timely Enrollment. in a Like Retirement Plan of a Subsequent Employer means formal enrollment in such a plan in the manner prescribed by the Subsequent Employer, provided that timely enrollment shall not include enrollment which has not been effected within twelve (12) months following termination of the Eligible Service in the Plan.

1.36 Trust Agreement. means the agreement entered into between the Employing Institution and the Trustee.

- 1.37 Trustee. means individual, individuals or financial institution, or a combination of them, designated in the Trust Agreement to hold in trust any assets of the Plan for the purpose of providing benefits under the Plan, and shall include any successor trustee to the trustee initially designated in the Trust Agreement.
- 1.38 University. means The University of North Carolina.
- 1.39 University Account. means that portion of a Participant's Individual Account attributable to (a) the University Contribution allocated to such Participant pursuant to Section 3.02 and (b) the Participant's proportionate share of the Adjustments attributable to his University Account.
- 1.40 University Contributions. means Contributions made by the Employing Institution of The University pursuant to Section 3.02.
- 1.41 Valuation Date. means the last day of each Plan year subsequent to the Effective Date, as of which date the Investment Fund shall be valued at fair market value. From time to time, the Plan Administrator or its delegate may value the Investment Fund as of any other date as it deems desirable.

## ARTICLE II

### ELIGIBILITY AND PARTICIPATION AND PARTICIPATION

#### 2.01 Eligibility.

2.01(a) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, session Laws of 1971, are deemed automatically enrolled in the Program as provided hereunder.

2.01(b) Eligible Employees initially appointed on or after July 1, 1985, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with provisions of law applicable thereto or (ii) to participate in this Optional Retirement Program. This election shall be made in writing and shall be filed with the Retirement System and with the Employing Institution and shall be effective as of the date of entry into eligible service.

2.01(c) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible Employee failing to elect to participate in the Optional Retirement Program at the time of

entry into eligible service shall be enrolled automatically as a member of the Retirement System. The application of such irrevocable election under circumstances in which a Participant's employment relationship with The University of North Carolina has been severed shall be made pursuant to rules established by The University. Such rules shall be applied and administered for all Participants in a uniform and nondiscriminatory manner. Further, any such rule shall not be inconsistent with the requirements of the Teacher's and State Employee's Retirement System (TSERS).

2.01(d) No election by an eligible Employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the issuance of a Contract or Contracts or trust participation under the Program.

2.02 Participation. Each person who becomes a Participant shall remain a Participant as long as he remains an

Employee, or he is entitled to future benefits under the terms of the Plan.

2.03 Beneficiary Designation. Upon commencing participation, each Participant shall designate a Beneficiary on forms furnished by the Plan Administrator or its delegate. Such forms shall be maintained in files held by the Plan Administrator or its delegate. From time to time, the Participant may change his Beneficiary by written notice to the Plan Administrator or its delegate. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under this Plan shall cease.

If no duly designated Beneficiary exists at the date of death of the Participant, or if the Beneficiary designated has died prior to the death of the Participant, or if the Participant has revoked a prior designation in writing filed with the Plan Administrator without having filed a new designation, then any death benefits which would have been payable to the Beneficiary shall be payable to the Participant's spouse, if living; if not living, equally to the Participant's children; or if none survive, then to the Participant's estate.

To the extent a Participant's interest in this Plan is invested in a Contract issued by an Insurance Company and such Contract shall have Beneficiary designation and/or payment procedures which shall be inconsistent with this Section 2.03, such Contract provisions shall apply so long as they will not affect the qualified status of the Plan.

2.04 Notification of Individual Account Balance. After the close of each Plan Year or more frequently as determined by the Plan Administrator, the Plan Administrator or its delegate shall notify each Participant of the amount of his share in the Adjustments and Contributions for the Plan Year (or other period) just completed and of the new balance of his Individual Account.

ARTICLE III  
CONTRIBUTIONS AND ALLOCATIONS

3.01 Individual Accounts. The Plan Administrator or its delegate shall establish and maintain an Individual Account comprised of a University Account and an Employee Account in the name of each Participant to which the Plan Administrator or its delegate shall credit all amounts allocated to each such Participant pursuant to the following Sections of this Article III.

To the extent authorized or required under the Optional Retirement Program, the State of North Carolina and the Participant shall contribute toward the purchase of Contracts or deposit such contributions in a trust (if applicable) on the Participant's behalf.

Separate accounts shall be maintained for all inactive Participants who have an interest in the Plan. Such separate accounts shall not require a segregation of the Investment Fund assets and no Participant shall acquire any right to or interest in any specific asset of the Investment Fund as a result of the allocations provided for

in the Plan. All allocations shall be made as of the Valuation Date referred to in this Article III.

3.02 University Contributions. Each Employing Institution of The University shall contribute on behalf of each Participant in the Optional Retirement Program an amount equal to six percent (6%) of the Participant's Compensation, with such percentage being adjusted from time to time pursuant to Section 135-5.1(c) of the North Carolina State Code, as established by the General Assembly of North Carolina.

3.03 Employee Contributions. Each Participant shall contribute the amount which he or she would be required to contribute if a member of the Retirement System. Consistent with IRC Section 414(h), Contributions authorized or required by the provisions of this section on behalf of each Participant shall be made by salary reduction according to rules and regulations established by The University.

3.04 Voluntary TSA Contributions. Additional personal contributions may also be made by a Participant by such payroll deduction or salary reduction to an annuity or retirement income plan established pursuant to G.S. 116-17



and applicable policies of the Employing Institution. Such contribution shall be made pursuant to IRC Section 403(b) and shall be considered outside the scope of this Plan. Payment of Contributions shall be made by the Employing Institution of The University to the designated company or companies underwriting the annuities for the benefit of each Participant.

3.05 Allocation of Adjustment. The Insurance Company shall determine the investment gains and losses under the Contract(s) for the period elapsed since the last preceding Valuation Date. Such Adjustment shall be allocated to accounts of all then Participants who are then maintaining a credit balance in their Individual Account, in relation to that portion of their Individual Account attributable to their University Account and to their Employee Account. The allocation shall be made separately within the Investment Funds on the basis of the ratio between each Participant's Individual Account invested in the Investment Fund and the total of all Participants' Individual Accounts invested in the Investment Fund at the Valuation Date. The Plan Administrator shall have the right to oversee the accounting to ensure that each Participant's allocation is

properly credited or debited, as the case may be, to his University Account and his Employee Account.

To the extent a Participant's interest in this Plan is invested in a Contract issued by an Insurance Company and such Contract shall have an allocation procedure which shall be inconsistent with this Section 3.05, such Contract provision shall apply so long as it will not affect the qualified status of the Plan.

3.06 Equitable Allocations. Should the Plan Administrator determine that the strict application of the accounting procedures utilized in the administration of the Plan will not result in an equitable and non-discriminatory allocation among the accounts of Participants, it may modify the procedures for the purpose of achieving an equitable and non-discriminatory allocation in accordance with the general concepts of the Plan and the provisions of this Article.

3.07 Maximum Additions. Anything herein to the contrary notwithstanding, the total Annual Additions made to the Individual Account of a Participant for any Limitation year commencing on or after July 1, 1985, when combined with any similar Annual Additions credited the Participant for the

same period from another qualified Defined Contribution Plan maintained by the Employing Institution, shall not exceed the lesser of subsection 3.07(a) or subsection 3.07(b) following:

3.07(a) Thirty thousand dollars (\$30,000) or such larger amount as may be allowed under regulations issued pursuant to IRC Section 415(d); and

3.07(b) Twenty five percent (25%) of the Participant's total non-deferred compensation received from the Employing Institution for such Plan Year. For purposes of this paragraph, "compensation" shall mean a Participant's earned income, wages, salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with an Employer maintaining the plan and effective for Plan Years beginning after December 31, 1997, including any elective deferrals as defined in IRC Section 402(g)(3) and any amounts which are contributed or deferred by the Employer at the election of the Employee and which are not includible in the gross income of the Employee by

reason of IRC Sections 125 or 457, but shall exclude the following:

- (i) Employer contributions to a plan of deferred compensation to the extent such contributions are not included in gross income of the Employee to a Simplified Employee Pension plan and to the extent such contributions are deductible from a plan of deferred compensation whether or not includable in the gross income of the Employee when distributed;
- (ii) Amounts realized from the exercise of a non-qualified stock option, or realized when restricted stock (or property) held by an Employee becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) Amounts realized from the sale, exchange, or other disposition of stock acquired under a qualified stock option; and

Compensation for any Limitation Year is the compensation actually paid or includible in gross income during such year.

In the event a Participant is covered by one or more other Defined Contribution Plans maintained by the Employing Institution, the maximum Annual Additions under this Plan shall be decreased to the extent determined necessary by the Employing Institution, prior to the reduction of such other Defined Contribution Plan, to ensure that all such plans will remain qualified under the IRC.

In the event that as of any Valuation Date corrective adjustments in the Annual Addition to any Individual Account is required pursuant to this Section 3.07, the Employee Account shall be first reduced by the amount required to ensure compliance with this Section 3.07, and then the University Account. Any amounts consequently withheld or taken from a Participant's Individual Account shall be segregated in the Fund in a separate account and applied toward the Contribution of the University for the next Limitation Year.

3.08 Multiple Plan Participation. If a Participant is also a participant of a Defined Benefit Plan maintained by The University, the sum of his defined benefit plan fraction and his defined contribution plan fraction for any Limitation Year may not exceed 1.0.

For purposes of maximum Annual Additions to Defined Contribution Plans and maximum annual benefits payable from Defined Benefit Plans, all Defined Contribution Plans and all Defined Benefit Plans, whether or not terminated, shall be combined and treated as one (1) plan.

For purposes of this Section 3.08, the term "defined contribution plan fraction" shall mean a fraction the numerator of which is the sum of all of the Annual Additions to the Participant's Individual Account under this Plan as of the close of the Limitation year and the denominator of which is the sum of the Lesser of the following amounts determined for such Limitation Year and for each prior Limitation Year of employment with the Employing Institution:

- 3.08(a) the product of 1.25 multiplied by the dollar limitation in effect under subsection 3.07(a) for such year determined without regard to IRC Section 415(c)(6); and
- 3.08(b) the product of 1.4 multiplied by an amount determined pursuant to subsection 3.07(b) with respect to each individual under the Plan for such Limitation Year.

For purposes of this Section 3.08, the term, "defined benefit plan fraction" shall mean a fraction the numerator of which is the Participant's projected annual benefit (as defined in the said defined benefit plan) determined as of the close of the Limitation Year and the denominator of which is the lesser of:

- 3.08(c) the product of 1.25 multiplied by the dollar limitation in effect pursuant to IRC Section 415(b)(1)(A) for such Limitation Year; and
- 3.08(d) the product of 1.4 multiplied by the amount which may be taken into account pursuant to IRC Section 415(b)(1)(B) with respect to each

individual under the Plan for such Limitation Year.

The limitation on aggregate benefits from a Defined Benefit Plan and a Defined Contribution Plan which is contained in Section 2004 of ERISA, as amended, shall be satisfied by a reduction (if necessary) in the Participant's benefits under the Defined Benefit Plan(s) (in accordance with the provisions of the said plan(s)) before a reduction of any Defined Contribution Plan.

This section 3.08 shall not apply after December 31, 1999.

3.09 Contributions Required By The Uniformed Services Employment and Reemployment Rights Act of 1994

(USERRA) A Participant shall be allowed to make Employee Contributions, on an after-tax basis, for each year of Qualified Military Service in an amount up to the maximum allowable Employee Contributions the Participant would have been eligible to contribute had he not been in Qualified Military Service based on his Compensation as herein defined, provided such Employee entered such Qualified



Military Service directly from the employ of the Employer and was reemployed by the Employer. The Participant shall be required to contribute such make-up Employee Contributions during the period which begins on the date of the Employee's reemployment with the Employer and has the same length as the lesser of (i) the product of three (3) and the period of Qualified Military Service, and (ii) five (5) years.

A University Contribution shall be made for any eligible Employee for each year of Qualified Military Service in an amount equal to the amount the Participant would have been credited had he not been in Qualified Military Service based on his Compensation as herein defined.

An Employee who is in Qualified Military Service shall be treated as receiving Compensation during such period of Qualified Military Service equal to:

- 3.09(a) the Compensation the Employee would have received during such period if the Employee were not in Qualified Military Service, determined based on the rate of pay the Employee would have received from the Employer but for absence during the period of Qualified Military Service, or

3.09(b) if the Compensation the Employee would have received during such period was not reasonably certain, the Employee's average Compensation from the Employer during the twelve (12) month period immediately preceding the Qualified Military Service (or, if shorter, the period of employment immediately preceding the Qualified Military Service.

Any Employer Contributions made pursuant to this Section shall not be subject to any otherwise applicable limitations contained in IRC Section 404(a), 402(g) or 415 with respect to the year in which the Employer Contributions are made; however, such Employer Contributions shall be subject to such limitations with respect to the year to which the Employer Contributions relate.

Qualified Military Service means any service in the uniformed services (as defined in Chapter 43, title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such services.

ARTICLE IV  
DISTRIBUTIONS

4.01 Vesting. If any Participant having less than five (5) years of Eligible Service under the Optional Retirement Program ceases employment with an Employing Institution and either Retires or proceeds to employment with a Subsequent Employer and the Participant does not Timely Enroll in a Like Retirement Plan as the Participant's Core Retirement Plan and initiate contributions under one or more annuity contract(s) of underwriting insurance companies or Mutual Funds under the Trust Agreement previously subscribed or available under the Optional Retirement Program, those Optional Retirement Program Individual Account balances attributable to Contributions by the Employing Institution shall be forfeited and paid over to the State of North Carolina as provided by law and such amount shall be used to reduce future employer Contributions.

If any Participant ceases employment with an Employing Institution and either Retires or proceeds to employment with a Subsequent Employer and the Participant Timely Enrolls in a Like Retirement Plan as the Participant's Core Retirement Plan and initiates contributions under annuity

contracts of underwriting insurance companies or Mutual Funds under the Trust Agreement previously subscribed or available under the Optional Retirement Program, those Optional Retirement Program Individual Account balances attributable to Contributions by the Employing Institution shall be one hundred percent (100%) vested.

For purposes of this Section 4.01 the following definition shall apply:

4.01(a) Core Retirement Plan means the primary retirement plan of an employee that the Participant's subsequent employer provides by reason of the employment relationship.

4.02 Normal Retirement. The normal retirement date of a Participant shall be the first day of the month coinciding with or next following the later of (a) the date on which a Participant attains the age of sixty-five (65) and the completion of five (5) Years of Eligible Service (b) the attainment of age sixty (60) and the completion of twenty-five (25) Years of Eligible Service, or (c) the completion of thirty (30) Years of Eligible Service.

Upon the retirement of a Participant in accordance with the provisions of this Section 4.02, the balance of his

Individual Account shall become payable, and the Plan Administrator shall thereupon direct the Trustee or Insurance Company to distribute to such Participant such amount in accordance with Section 4.06.

To the extent a Participant's interest in this Plan shall be invested in a Contract issued by an Insurance Company or a Mutual Fund under the Trust Agreement, the Participant shall have the right to commence a benefit at such time as elected by such Participant, provided the election is in accordance with Section 4.09 of this Plan.

4.03 Delayed Retirement. In the event a Participant remains in the employ of the Employing Institution beyond his normal retirement date, he shall thereafter retire on his delayed retirement date. The delayed retirement date of a Participant shall be the first day of the month coinciding with or next following the actual date the Participant retires from the employment of the Employing Institution. Upon the retirement of a Participant in accordance with the provisions of this Section 4.03, the balance of his Individual Account shall become payable and the Plan Administrator shall thereupon direct the Trustee or

Insurance Company to distribute to such Participant such amount in accordance with Section 4.06.

To the extent a Participant's interest in this Plan shall be invested in a Contract issued by an Insurance Company, the Participant shall have the right to commence a benefit at such time as elected by such Participant, provided the election is in accordance with Section 4.09 of this Plan.

4.04 Death Before Retirement or Termination of Employment.

Upon the death of a Participant before retirement or termination of employment, the value of such Participant's Individual Account as of the date of death of the Participant shall become payable and the Plan Administrator shall direct the Insurance Company(ies) to distribute to such Participant's Beneficiary amounts in accordance with subsection 4.06(b), with the Beneficiary being substituted for the Participant in such Section.

4.05 Death After Retirement or Termination of Employment.

Upon the death of a Former Participant who has elected to receive benefit payments in accordance with subsection 4.06(c), to the extent there is a remainder to be paid to a Beneficiary based on the annuity option elected, such

remainder shall be paid in accordance with the Contract, provided such remaining payment will not affect the qualified status of the Plan.

4.06 Method of Payment.

4.06(a) Application for Benefits - To receive a benefit under the Plan, the Participant, Former Participant, his Beneficiary, committee, or next of kin must make written application therefor on a form or forms provided by the Plan Administrator or its delegate. The Plan Administrator may require that there be furnished to it in connection with such application all information pertinent to any question of eligibility and the amount of any benefit.

4.06(b) Normal Form - The normal form of payment of benefits to a Participant shall be a life only annuity unless the Participant elects payment in accordance with subsection 4.06(c). A Participant who terminates employment and who is not vested pursuant to Section 4.01 but who Timely Enrolls in a Like Retirement Plan shall receive an annuity

contract(s) in his name if the conditions for nonforfeiture set forth in Section 4.01 are met.

4.06(c) Optional Form - Except as otherwise provided herein, in lieu of receiving payment in accordance with subsection 4.06(b), a Participant, Former Participant, or Beneficiary may elect in writing to receive his distribution in a lump sum or an optional form of payment provided by the Contract(s) or Mutual Funds. Notwithstanding the preceding, with respect to Participants commencing a benefit prior to July 1, 1999, in no event shall a Participant receive a lump sum distribution of an amount attributable to University Contributions. The form of payment attributable to University Contributions for benefits commencing prior to July 1, 1999 shall be provided as an annuity payable over a period at least equal to the Participant's life expectancy.

4.06(d) Eligibility for Health Insurance - To the extent a Participant is otherwise eligible under state law to purchase health insurance from the State of



North Carolina upon being in pay status of a retirement benefit hereunder, the term "pay status" shall mean having retired and receiving monthly retirement benefits of all or a portion of a Participant's Individual Account.

4.07 Maximum Option Payable. If a Participant elects to have his benefit paid under an optional form of payment and the designated Beneficiary is not the spouse of the Participant, the option elected shall be restricted so that the maximum distribution incidental benefit requirements of IRC Section 401(a)(9) and Treasury Regulation 1.401(a)(9)-2 are met.

4.08 Benefits to Minors and Incompetents. If a person entitled to receive payment under the Plan is a minor, the Plan Administrator, in its discretion and not inconsistent with any underlying annuity contract, may dispose of such amount in any one or more of the following ways:

- 4.08(a) by payment thereof directly to such minor;
- 4.08(b) by application thereof for the benefit of such minor;
- 4.08(c) by payment thereof to either a parent of such minor or to any adult person with whom such minor may at the time be living or to any person who shall be legally qualified and shall be acting as guardian of the person or of the property of such minor; provided only that the parent or adult person to whom any amount shall be paid shall have advised the Plan Administrator in writing that he will hold or use such amount for the benefit of such minor.

If it is found that a person entitled to receive payment under the Plan is physically or mentally incapable of personally receiving and giving a valid receipt for any payment due (unless prior claim therefor shall have been made by a duly qualified committee or other legal representative), such payment may be made to the spouse, son, daughter, parent, brother, sister, or other person deemed by the Plan Administrator to have incurred expense for such person otherwise entitled to payment.

4.09 Payment of Benefits. If a portion of a Participant's Individual Account shall become due and payable pursuant to Article IV, and the Participant, in accordance with the provisions of the Plan, has not elected otherwise, any payment of benefits or commencement thereof to the Participant shall begin not later than sixty (60) days after the close of the Plan Year in which occurs the latest of:

- 4.09(a) the Participant's having attained his normal retirement age as defined in Section 4.02;
- 4.09(b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; and
- 4.09(c) the termination of service of the Participant.

Notwithstanding anything contained herein to the contrary, the Plan shall in all events commence distribution of the interest of each Participant in accordance with Section 4.06 not later than April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70 1/2), or in the calendar year in which he retires, whichever is later, but in all instances distribution shall occur in

accordance with IRC Section 401(a)(9), including the minimum distribution incidental death benefit requirements of IRC regulation 1.401(a)(9)-2. The life expectancy of an Employee and the Employee's spouse (other than for a life annuity) may be redetermined annually at the Employee's election.

4.10 Loans. Upon written application of an Eligible Participant, the Plan Administrator may direct that a loan from the Investment Fund be made to the Eligible Participant. The loan shall be subject to such conditions as the Plan Administrator may establish. For purposes of this Section 4.10 "Eligible Participant" means a Former Participant who has become reemployed by an Employing Institution and who may borrow from his Individual Account as permitted by the Former Participant's subsequent employer and the Insurance Company(ies) and/or Trust Agreement. The term "Eligible Participant" shall not include current active Participants (other than those described in the preceding sentence) and Former Participants who have Retired.

The terms and conditions for such loans shall follow the loan policy as adopted by the Plan Administrator.

4.11 Rollover Distributions This Section 4.11 applies to distributions made on or after January 1, 1993.

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Employer, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. Such distribution may commence less than thirty (30) days after the notice required under Section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that (a) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (b) the Participant, after receiving the notice, affirmatively elects a distribution. Any distribution election must remain revocable until the later of the annuity starting date or the expiration of the seven (7) day period that begins the day after the explanation specified in Section 4.02 is provided.

(i) Definitions.

(A) 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 (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under IRC Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(B) Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in IRC Section 408(a), an individual retirement

annuity described in IRC Section 408(b), an annuity plan described in IRC Section 403(a), or a qualified trust described in IRC Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

- (C) 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 IRC Section 414(p), are Distributees with regard to the interest of the spouse or former spouse.
- (D) Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
- (E) The Individual Account of a Participant, who has been provided the notice specified in IRC Section

402(f) but who makes no election with regard to an Eligible Rollover Distribution within thirty (30) days of receiving such notice, shall be distributed directly to the Participant as soon thereafter as is practicable following such thirty (30) day period.



## ARTICLE V

### FUNDING

5.01 Contributions. Contributions by the Employing Institution and by the Participants as provided for in Article III shall be paid over to the Insurance Company and/or Trustee. All Contributions by the Employing Institution shall be irrevocable, except as herein provided, and may be used only for the exclusive benefit of the Participants, Former Participants, and their Beneficiaries.

5.02 Investment Fund. The Board of Governors of The University of North Carolina shall designate the Insurance Companies from which contracts are to be purchased or the Trust responsible for the investment of contributions under the Optional Retirement Program and shall approve the form and contents of such Contracts or Trust Agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:

5.02(a) the nature and extent of the rights and benefits to be provided by these Contracts or Trust Agreement for Participants and their Beneficiaries;

- 5.02(b) the relation of these rights and benefits to the amount of contributions to be made;
- 5.02(c) the suitability of these rights and benefits to the needs of the Participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and
- 5.02(d) the ability of the designated Insurance Company or Companies underwriting the annuity contracts or Trust Agreement to provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

Notwithstanding the provisions of this Section, no contractual relationship established under the Optional Retirement Program pursuant to the authority granted by Chapter 338, North Carolina Session Laws of 1971, is deemed terminated by the provisions of this Plan.

## ARTICLE VI

### AMENDMENT AND TERMINATION OF THE PLAN

- 6.01 Amendment of the Plan. The Board shall have the right at any time by action of the Board to modify, alter, or amend the Plan in whole or in part; provided, however, that the duties, powers, and liability of the Insurance Company(ies) or Trustee hereunder shall not be increased without its written consent; and provided, further, that the amount of benefits which at the time of any such modification, alteration, or amendment shall have accrued for any Participant, Former Participant or Beneficiary hereunder shall not be adversely affected thereby; and provided, further, that no such modification, alteration, or amendment shall have the effect of revesting in The University any part of the principal or income of the Investment Fund.
- 6.02 Termination of the Plan. The University expects to continue the Plan indefinitely, but continuance is not assumed as a contractual obligation and The University reserves the right at any time by action of the Board of Governors to terminate the Plan. If The University terminates or partially terminates the Plan or discontinues authorization of Contributions at any time, each

Participant affected thereby shall be then vested with the amount credited in his Individual Account.

In the event of termination of the Plan by The University, the Plan Administrator or its delegate shall value the Investment Fund as of the date of termination. That portion of the Investment Fund applicable to any Employing Institution of The University for which the Plan has not been terminated shall be unaffected. The Individual Accounts of the Participants, Former Participants, and Beneficiaries affected by the termination, as determined by the Plan Administrator or its delegate, shall continue to be administered as part of the Investment Fund or distributed to such Participants, Former Participants, or Beneficiaries pursuant to Section 4.06.

ARTICLE VII

MISCELLANEOUS

7.01 Governing Law. The Plan shall be construed, regulated, and administered according to the laws of the State of North Carolina except in those areas preempted by the laws of the United States of America.

7.02 Construction. The headings and subheadings in the Plan have been inserted for convenience of reference only and shall not affect the construction of the provisions hereof.

In any necessary construction the masculine shall include the feminine and the singular, the plural and vice versa.

The University of North Carolina established and maintains the Plan for the exclusive benefit of participating Employees and of necessity retains control of the operation and administration of the Plan. Pursuant to Section 1.29 and this Section 7.02, the Plan Administrator shall have the duty and discretionary authority to construe the Plan and to determine all questions that may arise thereunder relating to (a) the eligibility of individuals to participate in the Plan, (b) the amount of benefits to which any Participant or Beneficiary may become entitled hereunder, and (c) any situation not specifically covered by the provisions of the Plan. The Plan Administrator

shall have no power in any way to modify, alter, add to, or subtract from any provisions of the Plan.

When the Plan Administrator is required in the performance of its duties hereunder to administer or construe, or to reach a determination under, any of the provisions of the Plan, it shall do so in a uniform, equitable, and nondiscriminatory basis.

7.03 Administrative Expenses. The Board of Governors of the University of North Carolina may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration. The expenses of administering the Investment Fund and the Plan may be paid either by The University or from the Investment Fund.

7.04 Participation in Other Plans. Any eligible Employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within The University of North Carolina; and, while in an eligible position, he shall continue to participate in the Optional Retirement Program.

7.05 Other Benefits. No retirement benefit, death benefit, or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or

The University of North Carolina, or the Board of Trustees of the Retirement System with respect to any Employee selecting and participating in the Optional Retirement Program or with respect to any Beneficiary of that Employee. Benefits shall be payable to Participants or their Beneficiaries only by the designated company in accordance with the terms of the Contracts or Trust Agreement.

7.06 Participant's Rights; Acquittance. No Participant in the Plan shall acquire any right to be retained in the employ of an Employing Institution of The University by virtue of the Plan; nor, upon his dismissal, or upon his voluntary termination of employment, shall he have any right or interest in and to the Investment Fund other than as specifically provided herein. The Employing Institution shall not be liable for the payment of any benefit provided for herein; all benefits hereunder shall be payable only from the Investment Fund.

7.07 Spendthrift Clause. Except as may be required by IRC Section 401(a)(13)(B) relating to Qualified Domestic Relations Orders, and except for the applications of the provisions of G.S. 110-136 (garnishment to enforce child support) and in connection with a court-ordered equitable

distribution under G.S. 50-20, none of the benefits, payments, proceeds, or distributions under this Plan shall be subject to the claims of any creditor of a Participant or Former Participant or to the claim of any creditor of any Beneficiary hereunder or to any legal process by any creditor of such Participant or Former Participant or of any such Beneficiary; and neither such Participant, Former Participant, nor any such Beneficiary shall have any right to alienate, commute, anticipate, or assign any of the benefits, payments, proceeds, or distributions under this Plan.

7.08 Mistake of Fact. Notwithstanding anything herein to the contrary, there shall be returned to the Employing Institution any Contribution which was made as follows:

7.08(a) By a mistake of fact, as determined by the Internal Revenue Service or in such other manner as the Internal Revenue Service may permit; or

7.08(b) Prior to the receipt of initial qualification if the Plan received an adverse determination with respect to its initial qualification and the application for determination was made by the time prescribed by law for filing the Employing



Institution's tax return for the taxable year in which the Plan was adopted, or such later date as the Secretary of Treasury may prescribe.

The return of any Contribution to the Employing Institution by the Trustee or Insurance Company shall be made within one (1) year after the payment of the Contribution or the denial of the qualification, whichever is applicable. The portion of any Contribution returned under this Section 7.08 to the Employing Institution shall be reduced by its proportionate share or losses and expenses of the Fund, if any, but shall not be increased by any income or gains of the Fund, if any.

7.09 Counterparts. The Plan, the Contract(s) and the Trust Agreement (if applicable) may be executed in any number of counterparts, each of which shall constitute but one and the same instrument and may be sufficiently evidenced by any one counterpart.

ARTICLE VIII  
ADOPTION OF THE PLAN

Anything herein to the contrary notwithstanding, this Plan is created under the condition that it shall be approved and qualified by the Internal Revenue Service under IRC Section 401(a) and/or IRC Section 403(a) and that the Trust (if applicable) is exempt under IRC Section 501(a), or under any comparable Sections of any future legislation which amends, supplements, or supersedes such Sections. Should the Internal Revenue Service find that the Plan as herein created is not qualified, The University may modify the Plan to meet Internal Revenue Service requirements.

As evidence of its adoption of the Plan, the Board of Governors of The University of North Carolina has caused this instrument to be signed by its chairman therefor duly authorized and its corporate seal to be affixed hereto this 10<sup>th</sup> day of Sept.

1999.

THE BOARD OF GOVERNORS OF  
THE UNIVERSITY OF NORTH CAROLINA

By: 

Chairman

ATTEST:

By: 

Secretary

The University of North Carolina

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