

The Rhode Island Board of Governors  
for Higher Education  
Restated  
Defined Contribution Retirement Plan  
Plan Document

(Restated February 9, 2009)

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## INTRODUCTION

The policies and provisions contained in this contribution Plan apply to unclassified and non-classified employees of the Board of Governors for Higher Education.

The Board of Governors for Higher Education recognizes that there are collective bargaining agreements with non-classified Board employees at the three institutions of higher education. These collective bargaining agreements, and the terms and conditions of eligibility for participation in the Plan therein contained, reflect the autonomy and distinctiveness of each institution within the higher education system, as well as the separate bargaining histories between the Board and the separate collective bargaining units.

Where the policies of these eligibility requirements and the respective agreement(s) conflict substantially, the collective bargaining agreement in force shall hold.

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## **Article I: Definitions**

- 1.1 Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(1)(2) and 419A(d)(2) of the Code, if any. Notwithstanding the foregoing, this Plan does not accept nondeductible employee contributions or provide for forfeitures.
- 1.3 Beneficiary(ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 Board** means the Rhode Island Board of Governors for Higher Education, as the governing Board for the Institutions.
- 1.5 Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 Compensation** means the amount paid by the Institution to a Participant that must be reported as wages on the Participant's Form W-2, excluding overtime pay, wages imputed to employees as a result of domestic partner health coverage, plus compensation that is not currently includable in the Participant's gross income because of the application of Code Sections 125, 132(f)(4), 457(b) or 403(b) through a salary reduction agreement. For

academic year faculty, regular compensation shall mean only academic year contract compensation, and shall not include summer contract wages, wages earned as a result of course overloads, or any other separately contracted wages. For calendar year faculty, regular compensation shall mean only annual contract compensation and shall not include wages earned as a result of course overloads or any other separately contracted wages.

In addition to other applicable limitations stated in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan years beginning on or after January 1, 1994, the annual compensation of each employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit 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 Plan years beginning on or after January 1, 1994, any reference in this Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit stated in this provision. If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

**1.7 Date of Employment or Reemployment** means the effective date of the appointment for a faculty member. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service in performance of duties during the employee's most recent period of service with the Institution.

**1.8 Effective Date** means September 1, 1967, and as amended from time to time.

**1.9 Elective Deferrals** means any contributions made to the Plan at the election of the Participant pursuant to a salary reduction agreement that complies with the requirements of Internal Revenue Code Section 403(b). This also includes any contributions for a Participant pursuant to an election to defer compensation under any Code Section 401(k), 408(k), (Simplified Employee Pension), 457(b) or 403(b) plan.

**1.10 Eligible Employee** means that subject to the conditions stated in Article III, the following categories of employees are eligible to participate in this retirement plan: (a) Faculty on continuing "tenure track" and term appointments with a workload which is at least half time (17.5 hours weekly) and six (6) months or more in duration; (b) Staff on continuing and term appointments with a workload of at least twenty (20) hours per week and six (6) months or more in duration; (c) Faculty on a limited period appointment may be eligible if they have been appointed to a least one academic or calendar year's duration, as applicable, with assignments include the teaching of at least three (3) courses and nine (9) credits each semester; (d) Temporary/Ad Hoc faculty or staff replacing other faculty or staff on leaves with or without pay are not eligible unless such individual participated in the Board of Governors Alternate Retirement Plan pursuant to this Plan during the preceding academic year and unless the assignment of such temporary/ad hoc faculty or staff member qualifies him or her for membership in a collective bargaining unit; (e) Grant-funded faculty and staff whose grant is expected to be of a duration of one year or more are included; and (f) active members of the Employee's Retirement System of Rhode Island (ERSRI) may elect to participate in the Plan or remain in ERSRI within 60 days after they become eligible for participation in the Plan.

**1.11 Eligible Employer** means the Board and any Institution as defined in Section 1.16.

**1.12 Excessive Elective Deferrals** means those Elective Deferrals that are includable in a Participant's gross income under section 402(g) of the Code to the extent the Participant's Elective Deferrals for a taxable year exceed the dollar limitation under such Code Section.

**1.13 Fund Sponsor** means insurance, variable annuity or investment company that provides Funding Vehicles available to Participants under this Plan.

**1.14 Funding Vehicles** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

**1.15 Hours of Service** means:

- (a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.
- (b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), jury duty, military duty, leave of absence, or maternity or

paternity leave (whether paid or unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is directly or indirectly paid, or entitled to payment by the Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.

- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(6)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Institution *is* a member, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the regulations thereunder. Hours of Service also will be credited for any person considered an employee for this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

Hours of Service will be determined on the basis of actual hours that were worked by the employee.

- 1.16** Institution means the employment unit(s) under the jurisdiction of the Board which employs the Participants in this Plan, namely:

University of Rhode Island  
Rhode Island College  
Community College of Rhode Island  
Office of Higher Education

- 1.17** Institution Plan Contributions means contributions made by the Institution under this Plan.

- 1.18** Limitation Year means a calendar year.

- 1.19 Normal Retirement Age** means the Social Security Administration's full retirement age. Plan participants may retire at the Normal Retirement Age. (Early retirement is permitted when employment ceases on or after attainment of age 55.)
- 1.20 Participant** means any Eligible Employee of the Institution participating in this Plan.
- 1.21 Participant Plan Contributions** means either mandatory or voluntary contributions made by a Participant under this Plan and as further required by Article IV, Section 4.1(a) and 4.1(b), which amounts are made by the Institution to the Fund Sponsor for the Funding Vehicle(s) listed in Article V, and which are designated as "picked up" by the Institution.<sup>1</sup>
- 1.22 Plan** means the Rhode Island Board of Governors for Higher Education Defined Contribution Retirement Plan (restated by this document as of June 1, 2004 and February 9, 2009.)
- 1.23 Plan Contributions** means contributions made under this Plan by the Institution and Participant.
- 1.24 Plan Entry Date** means the first eligible pay period beginning after the date that the employee has met the participation requirements set forth in Article III.
- 1.25 Plan Year** means the twelve consecutive month period from July 1 through June 30.
- 1.26 Year of Service** means a 12-month period (computation period) starting with the Eligible Employee's Date of Employment during which the Eligible Employee works at least 20 hours each week or more, if the employee is a staff member or at least 17.5 hours each week or more, if the employee is a faculty member. The date of employment or reemployment for a faculty member will be the effective date of the appointment or reappointment. For all other employees, the date of employment or reemployment will be the first day of actual performance of his or her actual duties. For purposes of eligibility for participation, all Year(s) of Service with an Eligible Employer will be counted, regardless of whether there is a break in service.

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<sup>1</sup> Pursuant to Amendment No. 5 executed on December 9, 2008, and effective January 1, 2009.

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## **Article II: Establishment of Plan**

**Establishment of Plan.** The Rhode Island Board of Governors for Higher Education established the Higher Education Defined Contribution Retirement Plan (the Retirement Resolution) as of September 1, 1967, and as amended from time to time.

This Plan document sets forth the provisions of this Code Section 403(b) Plan. Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan, Plan Contributions shall be held for the exclusive benefit of Participants.

A Code Section 403(b) Defined Contribution Retirement Plan is a plan that provides for a separate account(s) for each Participant that meets the requirements of Code Section 403(b). Benefits are based solely on the amounts of Plan Contributions to the Participant's Accumulation Account(s) and earnings, if any. All benefits under the Plan are fully funded and provided through the Funding Vehicle(s) selected by the Participant. Benefits are not subject to, nor covered by, federal plan termination insurance.



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### **Article III: Eligibility for Participation**

- 3.1 Eligibility for Participation.** Eligible Employees may begin participation in this retirement Plan on a voluntary basis on or after the second anniversary of their employment within the Board of Governors' system. All eligible employees are required to begin participation in this Plan no later than the second anniversary of their employment within the Board of Governors' system and attaining the age of 30.

The preliminary service period will be waived for any eligible employee who owns an institution sponsored 403(b) or 401(a) retirement annuity, or who has 5 years of experience within his or her field (not including work done as a graduate student) and has reached age 30.

- 3.2 Notification.** The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.
- 3.3 Enrollment In Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be subject to termination.
- 3.4 Reemployment.** A former employee who is re-employed by the Institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.
- 3.5 Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:
- a. he or she ceases to be an Eligible Employee;
  - b. the Plan is terminated;
  - c. his or her contributions under the Plan are terminated.

Furthermore, if a Participant begins to receive retirement benefits from the Accumulation Account(s) arising from Plan Contributions under this Plan before termination of employment, he or she will cease to be eligible and no further Institution Plan Contributions will be made on his or her behalf, unless Participant is subject to the Institution's phased-in retirement plan or part-time employment option plan. Notwithstanding the foregoing, withdrawal of funds representing voluntary Employee contributions to the Plan will not affect a Participant's eligibility for continued Institution Plan Contributions.

- 3.6 Computation Period.** For purposes of determining a Year of Service for a faculty member for purposes of eligibility for participation, the initial computation period is the 12 month period beginning with the effective date of the faculty member's appointment and ending at the conclusion of the first 12 months of employment by an Eligible Employer. For purposes of determining a Year of Service for all other employees for purposes of eligibility for participation, the initial computation period is the 12 month period beginning with the day the employee first performs an Hour of Service and ending at the conclusion of the first 12 months of employment by an Eligible Employer. Any subsequent computation period will begin immediately following the initial computation period as long as the employee is employed by an Eligible Employer.

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#### Article IV: Plan Contributions

- 4.1 Plan Contributions.** Plan Contributions will be made on a pay period basis for Eligible Employees who have satisfied the requirements of Article III in accordance with the schedule below. Plan Contributions are calculated on the basis of compensation as defined in Section 1.6 hereof. Institution Plan Contributions will only be made for Participants who are making the required Participant Plan Contribution (the "Mandatory Plan Contribution(s)").

- (a) Plan contributions as a Percentage of Compensation.

By the Institution	By the Participant
9%	5%

- (b) Participants may contribute more than 5% (the "Voluntary Plan Contribution(s)"), up to his or her Internal Revenue Code ("IRC") Section 402(g) limit, excluding those catch-up contributions otherwise allowed pursuant to the 15 Year Service Rule set forth in Treasury Regulation Section 1.403(b)-4(c)(3). Participant Mandatory Plan Contributions may be made on a before-tax (salary reduction) or after-tax (salary deduction) basis pursuant to a salary reduction agreement and in accordance with the requirements of Code Section 403(b). Any Voluntary Plan Contributions will be made on a before-tax basis. Under the salary reduction agreement, the employee's salary (paid after the agreement is signed) is reduced and the amount of the reduction is applied as premiums to the Funding Vehicles available under this Plan. Any election to make Participant Plan Contributions under this Section may not be made retroactively, and shall remain in effect until modified or terminated, subject to any reasonable rules established by the Plan Administrator. A participant may modify his or her salary reduction agreement during a Plan Year by filing an appropriate form with the Plan Administrator. Such rules may include the number and frequency of such modifications during any Plan Year, but a Participant shall be permitted to make a modification at least once each Plan Year.

Computation Period. For determining a Year of Service for purposes of eligibility for Plan Contributions, the computation period is defined in Section 3.6 hereof. <sup>2</sup>

- 4.2 When Contributions Are Made.** Plan Contributions will begin each year when the Institution has determined that the Participant has met or will meet the requirements of Article III. Plan Contributions will be forwarded to the Fund Sponsor of the Funding Vehicle(s) in accordance with the procedures established by the Board. Plan Contributions will be forwarded by the Institution to the Fund Sponsor as soon as it is administratively feasible for the Institution to segregate contributions, but in any event, within the time required by law.
- 4.3 Allocation of Contributions.** Plan Contributions shall be forwarded to the Fund Sponsor(s) of the Funding Vehicle(s) selected by a Participant, in accordance with the procedures established by the Board and may be allocated by the Participant to one or more Funding Vehicle(s). A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) at any time. This paragraph is intended as good faith compliance with the requirements of Code Section 404(c).
- 4.4 Leave of Absence.** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave of absence.
- 4.5 Disability.** The Board's Long-Term Disability policy will make contributions for Participants who are disabled (as defined in the Board's long-term disability policy) on the basis of the compensation each such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming disabled, to the extent permitted by Code Section 415 or 403(b).
- 4.6 Transfer of Funds from Another Plan.** The Fund Sponsor shall accept contributions that are transferred directly from any other plan under the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and non-forfeitable.

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<sup>2</sup> Pursuant to Amendment No. 5 executed on December 9, 2008, and effective January 1, 2009.

- 4.7 Acceptance of Rollover Contributions.** If a Participant is entitled to receive a distribution from another plan described in Section 403(b) of the Code that is an eligible rollover distribution under section 402 of the Code, the Fund Sponsor will accept such amount under this Plan provided the rollover to this Plan is made 1) directly from another plan; or 2) by the Participant within 60 days of the receipt of the distribution.
- 4.8 Maximum Plan Contributions.** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

For the purpose of calculating the limits of Code Section 415, compensation means a Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan and excluding the following: (a) employer contributions to a plan of deferred compensation that are not includible in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation; and (b) other amounts that received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement towards the purchase of an annuity described in Code Section 403(b) (whether or not the amounts are actually excludable from the gross income of the employee). For years beginning after December 31, 1997, compensation shall include any elective deferral (as defined in Code Section 402(g)(3)) and any amount which is contributed or deferred by the Institution at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code Section 125, 132 or 457.

Notwithstanding the preceding paragraph, Compensation for a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.

To the extent permitted by Code Section 415 and the regulations promulgated thereunder, if the Annual Additions exceed the Section 415 limitations, the excess amounts will be disposed of as follows: (a) any Participant Plan Contributions (plus any gain attributable to the excess), to the extent they would reduce the excess amount, will be returned to the Participant; and, to the extent necessary, (b) if, after the application of (a) an excess still exists, the excess will be held unallocated in a suspense account and will be applied to reduce Institution Plan Contributions in succeeding limitation years.

If the limitations are exceeded because the Participant is also participating in another Plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions 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 Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

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## Article V: Fund Sponsors and Funding Vehicles

### 5.1 Fund Sponsors and Funding Vehicles. Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors and their Funding Vehicles are:

- A. TIAA-CREF, Teachers Insurance and Annuity Association/College Retirement Equities Fund
- B. AIG/VALIC, American International Group/Variable Annuity Life Insurance Company
- C. MetLife, Metropolitan Life Insurance Company

Funding Vehicles: Employer and employee contributions can be invested in the retirement annuity. Only employee contributions are invested in the supplemental retirement annuity.

The Institution's current selection of Fund Sponsors and Funding Vehicles is not intended to limit future additions or deletions of Fund Sponsors and Funding Vehicles. Any additional accounts offered by a Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Board and the Fund Sponsor.

### 5.2 Fund Transfers. Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles. A Participant may transfer funds to another Fund Sponsor once per calendar year.

### 5.3 Funding Vehicle for Voluntary Plan Contributions. Notwithstanding any other provision(s) of the Plan to the contrary, **effective January 1, 2010**, Voluntary Plan Contributions may only be invested into one of the Supplemental Tax-deferred Annuity Accounts as established from time to time by the Fund Sponsors.

The Institution's current selection of Supplementary Tax-deferred Annuity Fund Sponsors is not intended to limit future additions or deletions of Fund Sponsors. Any additional accounts offered by the Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Board and Fund Sponsor.<sup>3</sup>

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<sup>3</sup> Pursuant to Amendment No. 5, executed on December 9, 2008 and effective January 1, 2010 as provided in Amendment No. 6 executed on December 26, 2008.

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**Article VI: Vesting**

- 6.1 Plan Contributions.** Plan Contributions shall be fully and immediately vested and non-forfeitable when such Plan Contributions are made.



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## Article VII: Benefits

- 7.1 Retirement Benefits.** A Participant may elect to receive retirement benefits under any of the forms of benefit available under the relevant Funding Vehicle. However, notwithstanding any other provision in this Plan, distributions of amounts attributable to Participant Plan Contributions made by salary reduction and any earnings accrued in an annuity contract after December 31, 1988, may be paid only when a Participant: attains age 59½ and does not remain in service, otherwise separates from service, dies, or becomes disabled. Participants who elect to participate in the Institution's phased-in retirement plan or the part-time employment option may elect to receive retirement benefits while still working on a part-time basis. In addition, the Accumulation Account attributable to Participant Plan Contributions may be paid if the Participant encounters financial hardship, subject to the requirements set forth in the "Hardship Distribution" section of Article VII and to the extent permitted by the Code.<sup>4</sup>

There are several types of retirement benefits offered by the Funding Vehicles available under this Plan. Benefits may be received before termination of employment if the Participant is disabled. A Participant shall be considered disabled as provided in section 72(m)(7) of the Code.

- 7.2 Cash Withdrawals.** A Participant who has attained age 59½ and remains in service may receive a cash withdrawal of benefits attributable to all Voluntary Participant Plan Contributions made on a before-tax basis pursuant to Section 4.1(b), as permitted by the Funding Vehicle. This Plan does not permit cash withdrawals of benefits attributable to Institution Plan Contributions for in-service employees. However, a Participant who becomes disabled, terminates, retires, or upon death may receive a cash withdrawal of benefits attributable to all Participant Plan Contributions made pursuant to Section 4.1(a) and 4.1(b), as permitted by the Funding Vehicle and subject to IRS regulations.<sup>5</sup>

For this section only, each Funding Vehicle will establish a procedure to segregate benefits attributable to Institution Plan Contributions and Participant Plan Contributions. The procedure may use reasonable approximations and will apply uniformly to all Participants covered by that Funding Vehicle.

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<sup>4</sup> Pursuant to Amendment No. 5 executed December 9, 2008, and effective January 1, 2009.

<sup>5</sup> Pursuant to Amendment No. 5 executed December 9, 2008, and effective January 1, 2009.

**7.3 Loans.** A loan may be taken from contributions a Participant has made into the supplemental retirement annuity plan. The loan amount can be up to an IRS limit of \$50,000 or up to 50% of Plan accumulations, which is based on accumulations attributed to both the Participant's 5% contribution and the Institution's 9% contribution. However, the Participant may only receive the loan from contributions which he/she has made under the Plan. Under no circumstances will loans be made on contributions made by the Institution. Fund sponsors may have their own specific loan procedures.

**7.4 Hardship Distributions.** Hardship distributions of the Accumulation Account attributable to voluntary Participant Plan Contributions pursuant to Section 4.1(b) shall be approved only if the Fund Sponsor determines that the Participant has an immediate and heavy financial need and the distribution is necessary to satisfy the need.<sup>6</sup> This need shall be determined by the self-certification procedures implemented by the Fund Sponsor. The amount of the need may include any amount necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. In such cases, there shall be paid to such Participant out of his Accumulation Account only such portion of the amount requested as is necessary to prevent or alleviate the hardship. In making its determination hereunder, the Fund Sponsor shall follow uniform and nondiscriminatory practices and its determination shall be final and binding. Income earned on or after January 1, 1989, shall be available for distribution on account of hardship to the extent permitted by the Code.

"Hardship Distributions" shall apply to any person who is a Beneficiary under the Plan with respect to a Participant, in all cases when such provisions apply to the Participant's spouse or dependent.<sup>7</sup>

The following are deemed to be immediate and heavy financial needs of the Participant:

(a) medical expenses described in Code Section 213(d) incurred by the Participant, his spouse or his dependents, or necessary for these persons to obtain such medical care;

(b) purchase (excluding mortgage payments) of a principal residence for the Participant;

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<sup>6</sup> Pursuant to Amendment No. 5 executed on December 9, 2008, and effective January 1, 2009.

<sup>7</sup> Pursuant to Amendment No. 4 executed on December 3, 2007. This amendment is allowed pursuant to the provisions of The Pension Protection Act of 2006, H.R. 4, §826.

- (c) payment of tuition and related educational fees and room and board expenses for the next 12 months of post-secondary education for the Participant, his spouse, his children or his dependents;
- (d) the payment of amounts necessary to prevent the eviction of the Participant from his principal residence or the foreclosure on the mortgage of his principal residence;
- (e) payments for burial or funeral expenses for the employee's deceased parent, spouse, children or dependents;
- (f) expenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under Code Section 165; or
- (g) such other circumstances as may be specified in Regulation Section 1.401(k)-1(d)(2)(iii)(B) or subsequent promulgations.

A distribution will be treated as necessary to satisfy a financial need if the employee reasonably represents that the need cannot be relieved:

- (a) through reimbursement or compensation by insurance or otherwise;
- (b) by reasonable liquidation of the employee's assets (or the assets of a spouse or child available to the employee) to the extent the liquidation would not cause hardship;
- (c) by other distributions or nontaxable loans from the plans of the Board or by borrowing from commercial sources on reasonable terms.

**7.5 Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary(ies) under the options offered by the Funding Vehicle. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

**7.6 Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary(ies) by the Fund Sponsor.

**7.7 Minimum Distribution Requirements.**<sup>8</sup> The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this Section shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder.

**(A) Time and Manner of Distribution**

- (1) Required Beginning Date.** The Participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (2) Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:
  - (a)** If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
  - (b)** If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (c)** If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (d)** If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this

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<sup>8</sup> Pursuant to Amendment No. 2 which amended Section 7.7 of the Plan to comply with the final and temporary regulations under Section 401(a)(9) of the Code, relating to minimum distribution effective for calendar years beginning with the 2003 calendar year.

subsection (A)(2), other than subsection (A)(2)(a), will apply as if the surviving spouse were the Participant.

For purposes of subsections (A)(2) and (C), unless subsection (A)(2)(d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection (A)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (A)(2)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (A)(2)(a), the date distributions are considered to begin is the date distributions actually commence.

- (3) Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions shall be made in accordance with subsections (B) and (C) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

**(B) Required Minimum Distributions During Participant's Lifetime.**

- (1) Amount of Required Minimum Distribution for Each Distribution Calendar Year.** 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 by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, 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 Treasury Regulation Section 1.401(a)(9)-9, using the Participants and spouse's attained ages as of

the Participant's and spouse's birthdays in the distributions calendar year.

- (2) Lifetime Required Minimum Distribution Through Year of Participant's Death.** Required minimum distributions will be determined under this subsection (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.**

**(1) Death On or After Date Distributions Begin.**

- (a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

- (i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the

Participant's death, reduced by one for each subsequent year.

- (b) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

**(2) Death Before Date Distributions Begin**

- (a) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in subsection (C)(1).
- (b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (c) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse *dies* before distributions are required to begin to the surviving spouse under subsection (A)(2)(a), this subsection (C)(2) shall apply as if the surviving spouse were the Participant.

**(D) Definitions**

- (1) **Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-I, Q&A-4.
- (2) **Distribution calendar year.** 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 subsection (A)(2). The required minimum distribution for the Participant's first distribution *calendar* year shall 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 31 of that distribution calendar year.
- (3) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.
- (4) **Participant's Account Balance.** The Participant's 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 Participant's 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 Participant's 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.
- (5) **Required Beginning Date.** The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70½ or if later, April 1 following the calendar year in which the Participant retires.

**(E) Election to Allow Participants, Former Participants or Beneficiaries to Elect 5-Year Rule.**



Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in subsection (A)(2) and (C)(2) applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Subsection (A)(2), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with subsection (A)(2) and (C)(2).

**(F) Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.**

A designated Beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

- 7.8 Direct Rollovers.** This section 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 section, a distributee may elect, at the time and in the manner prescribed by the Plan 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.

For this section, the following provisions and definitions apply.

- 1) **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 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and, for any distributions after December 31, 1999, any hardship distributions described in Code Section 401(k)(2)(b)(i)(iv).

For distributions after December 31, 2007, an "eligible rollover distribution" shall include a rollover contribution as contemplated by IRC §408A(e), as added by the Pension Protection Act of 2006, H.R. 4, section 824, insofar as such rollover meets the requirements of IRC §§402(c), 403(b)(8), or 457(e)(16), as applicable.<sup>9</sup>

- 2) **Eligible Retirement Plan:** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in section 408(b) of the Code, 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.
- 3) **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.
- 4) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- 5) IRC §401(c)(11) shall apply and allow any portion of a distribution from the Plan for any deceased Participant to be made in a direct trustee-to-trustee transfer to an individual retirement plan described in clause (i) or (ii) of IRC §402(c)(8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated Beneficiary (as defined by §401(a)(9)(E)) of the Participant who is not the surviving spouse of the employee, and:
  - (i) Such transfer shall be treated as an eligible rollover distribution for purposes of IRC §402(c)(11),
  - (ii) The Plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of IRC §408(d)(3)(C)) for purposes of this title of the IRC, and
  - (iii) IRC §401(a)(9)(B) (other than clause iv thereof) shall apply to such Plan.<sup>10</sup>

<sup>9</sup> Pursuant to Amendment No. 3 executed December 3, 2007. This amendment was to comply with Section 829 of the Pension Protection Act of 2006.

<sup>10</sup> Pursuant to Amendment No. 3 executed December 3, 2007. This amendment was to comply with Section 829 of the Pension Protection Act of 2006.

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## **Article VIII: Administration**

- 8.1 Plan Administrator.** The Board of Governors is the administrator of this Plan and may designate, in writing, the respective Presidents at the Institutions to carry out duties under the Plan, i.e., enrolling Participants, sending Plan Contributions for each Participant to the Fund Sponsors, and performing duties required for the operation of the Plan.
- 8.2 Authority of the Board.** The Board has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Board shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Board will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Board may employ attorneys, agents, and accountants as it finds necessary or advisable to assist in carrying out its duties. The Board may designate a person or persons other than the Board to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 8.3 Action of the Board.** Any act authorized, permitted, or required to be taken by the Board under the Plan, which has not been delegated in accordance with the "Authority of the Board" section of Article VIII, may be taken by a majority of the members of the Board, either by vote at a meeting, or in writing without a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Board under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by an instrument in writing, signed by all members, as having authority to execute the documents on its behalf, or (ii) a person who becomes authorized to act for the Board in accordance with the provisions of the "Authority of the Board" section of Article VIII. Any action taken by the Board that is authorized, permitted, or required under the Plan and is in accordance with a Fund Sponsor's or Funding Vehicle's contractual obligations are final and binding upon the Board, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Board.

- 8.4 Indemnification.** The Board will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Board is delegated pursuant to the "Authority of the Board" section of Article VIII (other than the Fund Sponsors). These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the Board, under any provision of law, or under any other agreement.
- 8.5 No Reversion.** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made.
- 8.6 Statements.** The State Controller's Office will determine the total amount of contributions to be made for each Participant biweekly on the basis of its payroll records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the State Controller's Office will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the State Controller's Office, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution's payment.
- 8.7 Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. The Fund Sponsors will send each Participant a quarterly report summarizing the status of his or her Accumulation Accounts(s). Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.
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**Article IX: Amendment and Termination**

- 9.1 Amendment and Termination.** While it is expected that this Plan will continue indefinitely, the Board reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of the Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Board will instruct the employing Institution to notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 Limitation.** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made.
  - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

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**Article X: Miscellaneous**

- 10.1 Plan Non-Contractual.** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Board/Institution, and nothing in this Plan will be construed as a commitment on the part of the Board/Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Board/Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 Claims of Other Persons.** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Board, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 Governing Law.** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Rhode Island and Providence Plantations.
- 10.4 Merger, Consolidation, or Transfers of Plan Assets.** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the Plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.
- 10.5 Finality of Determination.** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.
- 10.6 Non-Alienation of Retirement Rights or Benefits.** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit

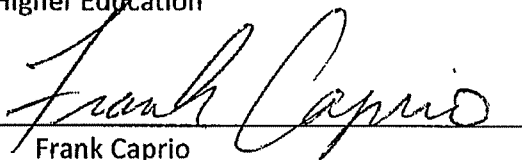
under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.

*Employer Identification Number: 05-0000522*

*Plan Number: 001*

The Rhode Island Board of Governors  
For Higher Education

By: \_\_\_\_\_

A handwritten signature in cursive script, reading "Frank Caprio", written over a horizontal line.

Frank Caprio  
Chairman

## Exhibit A

### EGTRRA Amendment For Noncontributory 403(b) Retirement Plans

This includes mandatory contributory ("TAMRA") plans

#### AMENDMENT NO. 1 OF THE RHODE ISLAND BOARD OF GOVERNORS FOR HIGHER EDUCATION DEFINED CONTRIBUTION RETIREMENT PLAN for EGTRRA

IN WITNESS WHEREOF, the Rhode Island Board of Governors for Higher Education herein amends the Defined Contribution Retirement Plan as follows:

##### A. PREAMBLE

1. Adoption and effective date of amendment. This amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first Plan year beginning after December 31, 2001.
2. Supersession of inconsistent provisions. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

##### B. LIMITATIONS ON CONTRIBUTIONS

1. Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:
  - a. \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
  - b. 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(E)(2) of the Code), if any, otherwise treated as an annual addition.



Maximum Exclusion Allowance. Effective for Plan years beginning on or after January 1, 2002, contributions to this Plan will not be subject to the exclusion allowance limitations of section 403(b) of the Code.

C. INCREASE IN COMPENSATION LIMIT

1. Annual Compensation Limit. The annual compensation of the Participant taken into account in determining allocations for any Plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the Plan year or such other consecutive 12 month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.
2. Plan Definition of Compensation. To the extent the Plan's definition of Compensation includes compensation not currently includable because of the application of Code Section 125 or 403(b), this definition is amended to include compensation not currently includable because of the application of Code §§ 132(f)(4) and 457.
3. Special Rule for Governmental Plans. Notwithstanding the above, employees of governmental employers who became Participants in the Plan before the first day of the Plan year beginning after December 31, 1995, will be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.

D. DISTRIBUTION UPON SEVERANCE FROM EMPLOYMENT

1. Effective date. This section shall apply for distributions and severances from employment occurring after December 31, 2001.
2. New distributable event. Amounts that have at any time been invested in a mutual fund custodial account may be distributed on account of the participant's severance from employment. However, such a distribution shall be subject to the other provisions of the Plan regarding distributions, other than provisions that require a separation from service before such amounts may be distributed.

E. DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS

1. Effective date. This section shall apply to distributions made after December 31, 2001.
2. Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in Article VII of the Plan, an eligible retirement plan shall mean a qualified retirement plan described in section 401(a) or section 403(a) of the Code, a tax sheltered annuity plan described in section 403(b) of the Code and 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 or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this

Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

3. Modification of definition of eligible rollover distribution to exclude hardship distributions. For purposes of the direct rollover provisions in Article VII of the Plan, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

#### F. ROLLOVERS FROM OTHER PLANS

1. Direct Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution from:
  - a. A qualified plan described in section 401(a) or 403(a) of the Code, excluding after-tax employee contributions.
  - b. A qualified tax sheltered annuity plan described in section 403(b) of the Code.
  - c. 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 or political subdivision of a state.
2. Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an eligible rollover distribution from:
  - a. A qualified plan described in section 401(a) or 403(a) of the Code.
  - b. A tax sheltered annuity plan described in section 403(b) of the Code.
  - c. 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 or political subdivision of a state.
3. Participant Rollover Contributions from IRAs. The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.
4. As required by Section 822 of the Pension Protection Act of 2006, H.R. 4, amending IRC §402(c)(2), any Participant contributions that are part of an eligible rollover distribution as described in this Section F, shall be separately accounted for.<sup>11</sup>

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<sup>11</sup> Pursuant to Amendment No. 3 executed December 3, 2007. This amendment was adopted for the purposes of complying with Section 829 of the Pension Protection Act of 2006.

## Exhibit B

### **Amendment to The Rhode Island Board of Governors for Higher Education Restated Defined Contribution Retirement Plan (the "Plan")**

Effective as of December 31, 2009 and applicable to Participant tax years ending on or after December 31, 2009, The Rhode Island Board of Governors for Higher Education hereby amends the Plan as follows:

1. Section 8.2 "Authority of Board" of Article VIII, entitled "Administration", is hereby deleted in its entirety and replaced with the following new Section 8.2:

8.2 Authority of Board. The Board has all the powers and authority expressly conferred upon it herein but shall have no discretionary and final authority with regard to matters of plan administration other than the authority to: (i) conduct administrative reviews of the Plan structure and its operation for tax compliance defects; such administrative reviews may include discrimination testing and compliance with maximum contribution limitations under Treasury regulations; (ii) fashion and propose corrections to the Plan; (iii) develop improvements to the Plan's administrative processes that will obviate the recurrence of tax defects; or (iv) keep records of its activities. The Board will not have responsibility for, or make, discretionary determinations in administering the Plan, including, but not necessarily limited to, discretionary determinations in authorizing plan to plan transfers, processing distributions, satisfying applicable qualified joint and survivor annuity requirements, and making determinations regarding hardship distributions, qualified domestic relations orders (QDROs), and eligibility for or enforcement of loans. The Board may employ attorneys, agents, accountants and other professional advisors, including but not limited to a third party custodian and record keeper, as it deems necessary or advisable to assist in the implementation and operation of the Plan.

2. Section 1.10 "Eligible Employee" of Article I, entitled "Definitions", is hereby amended in part by replacing subsection (b) therein with the following new subsection (b):

(b) Staff on continuing and term appointments with a workload of at least twenty (20) hours per week and six (6) months or more in duration (for purposes of this subsection (b), an employee will not be deemed ineligible to participate in the retirement plan if the employee is reasonably expected to work for at least 1,000 hours of service for the 12 month period beginning on the date the employee's employment commenced and for each plan year ending after the close of the 12 month period beginning on the date the employee's employment commenced, the employee worked at least 1,000 hours of service in the preceding 12 month period);

3. Section 7.4 "Hardship Distributions" of Article VII, entitled "Benefits", is hereby deleted in its entirety and replaced with the following new subsection 7.4:

7.4 Hardship Distributions. Hardship Distributions of the Accumulation Account attributable to voluntary Participant Plan Contributions made pursuant to Section 4.1(b) shall be approved only if there is an immediate and heavy financial need as determined with the consent of the plan providers for the Plan in accordance with that certain "Agreement for the Compliance Coordinator Service", as same may be amended from time to time, executed between Employer and Teachers Insurance and Annuity Association of America in or about the month of December, 2009. Income earned on such Hardship Distributions shall not be eligible for withdrawal under this Section 7.4 and in accordance with Treasury Regulation 1.403(b)-6(d)(2), unless an exception thereto is permitted by the Code.

"Hardship Distributions" shall apply to any person who is a Beneficiary under the Plan with respect to the Participant, in all cases when such provisions apply to the Participant's spouse or dependent.

A distribution shall be for an "Immediate and Heavy Financial Need" as determined in accordance with Treasury Regulation 1.401(k)-1(d)(3)(iii), and shall include distributions for:

- (1) Expenses for (or necessary to obtain) medical care that would be deductible under Code Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
- (2) Costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);
- (3) Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant, or the Participant's spouse, children, or dependents (as defined in Code Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2) and (d)(1)(B));
- (4) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence;
- (5) Payments for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Code Section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(d)(1)(B));

(6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or

(7) Any other circumstance in accordance with Treasury Regulation 1.401(k)-1(d).

IN WITNESS WHEREOF, the Board has caused this Amendment to be executed in its name and behalf by a duly authorized agent this 27<sup>th</sup> day of December, 2009.

RHODE ISLAND BOARD OF GOVERNORS  
FOR HIGHER EDUCATION

By: \_\_\_\_\_

Frank Caprio

Title: Chair

1092993\_1

EXHIBIT C

AMENDMENT TO THE RHODE ISLAND  
BOARD OF GOVERNORS FOR HIGHER EDUCATION (the "Board")  
DEFINED CONTRIBUTION RETIREMENT PLAN  
PLAN DOCUMENT (Hereinafter the "Plan")

WHEREAS, the Board has reviewed the Plan and desires to strengthen the terms of the Plan and continue to maintain compliance with the provisions of the Internal Revenue Code ("IRC");

NOW, THEREFORE, the Board hereby approves the following amendments to the Plan, effective as of the first day of the month following the date of approval by the Board:

1. **Article IV: Plan Contributions, Section 4.1, is hereby amended by adding to the end of the paragraph the following sentence, as marked with italics:**

"4.1 **Plan Contributions.** Plan Contributions will be made on a pay period basis for Eligible Employees who have satisfied the requirements of Article III in accordance with the schedule below. Plan Contributions are calculated on the basis of compensation as defined in Section 1.6 hereof. Institution Plan Contributions will only be made for Participants who are making the required Participant Plan Contributions (the "Mandatory Plan Contribution(s)"), *and such Mandatory Plan Contribution(s) shall be deemed paid, and "picked up", by the Institution for purposes of the deferral provisions of IRC Section 414(h)(2); furthermore, Participants shall not be permitted to have any cash or deferred election right (within the meaning of Treasury Regulation Section 1.401(k)-1(a)(3)) with respect to all or any portion of such Mandatory Plan Contribution(s).*"

2. **Article 1.10, definition of Eligible Employee, is hereby superseded and replaced with the following provision:**

"1.10 **Eligible Employee** means, subject to the conditions stated in Article III, every employee with a period of appointment of at least six (6) months, except the following categories of employees:

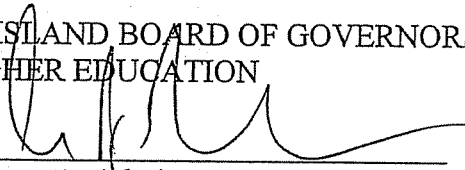
- (i) nonresident aliens with no U.S. source income;
- (ii) employees who are students performing services described in IRC Section 3121(b)(10); and
- (iii) employees who normally work less than 20 hours per week;

provided further that active members of the Employee's Retirement System of Rhode Island (ERSRI) with a period of appointment of at least six (6) months may elect to participate in the Plan or remain in ERSRI within 60 days after they become eligible for participation in the Plan."

**3. Article 3.1, the term "eligible employee" as used therein is hereby amended to be "Eligible Employee".**

IN WITNESS WHEREOF, the Board has caused this Amendment to be executed in its name and behalf by a duly authorized agent this 25 day of ~~January~~ June, 2012.

RHODE ISLAND BOARD OF GOVERNORS  
FOR HIGHER EDUCATION

By: 

Name: Lorne A. Adrain

Title: Chair

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Exhibit D

**Amendment to The Rhode Island Board of Governors for Higher Education Restated  
Defined Contribution Retirement Plan  
(the "Plan")**

Effective as of December 10, 2012 and applicable upon passage, The Rhode Island Board of Governors for Higher Education hereby amends the Plan as follows:

1. Section 4.1 of Article IV, entitled "Plan Contributions", is hereby amended by adding the following new paragraph (c):

(c) Notwithstanding that employees who are active members of the Employee's Retirement System of Rhode Island (ERSRI) have not elected to become Participants within 60 days of becoming eligible to participate in the Plan as contemplated by Section 1.10(f), such employees shall be allowed to participate in the Plan for the limited purpose of making Voluntary Plan Contributions as allowed under Section 4.1(b) and shall otherwise be bound by all applicable Plan provisions.

IN WITNESS WHEREOF, the Board has caused this Amendment to be executed in its name and behalf by a duly authorized agent this 10<sup>th</sup> day of December, 2012.

RHODE ISLAND BOARD OF GOVERNORS  
FOR HIGHER EDUCATION

By: \_\_\_\_\_

Lorne A. Adrain

Title: Chair



**Exhibit E**

**Amendment  
to**

**The Rhode Island Council on Postsecondary Education  
Restated Defined Contribution Retirement Plan**

IN WITNESS WHEREOF, the Rhode Island Council on Postsecondary Education herein amends the Defined Contribution Retirement Plan (the "Plan") to comply with IRS guidance on changes to the hardship distribution rules made by the Bipartisan Budget Act of 2018, which are effective for plan years beginning on or after January 1, 2019.

Now therefore, Section 7.4 of the Plan is hereby amended to provide for the following:

**1. Elimination of 6-Month Suspension**

The 6-month suspension period on employee contributions shall be eliminated beginning for hardships distributions in Plan Years beginning after December 31, 2018.

**2. Elimination of Plan Loans First Requirement**

Effective for hardship distributions in plan years beginning after December 31, 2018, the requirement that Plan loans must be taken first, prior to receiving a hardship distribution, is eliminated.

**3. Casualty Loss Expenses Not Tied To a Disaster**

Expenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under Code Section 165 are not required to be tied to a federally declared disaster.

**4. Catch-all Facts and Circumstances Test Eliminated**

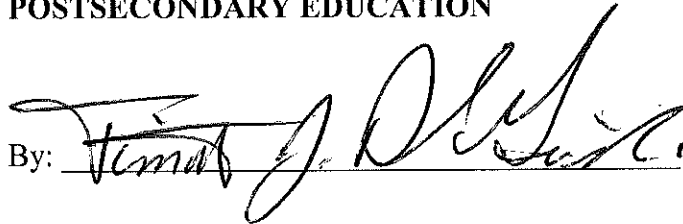
For hardship distributions made on or after January 1, 2019, the regulations eliminate the rules in the existing 401(k) regulations permitting the determination of whether a distribution is necessary to satisfy a financial need to be based on all the relevant facts and circumstances, and replace this subjective determination with a single, general, and more objective standard. The determination under the new standard includes the following requirements that are similar to those under the current regulations:

- a. a hardship distribution may not exceed the amount of the employee's need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution),
- b. the employee must have obtained other available distributions under the employer's plans (this includes all currently available distributions (including ESOP dividends, but not hardship distributions or loans) under the plan and all other plans of deferred compensation maintained by the employer, whether qualified or nonqualified), and

- c. the employee must represent (in writing, by an electronic medium, or other forms as prescribed by the IRS) that he or she has insufficient cash or liquid assets to satisfy the financial need.

IN WITNESS WHEREOF, the Rhode Island Council on Postsecondary Education has caused this Amendment to be executed in its name and behalf by a duly authorized agent this 20<sup>th</sup> day of MARCH 20 19.

**RHODE ISLAND COUNCIL ON  
POSTSECONDARY EDUCATION**

By: 

Title: CHAIR