

THE UNIVERSITY OF NORTH CAROLINA  
OPTIONAL RETIREMENT PROGRAM

APPENDIX:

**THE UNIVERSITY OF NORTH CAROLINA  
QUALIFIED GOVERNMENTAL EXCESS BENEFIT  
ARRANGEMENT**

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**The University of North Carolina  
Optional Retirement Program  
Appendix  
The University of North Carolina  
Qualified Governmental Excess Benefit Arrangement**

**INTRODUCTION**

WHEREAS, The University of North Carolina (“UNC”) is a public institution of higher education of the State of North Carolina and is a “body politic and corporate” of said State; and

WHEREAS, UNC has established an Optional Retirement Program, which is a governmental retirement plan intended to qualify, and which has been found by the Internal Revenue Service to qualify, as a qualified plan under Sections 401(a) and 403(a) of the Internal Revenue Code; and

WHEREAS, Section 415(m) of the Internal Revenue Code of 1986, as amended, (“IRC”) authorizes a governmental organization to establish a qualified excess benefit plan as a portion of a governmental plan, as provided by IRC Section 415(m);

WHEREAS, the purpose of The University of North Carolina Qualified Governmental Excess Benefit Arrangement (the “Arrangement”) is to provide participants in the Optional Retirement Program of The University of North Carolina (the “ORP”) that portion of a participant’s benefits that would otherwise be payable under the terms of the ORP except for the limitations on benefits imposed by IRC Section 415;

WHEREAS, this Arrangement is intended to comply with IRC Section 415(m) and is intended to be an appendix to the Optional Retirement Program Plan;

NOW, THEREFORE, UNC hereby establishes this Arrangement as set forth in this document effective January 1, 1995.

**GENERAL PROVISIONS**

Except as noted herein, this Arrangement shall operate in accordance with the Optional Retirement Program and the policies and procedures adopted hereunder.

**ARTICLE I**

**DEFINITIONS**

Where the following words and phrases appear in the Arrangement, they shall have the meanings specified below unless a different meaning is clearly required by the context. Capitalized terms used but not defined in this Arrangement shall have the meanings given to them in the ORP.

1.1 **Arrangement.** The term “Arrangement” refers to The University of North Carolina Qualified Governmental Excess Benefit Arrangement, whether or not referred to herein as “the” or “this” Arrangement.

1.2 **Beneficiary.** The term “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.

1.3 **Benefit Commencement Date.** For a Participant who has: attained Normal Retirement, which is defined in Section 4.02 of the ORP as satisfying one of the following: (1) age 60 with 25 years of participation; (2) age 65 with 5 years of participation; or (3) 30 years of participation, at any age, the term “Benefit Commencement Date” shall mean the first day of the month following the Participant’s termination of employment or death. For all other Participants, the term “Benefit Commencement Date” shall mean the first day of the month following attainment of Delayed Retirement as that term is defined in Section 4.03 of the ORP or death. If a terminated or retired Participant returns to employment with UNC prior to the original Benefit Commencement Date, the Benefit Commencement Date for benefits accrued during the former period of service shall be redetermined according to the first two sentences of this Section 1.3 based on the date of cessation of the second (or subsequent) period of employment.

1.4 **Code.** The terms “Internal Revenue Code” and “IRC” shall mean the Internal Revenue Code of 1986, as amended from time to time subsequent to the date that this Arrangement is executed.

1.5 **Compensation.** The term “Compensation” shall mean an individual’s compensation as defined in Section 1.06, Article I of the ORP, subject to the limitations of IRC Section 401(a)(17) and the transition rules under Treasury Regulations Section 1.401(a)(17)(d)(4)(ii).

1.6 **Eligible Employer.** The term “Eligible Employer” shall mean The University of North Carolina.

1.7 **Participant.** Any employee within the Eligible Class under Section 2.1, Article II of this Arrangement.

1.8 **Plan Administrator.** The term Plan Administrator shall mean The University of North Carolina. The Plan Administrator hereby delegates its responsibilities as follows:

(a) Any action (including, but not limited to decisions, determinations and interpretations that may be taken by the Plan Administrator under the Arrangement) may be taken by its delegate.

(b) The President of The University of North Carolina shall have the authority to appoint, in writing, a person or committee to serve as a temporary substitute or permanent replacement for the President to serve as the delegate of the Plan Administrator, provided such person is (or all committee members are) either an employee of The University of North Carolina or a member of the Board of Governors of The University of North Carolina.

(c) No person serving as a delegate of the Plan Administrator shall be authorized to take action with respect to matters exclusively affecting his or her own benefit under the Arrangement.

## ARTICLE II

### PARTICIPATION

2.1 **Eligible Class.** All employees of the Eligible Employer shall participate in the Arrangement if they are participants in the ORP and the net amount determined in Sections 3.1, 3.2, and 3.3 of the Arrangement exceeds zero for any month.

## ARTICLE III

### CONTRIBUTIONS

3.1 **Commencement of Contributions** Notwithstanding anything herein to the contrary, contributions made to this Arrangement shall only commence when the contributions under Sections 3.2 and 3.3 hereunder, in the aggregate, exceed the contribution limits described in IRC Section 415(c).

3.2 **Employee Contributions.** Employee contributions to the Arrangement shall be determined by applying the following steps:

(a) First, for each month, beginning with the month coincident with the effective date, the employee contribution rate specified under the ORP shall be multiplied by Compensation as defined hereunder earned during such month, disregarding any limitations on employee contributions that would be applicable under the ORP as necessary to limit annual additions within the ORP to the amount defined in IRC Section 415(c).

(b) Contributions to the Arrangement of the amount determined pursuant to Section 3.2(a) hereof shall then commence when the Employee and Employer Contributions under the ORP exceed the limits in IRC Section 415(c).

**3.3 Employer Contributions.** Employer contributions to the Arrangement shall be determined by applying the following steps:

(a) First, for each month, beginning with the month coincident with the effective date, the employer contribution rate specified under the ORP shall be multiplied by Compensation as defined hereunder earned during such month, disregarding any limitations on employer contributions that would be applicable under the ORP as necessary to limit annual additions to the amount defined in IRC Section 415(c).

(b) Contribution to the Arrangement of the amount determined pursuant to Section 3.3(a) hereof shall then commence when the Employee and Employer Contributions under the ORP exceed the limits in IRC Section 415(c).

**3.4 Cessation of Contributions.** No contributions to this Arrangement shall be made by or for a Participant after the payment of benefits to that Participant has commenced under this Arrangement.

## ARTICLE IV

### INVESTMENTS

Contributions under this Arrangement shall be invested in the same form and manner as contributions under the ORP. All product and investment elections under the ORP equally apply under this Arrangement.



## ARTICLE V

### PAYMENT OF BENEFITS

5.1 **Benefit Amounts.** The benefits payable to or on behalf of a Participant under this Arrangement shall be equal to the Participant's account balance (which shall be the sum of all employee and employer contributions made under this Arrangement by or for the Participant, reduced by plan expenses properly chargeable to the Participant) increased or decreased as appropriate by the Participant's investment factor.

A Participant's investment factor shall be equal to the return that would have been realized on the Participant's account balance had that balance been invested in accordance with the same instructions used to invest the Participant's employee and employer contributions under the ORP, provided such instructions exclusively utilize an authorized vendor approved by The University of North Carolina.

5.2 **Commencement of Benefits.** Payment of benefits to a participant will begin coincident with the payment of benefits as determined by the ORP. Withdrawals from the Arrangement prior to the Benefit Commencement Date are not permitted under any circumstances.

5.3 **Form of Benefit Payment.** Upon commencement, benefits shall be determined pursuant to the ORP. Any election of benefit form under the ORP shall also be applicable under this Arrangement.

5.4 **Election of Benefit Payment Form.** Each Participant shall, prior to the date benefits begin to accrue hereunder, make an affirmative written election on a form to be provided by the Plan Administrator as to the form of distribution applicable to benefits under the Arrangement. Elections under the ORP shall be deemed controlling hereunder. In the event that no such election is made prior to the date benefits begin to accrue hereunder, distributions from this Arrangement shall be governed by the normal form of payment under the ORP.

5.5 **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 Arrangement shall cease. Any beneficiary designation under the ORP shall be deemed controlling hereunder.

Further, to the extent there is no beneficiary designation under the ORP 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 hereunder 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.

**5.6 Vesting Provisions.** For purposes of determining vested status in this Plan, years of participation in the ORP shall constitute years of participation in the Arrangement. Therefore, all employer provided benefits in the Arrangement shall be vested to the same extent (as measured by the vesting percentage) as are employer provided benefits in the ORP. Employee provided benefits under the Arrangement shall be 100% vested at all times.

**5.7 Non-Alienation Provisions.** A Participant's right to benefit payments under the Arrangement are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment by creditors of the Participant or the Participant's Beneficiary.

## ARTICLE VI

### UNFUNDED STATUS

Participants and their Beneficiaries will have no right or property interest in any assets held to support the liabilities created hereunder. Participants have the status of general unsecured creditors of the Eligible Employer, and this Plan constitutes a mere promise by the Eligible Employer to make benefit payments in the future. Any and all payments made to or on behalf of a Participant pursuant to the Arrangement shall be made from the general assets of the Eligible Employer. Any and all annuity contracts or mutual funds purchased to support the liabilities hereunder shall be registered in the name of the employer and held as a general asset on its books of account.

## ARTICLE VII

### PLAN ADMINISTRATION

**7.1 Powers and Duties.** The Plan Administrator shall administer the Arrangement. It shall have the authority to interpret, construe, and implement the Arrangement, to adopt and review rules and regulations relating to the Arrangement and to make all other determinations relating to the administration of the Arrangement. Any decision or interpretation of any provision of the Arrangement adopted by the Plan Administrator shall be final and conclusive. The Plan Administrator may delegate

authority to carry out these duties as described in Section 1.8, Article I, hereof. A Participant who is also delegated administrative authority under the Arrangement Section 1.8, Article I, shall not participate in any decision involving any requests made by him or her or relating in any way solely to his or her rights, duties and obligations as a Participant under the Arrangement.

**7.2 Consultants.** Consistent with any applicable laws, regulations, or policies of the State of North Carolina, the Plan Administrator may employ such counsel, accountants, actuaries and other agents as it shall deem advisable. UNC shall pay the compensation of such counsel, accountants, actuaries and other agents and any other due and proper expenses incurred by the Plan Administrator in the administration of the Arrangements to offset the liabilities created by this Arrangement that are not otherwise accommodated through products purchased under this Arrangement.

## **ARTICLE VIII**

### **AMENDMENT AND TERMINATION**

**8.1 Amendment.** UNC reserves the right to amend or to modify the Arrangement at any time, including retroactively, by formal action of its Board of Governors or its delegate, so long as the amendment or modification does not reduce a Participant's benefits that accrued under this Arrangement prior to the earlier of the date on which such amendment is authorized or executed.

**8.2 Termination.** UNC reserves the right to terminate the Arrangement at any time by formal action of its Board of Governors, so long as the termination does not reduce a Participant's benefits that accrued under the Plan prior to the date of such termination.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

**9.1 Governing Law.** Except to the extent superceded by federal law, the laws of the State of North Carolina shall be controlling in all matters relating to this Arrangement, including the construction and performance hereof, notwithstanding principles of conflicts of laws.

**9.2 Captions.** The captions of Articles and Sections of this Arrangement are for convenience of reference only and shall not control or affect the meaning or construction of any of its provisions.

9.3 **Facility of Payment.** Any amounts payable hereunder to any person who is under legal disability or who, in the judgment of the Plan Administrator, is unable to manage his financial affairs properly may be paid to the legal representative of such person or may be applied for the benefit of such person in any manner that the Plan Administrator may select, and any such payment shall be deemed to be payment for such person's account.

9.4 **Withholding.** To the extent required by the laws in effect at the time payments are made hereunder, UNC shall withhold from such payments, any taxes required to be withheld for federal, state or local government purposes.

9.5 **Administrative Expenses.** Except as provided in the products used to underwrite liabilities hereunder, all other expenses relating to the Arrangement and its administration shall be borne by UNC.

9.6 **Severability.** Any provision of this Arrangement prohibited by the law of any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

9.7 **Liability.** Except as otherwise expressly provided herein, no member of the Board of Governors of UNC, no delegate of the Plan Administrator, and no officer, employee or agent of the Eligible Employer or the Plan Administrator Committee (specifically including, but not limited to an employee of UNC acting at the direction of the Plan Administrator) shall have any liability to any person, firm or corporation based on or arising out of the Arrangement except in the case of gross negligence or fraud. UNC agrees to indemnify each member of its Board of Governors, each delegate of the Plan Administrator and each officer and employee of the Eligible Employer against all liabilities arising out of the performance of his duties hereunder, excluding liabilities resulting from the individual's gross negligence or fraud.

9.8 **Binding Effect.** This Arrangement shall be binding upon and shall inure to the benefit of UNC, its successors and assigns and each Participant and his heirs, executors, administrators and legal representatives.

9.9 **Construction.** Any words herein used in the masculine shall be read and construed in the feminine where they would so apply. Words in the singular shall be read and construed as though used in the plural in all cases where they would so apply.

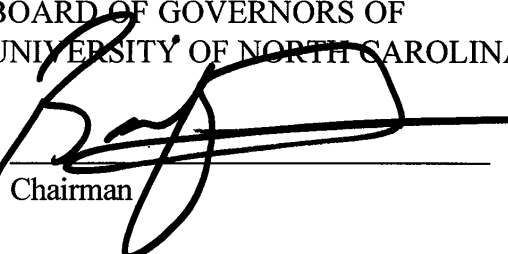
ARTICLE X

ADOPTION OF THE ARRANGEMENT

As evidence of its adoption of the Arrangement, 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 September 1999.

THE BOARD OF GOVERNORS OF  
THE UNIVERSITY OF NORTH CAROLINA

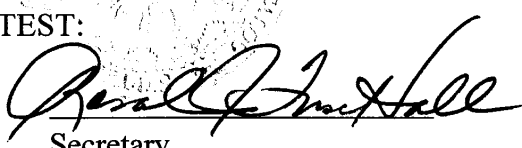
By:



Chairman

ATTEST:

By:



Secretary

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