

Office of the President
January 27, 2004

Members, Board of Trustees:

ESTABLISHMENT OF A 401(a) RETIREMENT PLAN

Recommendation: that the Board of Trustees approve the establishment of a 401(a) retirement plan (the “Plan”), effective January 1, 2004, for regular full-time employees of the University who have exceeded the Internal Revenue Service (IRS) limits allowed for retirement contributions available under the University’s 403(b) retirement plan.

It is further recommended that the “Plan” attached hereto as Exhibit A be adopted and that the Executive Vice President for Finance and Administration be authorized to execute the “Plan,” any required Trust Agreements and any and all documents reasonably necessary to obtain its qualification with the Internal Revenue Service including, but not limited to, the Power of Attorney, Notice, Treasury Form 5300 and any amendments required by the Internal Revenue Service. It is further recommended that the Office of General Counsel is designated to represent the University before the Internal Revenue Service in regard to obtaining qualification of the “Plan.”

Background: The University of Kentucky Employee Benefits Office has developed a 401(a) retirement plan for employees whose salaries exceed the limits for 403(b) retirement contributions under federal laws, e.g., Omnibus Budget Reconciliation Act of 1993 (OBRA 93) or section 415 of the Internal Revenue Code (IRC).

The establishment of a 401(a) retirement plan will give employees an additional OBRA 93 limit (if applicable) and section 415 of the IRC limit. The University will be able to make full retirement contributions on salaries up to \$410,000 for employees under the OBRA 93 limit and \$546,666 for employees under the section 415 limit of the IRC. Currently, the University gives employees who have exceeded one of the aforementioned limits a temporary salary increase, meaning the 10% University retirement contribution is paid to the employee as taxable salary instead of being remitted as a tax deferred retirement contribution.

The establishment of the 401(a) retirement plan will give the medical faculty the ability to tax defer more of their salaries and allow the University to be more consistent in its treatment of employees in the retirement program. Contributions to the 401(a) plan may

only be made after employees have exceeded the contribution limits available under 403(b).

In order for the 401(a) "Plan" to be a qualified plan, it is advisable that a request for a favorable determination letter be filed with the Internal Revenue Service utilizing Treasury Form 5300. The University's Office of General Counsel is capable of filing such application and making any modifications necessary to obtain said qualification. The form of the "Plan" to be adopted is attached hereto as Exhibit A. Contributions do not commence until the Internal Revenue Service issues a favorable determination letter. Participants will have some opportunity to catch-up amounts of contributions that otherwise could have been made during the Plan Year after the favorable determination letter is received. The University official responsible for making any amendments to said "Plan" should be the Executive Vice President for Finance and Administration. The Office of General Counsel should be authorized to file the Form 5300 and take such other actions as necessary to obtain qualification. The Executive Vice President for Finance and Administration should be authorized to execute the Plan document, any required Trust Agreements, Power of Attorney and any necessary amendments, subject to such reporting requirements as the Board of Trustees may impose.

Action taken: Approved Disapproved Other _____

UNIVERSITY OF KENTUCKY

401(a) Qualified Pension Plan

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Article I - Definitions

- 1.1 **Accumulation Account** means the separate account established for each Participant under the Funding Vehicles. The current value of a Participant's Accumulation Account includes the current value of all Plan contributions and any amounts transferred from another plan less expense charges and reflecting credited investment experience. A Participant's account balance is the Accumulation Account attributable to contributions made or accepted under this Plan from all sources including both forfeitable and non-forfeitable amounts.
- 1.2 **Annual Compensation Limit** shall mean the limit for contributions to a 403(b) and 401(a) Plan set forth in Code Section 401(a) (17), as the same is adjusted from year to year.
- 1.3 **Beneficiary(ies)** “Beneficiary” means the individual, institution, trustee, or estate designated by the Participant to receive benefits on the death of the Participant.
- 1.4 **Board** means the Institution's Board of Trustees
- 1.5 **Catch-up Contribution** shall refer to the contributions from both the Participant and the Institution necessary to make contributions during the first Plan Year during which a favorable determination letter is received from the Internal Revenue Service made after the Initial Contribution Commencement Date equal to the contributions from both Participant and Institution that would have been made to each Participant’s account during the said Plan Year if contributions were commenced when a Participant was first eligible and enrolled to participate without regard for the requirement for the Internal Revenue Service favorable determination letter required for the Initial Contribution Commence Date to occur. The amount of said Catch-up contribution, if any, per pay period shall be selected by the Participant. The Institutional match for the Catch-up contribution said be based upon the Participant’s election amount in the same ratio as the other contributions by the Institution (\$2 from Institution for every \$1 from Participant). In no event shall such Catch-up Contribution extend into any other Plan Year, even if the full amount needed to Catch-up has not been contributed. Any amounts that could have been contributed by the Participant or Institution without regard to the requirements for the Initial Contribution Commencement Date, but which are not made by the end of the PlanYear in which Catch-up Contributions commenced, shall be forfeited.
- 1.6 **Code** means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code includes not only the section, but any comparable section or sections of any future legislation that amends, supplements, or supercedes the section.
- 1.7 **Compensation** means wages in excess of the current Annual Compensation Limit stated in IRC Section 401(a)(17) paid to a Participant by the University of Kentucky, that must be reported as wages on the Participant's W-2 Form. “Compensation” includes those wages that are not included in the Participant's gross income due to Participant participation in an IRC Section 125, 132(f)(4), 401(k), 403(b) elective deferral plan, 414(h)(1)(B), 414(h)(2), or 457 salary reduction agreement.

Notwithstanding any other stated Plan provision to the contrary, for retirement Plan years beginning on or after January 1, 1996, the annual compensation to be considered for each 401(a) Plan Participant shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit for Plan Year 2004 is \$205,000. The annual compensation limit will be adjusted by the Commissioner of the Internal Revenue Service for increases in the cost-of-living and will be consistent 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 retirement Plan years beginning on or after January 1, 1996, any reference in this 401(a) Plan to the compensation limitation shall mean the OBRA '93 annual compensation limit stated IRC Section 401(a)(17).

- 1.8 ***Date of Employment or Reemployment*** means the first day in which an Employee is paid for the performance of services for the most recent period of service with the Institution. For a faculty member Date of Employment or Reemployment is the date of appointment.
- 1.9 ***Eligible Compensation*** shall mean all such compensation, in excess of the Annual Compensation Limit that can be utilized for contributions to the University of Kentucky 403(b) Plan, based upon the limits of Code Section 401(a) (17), as the same are adjusted from year to year.
- 1.10 ***Effective Date*** means January 1, 2004.
- 1.11 ***Eligible Employee*** means regular full-time employees whose annual compensation for the current Plan Year exceeds or is reasonably expected to exceed the Annual Compensation Limit under the University of Kentucky's 403(b) Plan. The term Eligible Employee shall not include self-employed individuals, as defined by Code Section 401(c)(1).
- 1.12 ***Fund Sponsor*** means the insurance, variable annuity or investment company providing the Funding Vehicles.
- 1.13 ***Funding Vehicles*** means a tax deferred annuity, fixed or variable in nature or a combination thereof, or a mutual fund issued for the purpose of funding accrued benefits under the 401(a) Plan, in which annuity contracts are described in Section 401(g) of the IRC, or mutual funds are held in trust.
- 1.14 ***Initial Contribution Commencement Date*** means the date of the first payroll after the Institution has received a favorable determination letter for the Plan from the Internal Revenue Service.

- 1.15 ***Institution or Employer*** means the University of Kentucky, which is an agency and instrumentality of the Commonwealth of Kentucky.
- 1.16 ***Institution Contribution or Employer Contribution*** means contributions made by the Institution under this Plan.
- 1.17 ***Limitation Year*** means the calendar year.
- 1.18 ***Normal Retirement Age*** means age 65.
- 1.19 ***Participant*** means any Eligible Employee of the Institution who participates in the Plan in accordance with Article II.
- 1.20 ***Participant Plan Contributions*** means contributions made by a Participant under this Plan. Required participant plan contributions are designated “picked-up” by the Institution by which such participant is employed so as not to be included in Participant’s gross income for Federal tax purposes as provided by section 414(h)(2) of the Code.
- 1.21 ***Plan*** means the Institution's 401(a) Defined Contribution Retirement Plan as set forth in this document.
- 1.22 ***Plan Entry Date*** means the first day after the date that the employee has met the participation requirements set forth in Article II.
- 1.23.1 ***Plan Rescission Date*** means January 1, 2006 if a favorable determination letter for the Plan has not been received by the Institution from the Internal Revenue Service by that date, unless the Plan is extended by the Board of the Institution.
- 1.24. ***Trust Accounts.*** Trust Accounts established in accordance with Section 4.4 for the purpose of providing mutual fund investments.
- 1.25 ***Plan Year*** means the calendar year.

Article II - Eligibility for Participation

2.1 **Participation.** All eligible employees can begin participation in this Plan on the Plan Entry Date during the first Plan Year beginning on or after the Effective Date; with contributions to commence on the Initial Contribution Commencement Date after the Eligible Employee has been declared eligible to participate in the Plan by the Institution and made a written election to participate.

If an individual is classified as an independent contractor or leased employee during any period of providing services to the Institution, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation.

2.2 **Notification.** The Institution will notify each Eligible Employee in writing of eligibility to participate in the Plan. Each Participant is entitled to the benefits and is bound by all of the terms, provisions, and conditions of this Plan, including any and all amendments which from time to time may be adopted, including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan contributions have been applied.

2.3 **Reemployment.** A Participant shall resume participation in the Plan immediately upon reemployment provided that he/she meets the qualifications set forth in Section 2.1 of Article II.

2.4 **Return to Eligible Class.** In the event a Participant is no longer a member of an eligible class of employees and becomes ineligible to participate, such Employee will participate immediately upon returning to an eligible class of employee.

2.5 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete and return to the Institution the appropriate enrollment form(s). An election to participate in the University of Kentucky 401(a) Plan is irrevocable, and shall be in writing and filed with the University.

2.5.1 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:

- he or she retires or is separated from employment from the University;
- the Plan is terminated;
- he or she elects phased retirement.

Article III - Plan Contributions

- 3.1 **Contributions.** After the Initial Contribution Commence Date, the Institution shall contribute to the Plan for those Eligible Employees who have satisfied requirements of Article II in accordance with the scheduled enrollment period.

Plan Contributions as a Percentage of Eligible Compensation

<u>By the Institution</u>	<u>By the Eligible Employee</u>
10%	5%

In addition, during the Plan Year in which the Initial Contribution Commencement Date occurs, Institution and Participant shall make the Catch-up Contributions, if necessary and as required, in the same ratio as the other contributions under this Plan (\$2 from Institution for every \$1 from Eligible Employee/ Participant).

Plan Contributions are considered to be credited to Participants no later than the next business day following the day for which the Plan contributions are made.

The annual compensation limit will be adjusted by the Commissioner of the Internal Revenue Service for increases in the cost-of-living and will be consistent 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.

Participant Plan Contributions will be made on a tax-deferred basis. Plan Contributions, made by a Participant on a before-tax basis, will be made under a written salary reduction agreement with his/her Institution. Under the agreement, the salary that is paid to a Plan Participant, after he/she signs a salary reduction agreement, is reduced. The amount of the reduction in salary is applied as a Contribution to one or more available Funding Vehicles offered by an approved Fund Sponsor.

The salary reduction agreement will be legally binding and irrevocable while the agreement is in effect. The agreement is subject to termination should the Plan Participant cease to meet the requirements for an Eligible Employee.

- 3.2 **Transfer of Funds from Another Plan.** Except as otherwise provided in Section 3.3, each Fund Sponsor shall accept amounts which are transferred directly from any other plan qualified under Code Sections 401(a) or 403(a) whether such plans are funded through a

trustee arrangement, custodial account or through an annuity contract, to the extent that such contributions are attributable to amounts contributed by the employer and employee on a pre-tax basis and earnings attributable to both employer and employee contributions. Such funds and the accumulation generated from them shall be fully vested and nonforfeitable at all times.

- 3.3 ***Acceptance of Rollover Contributions.*** If a Participant is entitled to receive a distribution from another plan qualified under Code Sections 401(a) or 403(a), a tax sheltered annuity plan described in Section 403(b) of the Code or a Code Section 457 (b) plan maintained by a government employer which separately accounts for amounts rolled over from plans other than Section 457(b) plans and such distribution is an eligible rollover distribution under Section 402 of the Code, a 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.
- 3.4 ***Rollover of IRAs.*** A Participant, with the written consent of the Plan Administrator, may at any time after becoming a Participant transfer to one or more Funding Vehicles all or a portion of the amount received by the Participant from an individual retirement account or annuity as defined respectively in Section 408(a) or 408(b) of the Code maintained for his benefit, if no part of the amount rolled over is required to be distributed under Section 401(a)(9) of the Code.
- 3.5 ***Allocation of Contributions.*** Institution Contributions shall be forwarded to the Fund Sponsors of the Funding Vehicles selected by a Participant, in accordance with the procedures established by the Institution and the Fund Sponsors. Contributions may be allocated by the Participant to one or more Funding Vehicles in whole-number percentages.
- 3.6 ***Participant Statements.*** At least once a year the Fund Sponsors to whom the Participant has allocated contributions will send the Participant a report summarizing the status that portion of his or her Accumulation Account with that Fund Sponsor.
- 3.7 ***Limitations.*** Notwithstanding anything to the contrary contained in this Plan, the obligation of the Institution to make contributions is subject to the provisions relating to the amendment and termination of the Plan. However, no amendment or termination will affect any obligation of the Institution to make contributions with respect to Compensation earned by Participants prior to the date of amendment or termination.
- 3.8 ***Military Service Credit.*** Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with §414(u) of the Internal Revenue Code.
- 3.9 ***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 amount 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(f)(4) or 457.

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.

Article IV - Funding Vehicles

- 4.1 **Investment of Plan Contributions.** Plan Contributions must be invested in one or more Funding Vehicles of the Sponsoring Organizations and any other Funding Vehicles for the Plan that the Employer makes available to Participants.
- 4.2 **Funding Vehicles.** Plan Contributions are invested in one or more Funding Vehicles available to Participants under the University of Kentucky's 401(a) Plan. The Fund Sponsors are:
- A. American Century Services Corporation (American Century)
 - B. Fidelity Investments Tax-Exempt Services Company (Fidelity)
 - C. Teachers Insurance and Annuity Association (TIAA)
TIAA Group Retirement Annuity
College Retirement Equities Fund (CREF)
CREF Group Retirement-Unit Annuity
- 4.3 **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.
- 4.4 **Trust Accounts.** All contributions under this Plan used to purchase mutual funds shall be paid to one or more Trustees as appointment by the Board and deposited in one or more Trust Funds. All assets of the Trust Funds, including investment income, shall be retained for the exclusive benefit of Participants, Former Participants and Beneficiaries and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and Trust Fund.

Article V - Vesting

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

Article VI - Benefits

- 6.1 **Retirement and Termination Benefits.** Following retirement, phased retirement, or termination of employment at any age, a Participant may elect to receive retirement benefits under any of the options set forth in the contracts between the Fund Sponsor(s) and the Participant and/or Institution. Notwithstanding any other provision in this Plan, distribution of an amount that has, at any time, been invested in a mutual fund custodial account may be paid only when a Participant: (1) separates from service or (2) dies.
- 6.2 **Death Benefits.** In the event that a Participant dies prior to the commencement of retirement benefit payments, the full current value of the vested amount in the Accumulation Account(s) is then payable to the Beneficiary or Beneficiaries named by the Participant, under one of the options offered by the Fund Sponsor(s).
- 6.3 **Application for Benefits.** Procedures for the receipt of benefits are initiated by writing directly to the Fund Sponsor(s). An employing Institution will be required to submit appropriate evidence of termination of employment of a Plan Participant to the Fund Sponsor(s). Benefits will be payable by the Fund Sponsor(s) upon receipt of a satisfactorily completed application for return of benefits and supporting documents. The Fund Sponsor(s) will provide the necessary forms to the Participant or Beneficiary.
- 6.4 **Distribution Requirements.**
- (A) **General Rules.** The requirements of this section shall apply to any distribution of a Participant's interest, and will take precedence over any inconsistent provisions of this Plan or any Funding Vehicle.
 - (B) **Required Beginning Date.** The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.
 - (C) **Limits on Distribution Periods.** Distributions, if not made in a single sum, may only be made over one of the following periods (or a combination thereof):
 - (i) the life of the Participant;
 - (ii) the life of the Participant and a Designated Beneficiary;
 - (iii) a certain period not extending beyond the Life Expectancy of the Participant;
or
 - (iv) a certain period not extending beyond the joint and last survivor expectancy of the Participant and a Designated Beneficiary.
 - (D) **Determination of Amount to be Distributed Each Year.** If the Participant's interest is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the Required Beginning Date:

With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of IRC Section 401(a)(9) that were proposed on January 17, 2001.

This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of the final regulations under IRC Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

The final regulations for IRC Section 401(a)(9) were issued on April 17, 2002, and become effective January 1, 2003.

(E) Death Distribution Provisions.

Distribution Beginning Before Death. If a Participant dies after the distribution of his/her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

Distribution Beginning After Death. If a Participant dies before his/her retirement benefits have begun to be distributed, the interest on his/her retirement benefits must normally be distributed by December 31 of the calendar year following the fifth anniversary of the Participant's death. Under a special IRC rule, death benefits may be payable over the life or the life expectancy of a designated beneficiary, if the distribution of benefits begins no later than December 31 of the calendar year immediately following the calendar year in which the Plan Participant died. If the Plan Participant's designated beneficiary is his/her spouse, payment of benefits may be deferred until December 31 of the calendar year in which the Plan Participant would have attained age 70 ½, had he/she continued to live.

The payment of retirement benefits, consistent with the rules presented above, is extremely important. Federal tax law imposes a 50 percent excise tax on the difference between the amount of benefits required to be distributed by law, and the amount actually distributed; if, the amount distributed is less than the required minimum amount.

Information regarding a Fund Sponsor's retirement benefit distribution options will be provided, upon request, to a Plan Participant from his/her selected Fund Sponsor(s). A Plan Participant will be responsible for notifying the selected Fund Sponsor(s) of his/her decision to seek a distribution from the accumulated funds within the Plan.

(F) Definitions.

Required Beginning Date. The Required Beginning Date of a Participant is the first day of April of the calendar year following the later of: (1) the calendar year in which

the Participant attains age 70 ½; or (2) the date that the Participant terminates his/her employment.

A Plan Participant must normally begin receiving his/her retirement benefits no later than April 1 of the calendar year, following his/her attainment of age 70 ½. If a Plan Participant retires after attaining age 70 ½, he/she must begin receiving his/her retirement benefits no later than April 1, following the calendar year in which he/she retires. Failure by a Plan Participant to begin receiving his/her annuity income by the required April 1 date may subject him/her to a substantial federal tax penalty.

- 6.5 ***Direct Rollover of Eligible Rollover Distributions.*** 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 the purposes of this Section, the following definitions apply:

(a) **Eligible rollover distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution described in §401(k)(2)(B)(i)(IV) received after December 31, 1998; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer securities).

(b) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or 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 that accepts the distributee's eligible rollover distribution and agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in section 414(p) of the Code.

(c) **Distributee:** A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(d) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

Article VII - Administration

- 7.1 **Plan Administrator.** The Institution, located at Director's Office, 101 Scovell Hall, Lexington, KY 40506-0064, is the administrator of this Plan and is responsible for enrolling Participants, sending Plan Contributions for each Participant to the Fund Sponsors, and for performing other duties required for the operation of the Plan.
- 7.2 **Authority of the Institution.** The Institution, by action of its board, may designate a person or persons other than the Institution to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing. The Institution has all the powers and authority expressly conferred upon it herein and further has the discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, including any uncertain terms and to resolve any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Institution shall be given deference, if it is subject, if it is subject to judicial review, and shall be overturned only if its arbitrary or capricious. [In exercising these powers and authority, the Institution will at all times exercise good faith, apply standards of uniform application, and refrain from arbitrary action.] The Institution may employ attorneys, agents, and accountants as it finds necessary or advisable to assist it in carrying out its duties.
- 7.3 **Action of the Institution.** Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance with Section 7.2, 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 Institution 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 Institution in accordance with the provisions of Section 7.2. Any action taken by the Institution which is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicle's contractual obligations, is final and binding upon the Institution, all persons who have or who claim an interest under the Plan, and third parties dealing with the Institution.
- 7.4 **Indemnification.** In addition to whatever rights of indemnification the members of the board, or any other person or persons (other than the Sponsoring Organizations) to whom any power, authority, or responsibility of the Institution is delegated pursuant to Section 7.2, may be entitled under the articles of incorporation, regulations, or by-laws of the Institution, under any provision of law, or under any other agreement, the Institution will satisfy any liability actually and reasonably incurred by any member or other person or persons, including expenses, attorney's fees, judgement, fines, and amounts paid in settlement or in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise by the member or other person or persons of any

of the powers, authority, responsibilities, or discretion of the Institution as provided under the Plan or trust, or reasonably believed by the member or other person or persons to be provided thereunder or any action taken by the member or other person or persons in connection with it. This indemnity is granted only to the extent and limits of the ability of an instrumentality of the Commonwealth of Kentucky to grant an indemnity under Kentucky law.

- 7.5 ***No reversion.*** Under no circumstances or conditions will any 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 contributions may be returned to the Institution within one year of the date that the mistake of fact is discovered.
- 7.6 ***Relationship of Federal and State Law.*** The Plan is intended to satisfy the applicable requirements of Code Section 401(a) that apply to government plans as defined in Section 414(d) including regulations and other authoritative pronouncements. To the extent not governed by the provisions of the Code or other federal laws, the Plan shall be administered and interpreted in accordance with the law of the Commonwealth of Kentucky in which the Employer is located.

Article VIII - Amendment And Termination

- 8.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Institution reserves the right at any time to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan by resolution of its board. In the event of a termination of the Plan or a complete discontinuance of Plan contributions, the Institution will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts of affected Participants will become nonforfeitable to the extent funded.
- 8.2 ***Limitation.*** Notwithstanding the provisions of the "Amendment and Termination" section of Article VIII, 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. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.
 - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.

Article IX – Miscellaneous

- 9.1 ***Plan Non-Contractual.*** Nothing contained 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 Institution, and nothing contained in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all Employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 9.2 ***Claims of Other Persons.*** The provisions of the Plan will in no event be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 9.3 ***Non-Alienation of Retirement Rights or Benefits.*** Except to the extent required under applicable law, no benefit under the Plan may, at any time be subject in any manner to alienation, encumbrance, the claims of creditors or legal process. 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, any attempt to do so will be void and of no effect. However, this Plan will comply 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 is a determined to be a qualified domestic relations order, as defined in Section 414(p) of the Code.
- 9.4 ***Merger, Consolidation, or Transfers of Plan Assets.*** The Plan will not be merged or consolidated with any other Plan, nor will any of its assets or liabilities be transferred to another plan; unless, immediately after a merger, consolidation, or transfer of assets and liabilities, each Participant would receive a benefit under the Plan that is at least equal to the benefit that he/she would have received immediately prior to a merger, consolidation, or transfer of assets or liabilities assuming in each instance that the Plan had then been terminated).
- 9.5 ***Contracts.*** The terms of the Funding Vehicles and the terms of the trust in which a Funding Vehicle may be held and any certificates issued to a Participant are a part of the Plan as if fully set forth in the Plan document and the provisions of which are incorporated by reference into the Plan. In cases where there is any inconsistency or ambiguity between the terms of the Plan and those of the Funding Vehicles, certificates and trust, the terms of the Plan control.

IN WITNESS WHEREOF, the University of Kentucky has, by action duly taken, caused this Plan to be executed this _____ day of _____, 2004.

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

Employer Identification number _____

Plan Number _____