

---

**DEFINED CONTRIBUTION RETIREMENT PLAN**  
**FOR FACULTY OF**  
**GEORGE MASON UNIVERSITY**

---

**Originally Effective July 1, 1985**

**As Amended and Restated**

**Effective January 1, 2001**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
PREAMBLE .....	1
SECTION 1 - DEFINITIONS .....	1
1.1 Accumulation Account .....	1
1.2 Administrator .....	1
1.3 Board.....	1
1.4 Code .....	1
1.5 Commonwealth .....	1
1.6 Compensation .....	1
1.7 Eligible Employee.....	2
1.8 Employee .....	2
1.9 Employer.....	2
1.10 Excess Benefit Account .....	2
1.11 Excess Benefit Amount.....	2
1.12 Former Participant .....	3
1.13 415 Compensation .....	3
1.14 Investment Fund.....	3
1.15 Joint and Survivor Annuity .....	3
1.16 Leased Employee .....	4
1.17 Leave of Absence.....	4
1.18 Life Annuity.....	4
1.19 Limitation Year.....	4
1.20 Participant .....	4
1.21 Plan .....	4
1.22 Plan Year.....	4
1.23 Qualified Excess Benefit Arrangement .....	5
1.24 Trust .....	5
1.25 Trustees .....	5
1.26 University.....	5
1.27 USERRA.....	5
1.28 Valuation Date .....	5

1.29	VRS.....	5
SECTION 2 - PARTICIPATION .....		6
2.1	Election to Participate.....	6
2.2	Obligation of Participant.....	6
2.3	Termination of Participation.....	7
2.4	Reinstatement as an Eligible Employee.....	7
2.5	Prohibition Against Simultaneous Participation.....	7
SECTION 3 - CONTRIBUTIONS .....		7
3.1	Employer Contributions.....	7
3.2	Transfer Contributions .....	7
3.3	Annual Limitation on Contributions.....	8
3.4	Reemployment of Returning Veterans.....	9
SECTION 4 - VESTING .....		10
SECTION 5 - INVESTMENT OPTIONS .....		10
5.1	Investment Options .....	10
5.2	Annuity Contract.....	10
5.3	Qualified Trust.....	11
5.4	Reallocation Among Annuity Contracts and the Trust.....	13
SECTION 6 - DISTRIBUTIONS .....		13
6.1	Distributions of Amounts Allocated to Annuity Contracts .....	13
6.2	Distributions of Amounts Allocated to the Trust.....	13
6.3	Reemployment of Participant .....	17
6.4	Payments Made Pursuant to a Administrative Domestic Relations Order .....	17
SECTION 7 - AMENDMENT AND TERMINATION .....		18
7.1	Amendment.....	18
7.2	Termination, Partial Termination, or Complete Discontinuance of Contributions .....	18
7.3	Permissible Reversions .....	19
SECTION 8 - CLAIMS .....		19
8.1	Claims for Benefits Under an Annuity Contract .....	19
8.2	Claims for Benefits Under the Trust.....	19
SECTION 9 - ADMINISTRATION.....		20
9.1	Plan Administrator .....	20

9.2	Actions Conclusive .....	21
9.3	Appointment of Agents .....	21
9.4	Reliance on Opinions, Etc .....	21
9.5	Records and Accounts .....	22
9.6	Payment of Expenses .....	22
9.7	Liability .....	22
SECTION 10 - TRUST AGREEMENT .....		23
10.1	The Trust Agreement .....	23
10.2	No Diversion of Corpus or Income .....	23
SECTION 11 - QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT .....		23
11.1	Allocation of Excess Benefit Amounts .....	23
11.2	Crediting of Investment Return to the Participant's Excess Benefit Account .....	24
11.3	Vesting of Excess Benefit Amounts .....	25
11.4	Distributions from Excess Benefit Accounts .....	25
11.5	No Trust Established .....	27
SECTION 12 - MISCELLANEOUS .....		27
12.1	Limitation of Rights; Employment Relationship .....	27
12.2	Merger; Transfer of Assets .....	27
12.3	Prohibition Against Assignment .....	27
12.4	Applicable Law; Severability .....	28
12.5	Reliance Upon Copy of Plan .....	28
12.6	Gender and Number; Captions or Headings .....	29

## **PREAMBLE**

George Mason University (the “University”) originally established the Defined Contribution Retirement Plan for Faculty of George Mason University (the “Plan”) effective July 1, 1985 to provide retirement benefits to faculty of the University. The Plan was amended and restated effective January 1, 2001. The Plan is a combination 403(a)/401(a) plan funded both by annuities and a tax-exempt 501(a) trust.

## **SECTION 1** **DEFINITIONS**

### 1.1 Accumulation Account

The account of a Participant that is credited with Employer contributions pursuant to Section 3.1 and Transfer Contributions pursuant to Section 3.2.

### 1.2 Administrator

The University.

### 1.3 Board

The Rector and Visitors of George Mason University.

### 1.4 Code

The Internal Revenue Code of 1986, as amended.

### 1.5 Commonwealth

The Commonwealth of Virginia.

### 1.6 Compensation

#### (a) Generally

“Compensation” is the base salary and any other benefits eligible stipend paid to the Participant during the Plan Year (i.e. the 9 month academic year salary for those Participants with academic year assignments or 12 month salary for those Participants with 12 month assignments) and does not include any other form of compensation a Participant may receive during the Plan Year including, but not limited to, summer wages, overtime and special payments.

#### (b) Participants on Leave of Absence

“Compensation” for a Participant who is on a Leave of Absence shall be Compensation described in (a) when the Participant went out on leave.

#### (c) Limitation

In addition to other applicable limitations set forth in the Plan and notwithstanding any other provision of the Plan to the contrary, the annual compensation taken into account under the Plan shall not exceed the dollar

limitation of Code section 401(a)(17), which is incorporated herein by reference, as adjusted from time to time.

#### 1.7 [Eligible Employee](#)

An Employee who is designated as “Instructional, Research, Administrative or Professional Faculty” as such term is defined in the annual Governor’s Consolidated Salary Authorization. The term “Eligible Employee” shall not include (a) any Leased Employee; (b) any person who is classified by the University as an independent contractor (regardless of the person’s actual employment status under applicable law); (c) any temporary employee; or (d) any Employee less than 1.0 FTE.

#### 1.8 [Employee](#)

Any individual on the payroll of the Employer whose compensation from the Employer is subject to withholding for the purposes of Federal income taxes and the Federal Insurance Contributions Act. If a person is engaged in an independent contractor or similar capacity and is subsequently reclassified by the Employer, the Internal Revenue Service, or a court as an employee, such person, for purposes of this Plan, shall be deemed an Employee from the actual (and not the effective) date of such reclassification, unless expressly provided otherwise by the Employer.

#### 1.9 [Employer](#)

The University.

#### 1.10 [Excess Benefit Account](#)

A bookkeeping account established by the Administrator to which a Participant’s Excess Benefit Amount is credited. The Excess Benefit Account shall be a bookkeeping device only, and all amounts credited to a Participant’s Excess Benefit Account shall be paid from the general assets of the Employer.

#### 1.11 [Excess Benefit Amount](#)

The amount that is difference between (a) the aggregate of what the Employer’s contribution on behalf of the Participant for the Plan Year would have been under Section 3.1 of this Plan and under the applicable provisions of any and all other tax-qualified defined contribution plans maintained by the Employer but for the applicable limits described in Section 3.3 of this Plan, and (b) what the Employer’s contributions to such plans were pursuant to such applicable limits.

#### 1.12 [Former Participant](#)

Any individual who is no longer a Participant but who continues to have an Accumulation Account.

### 1.13 [415 Compensation](#)

A Participant's wages, salaries, fees for professional service and other amounts for personal services actually rendered in the course of employment with the Employer maintaining the Plan paid or accrued during the Limitation Year. It shall exclude:

(1) any distributions from a plan of deferred compensation sponsored by the Employer regardless of whether such amounts are includable in the gross income of the Employee when distributed except any amounts received by an Employee pursuant to an unfunded non-qualified plan of the Employee's Employer to the extent such amounts are includable in the gross income of the Employee; (2) amounts realized from the exercise of a non-qualified stock option or when restricted stock (or property) held by an Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (3) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (4) other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includable in the gross income of the Employee).

### 1.14 [Investment Fund](#)

The funds referred to in Section 5 hereof for the investment and reinvestment of a Participant's share of contributions and assets held under the Plan, sometimes also referred to as "Fund" or "Funds."

### 1.15 [Joint and Survivor Annuity](#)

An immediate monthly annuity for the life of the Participant with a survivor annuity for the life of the Participant's designated beneficiary that is not less than 10% and not more than 100% of the amount of the annuity that is payable during the joint lives of the Participant and the designated beneficiary. The percentages of the survivor annuity under the Plan shall be even numbered percentages between 10% and 100%. The annuity shall be equal to the amount of benefit that can be purchased with the portion of the Participant's Accumulation Account that has been allocated to the Trust.

Notwithstanding the foregoing, any amount to be distributed each year, and the times those amounts are paid, must satisfy the incidental death benefit requirements specified in Code section 401(a)(9)(G) and the regulations thereunder.

### 1.16 [Leased Employee](#)

An individual who is not on the Employer's payroll and provides services to the Employer if such services are provided pursuant to an agreement between the Employer and any other person.

### 1.17 [Leave of Absence](#)

An educational leave, as defined under the Department of Human Resource Management Policies and Procedure Manual (the “Manual”), where the Participant receives one-half base salary or more, or a faculty study leave, as defined under the Manual, where the Participant receives one semester full pay and one semester no pay, or two semesters half pay.

1.18 [Life Annuity](#)

An immediate monthly annuity solely for the life of the recipient. The annuity shall be equal to the amount of benefit that can be purchased with the portion of the Participant’s Accumulation Account that has been allocated to the Trust.

1.19 [Limitation Year](#)

The Plan Year.

1.20 [Participant](#)

Any Eligible Employee who has commenced participation in the Plan in accordance with the provisions of Section 2 of the Plan.

1.21 [Plan](#)

The Defined Contribution Retirement Plan for Faculty of George Mason University as set forth in this document and as amended from time to time.

1.22 [Plan Year](#)

The twelve (12) month period commencing on each January 1 and ending on each December 31.

1.23 [Qualified Excess Benefit Arrangement.](#)

The arrangement under the Plan described in Section 11 pursuant to which Excess Benefit Amounts are credited on behalf of Participants. Such Qualified Governmental Excess Benefit Arrangement is maintained solely for the purpose of accruing additional benefits on behalf of a Participant that would otherwise exceed the applicable limitations described in section 415 of the Code.

1.24 [Trust](#)

The Trust for the Defined Contribution Retirement Plan for Faculty of George Mason University, created by the Trust Agreement entered into pursuant to Section 10 between the University and the Trustees.

1.25 [Trustees](#)

The persons and/or bank or trust company which are named as Trustees in the Trust Agreement described in Section 10.1.

1.26 [University](#)

George Mason University.

1.27 [USERRA](#)

The Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

1.28 [Valuation Date](#)

The last day of each Plan Year and each other interim date during the Plan Year on which the portion of the assets of a Participant's or Former Participant's Accumulation Account is valued.

1.29 [VRS](#)

The Virginia Retirement System.

## **SECTION 2**

### **PARTICIPATION**

#### **2.1 Election to Participate**

(a) **Employees Who Are Not Participants in Other Plans**

In the case of an Employee who is not a participant in the VRS at the time he or she becomes an Eligible Employee, such person shall choose within sixty (60) days (Employees who became Eligible Employees prior to July 1, 2001, shall choose within ninety (90) days) of becoming an Eligible Employee to participate in either the Plan or the VRS. The Employee shall make the irrevocable choice by completing the corresponding application of the retirement program in which he or she elects to participate. If an Eligible Employee fails to choose a plan, pursuant to the policy of the Commonwealth he or she shall be required to participate in the VRS and be ever precluded from participating in the Plan. An Eligible Employee who elects to participate in the Plan shall become a Participant in the Plan as of the date the Employee first became eligible to participate in the Plan.

(b) **Current Employees Who Become Eligible Employees**

In the case of an Employee who is a participant in the VRS at the time he or she becomes an Eligible Employee, such person may make an irrevocable election to participate in the Plan within sixty (60) days after becoming an Eligible Employee by completing the Plan application form prescribed by the Administrator. If an Eligible Employee fails to choose a plan, pursuant to the policy of the Commonwealth he or she shall be required to continue to participate in the VRS and be ever precluded from participating in the Plan. Such Employee shall become a Participant in the Plan as of the date the Employee first became eligible to participate in the Plan.

#### **2.2 Obligation of Participant**

When an Employee becomes eligible to participate, and thereafter from time to time, the Administrator may require the Employee to furnish such information and fill out, sign and file such forms and documents as may be reasonably required for the administration of the Plan, including beneficiary designation forms, evidence of age and marital status, etc. If a Participant does not comply with any such reasonable requirements neither the Administrator, the Trustees, nor any other person, shall be obligated to administer the Plan for such Participant until such information is properly furnished, and no such person shall incur liability to such Participant or his or her beneficiary to the extent that any intended Plan benefit has not been obtained or is not available because of the Participant's or beneficiary's failure to furnish such information and fill out, sign and file such documents.

### 2.3 [Termination of Participation](#)

Participation in the Plan continues until a Participant is no longer an Eligible Employee.

### 2.4 [Reinstatement as an Eligible Employee](#)

A former Eligible Employee who subsequently becomes an Eligible Employee again shall have the right to elect to participate in the Plan as described in Section 2.1 above. A minimum thirty (30) day break in status as an Eligible Employee is required.

### 2.5 [Prohibition Against Simultaneous Participation](#)

A Participant in this Plan may not at the same time participate in the VRS or be receiving benefits from the VRS.

## SECTION 3 CONTRIBUTIONS

### 3.1 Employer Contributions

(a) Employer Contributions

The Employer shall make a contribution to each Participant's Accumulation Account for the Plan Year at the rate of 10.4% of such Participant's Compensation or such other rate that may be established from time to time by the Commonwealth or provided for under section 51.1-126 of the Code of Virginia.

(b) Participants on Leaves of Absence

The Employer shall continue to make a contribution under this Section 3.1 on behalf of a Participant who is on a Leave of Absence subject to the limitation described in Section 3.3.

(c) Timing of Contributions

Timing of the contributions described in (a) and (b) above shall be determined by the Administrator in its sole and absolute discretion.

### 3.2 Transfer Contributions

The Plan shall receive only transfers of accrued benefits from the VRS on behalf of a Participant. It shall accept no other transfers or rollovers of any kind.

The Administrator shall allocate the transferred amounts described in the preceding paragraph among the various investment vehicles permitted under the Plan pursuant to Section 5. The Participant shall provide such instructions in writing on a form prescribed by the Administrator.

### 3.3 Annual Limitation on Contributions

(a) Defined Contribution Limit

In no event shall a Participant's Employer contribution under Section 3.1 above for the Limitation Year beginning on January 1, 2001 exceed the lesser of \$35,000 or twenty-five percent (25%) of the Participant's 415 Compensation. For Limitation Years beginning on or after January 1, 2002, a Participant's Employer contributions shall not exceed the lesser of:

- (I) \$40,000, as adjusted under Code section 415(c)(1)(A); or
- (II) one hundred percent (100%) of the Participant's 415 Compensation.

(b) Participation In More Than One Plan

If the Employer maintains one or more other qualified defined contribution plans, as defined in Code section 414(i), a Participant's Employer contributions in such other plans shall be aggregated with the Participant's Employer contribution under this Plan for purposes of the limitation in Section 3.3(a) above.

(c) Reallocating Excess Contributions

If the limitation in Section 3.3(a) is exceeded for a Participant, the excess amounts shall be reallocated as follows:

- (I) to the extent the excess amount is attributable to contributions to the Supplemental Defined Contribution Benefit Plan for Employees of George Mason University, such contributions shall be used to reduce the contribution to that plan for the next Limitation Year (and succeeding Limitation Years, as necessary) for that Participant;
- (II) if the limitation in Section 3.3(a) is still exceeded after the application of (I) and (II) above, to the extent that the excess amount is attributable to contributions to the Participant's Accumulation Account, such contributions shall be used to reduce the Employer's contribution for the next Limitation Year for that Participant;
- (III) if the limitation in Section 3.3(a) is still exceeded after the application of (I) and (II) above, to the extent that the excess amount is attributable to contributions to the George Mason University Cash Match Plan, such contributions shall be used to reduce the required contributions to that plan for the next Limitation Year for that Participant.

However, if the Participant is not covered by a plan in (I) – (III) above (as applicable) as of the end of a Limitation Year, then the excess amounts must be held unallocated in a suspense account for the Limitation Year and allocated and reallocated in the next Limitation Year to all of the remaining participants in the applicable plan in proportion to what each participant's Compensation for the Plan Year bears to the Compensation for all such participants for the Plan Year. In no case may excess amounts be distributed to participants or former participants of any plan.

(d) No Exceeding 415 Limit

In no event shall the amount of any benefit or annuity determined under this Plan Section 3 exceed the maximum benefit permitted under Code section 415.

3.4 [Reemployment of Returning Veterans](#)

(a) Retroactive Contributions

If a Participant is in qualified military service, as that term is defined under USERRA, and he returns to employment with the Employer within ninety (90) days of the end of his military leave (or such longer period of time as his reemployment rights are protected by law), the Employer shall make the contributions described in Section 3.1 above on behalf of the Participant that he otherwise would have been entitled to but for his absence due to the military leave.

(b) Limitations

Contributions made pursuant to (a) above shall not be counted for purposes of Section 3.3 during the Plan Year (Limitation Year) when they are made. Rather such contributions shall be counted for purposes of Section 3.3 in the Plan Year to which the contributions relate.

(c) Compensation

For purposes of (a) and (b) above, the Administrator shall treat the Participant as receiving Compensation during the period of qualified military service equal to the amount of Compensation the Participant would have received from the Employer during such period, based on the rate of pay the Participant would have received from the Employer but for the absence due to military service, or, if such rate of pay is not reasonably certain, the Participant's average Compensation during (I) the twelve (12) month period immediately before the qualified military service or, (II) if shorter, the period of employment immediately before the qualified military service.

(d) Crediting of Earnings

A Participant who is entitled to a contribution pursuant to (a) above shall not be entitled to receive corresponding retroactive earnings attributable to such contribution.

**SECTION 4**  
**VESTING**

A Participant shall be fully vested in his or her Accumulation Account at all times under the Plan.

## **SECTION 5**

### **INVESTMENT OPTIONS**

#### **5.1 Investment Options**

A Participant shall have the option to allocate the Employer's contribution made pursuant to Section 3.1 between the following forms of investment:

- (a) an annuity contract that meets the requirements of Code section 403(a), or
- (b) a qualified trust as described in Code section 401(a).

When first applying to become a Participant in the Plan, as described in Section 2.1, the Eligible Employee shall also designate on the Plan application form prescribed by the Administrator whether Plan contributions should be invested in an annuity contract or the Trust. A Participant may change the investment allocation at such time or times as the Administrator may prescribe.

#### **5.2 Annuity Contract**

The Employer may offer one or more annuity contracts described in Section 5.1(a) above among which a Participant may choose to allocate contributions made to his or her Accumulation Account. The nature and the quality of the investments offered under each of these contracts shall be determined by the Administrator. To the extent a Participant may choose among various investments offered under an annuity contract, any communication regarding such investment shall be between the sponsor of the annuity contract and the Participant. Once a Participant chooses an annuity contract to which to allocate Plan contributions, the Employer shall have no further responsibility regarding such contributions.

#### **5.3 Qualified Trust**

##### **(a) Individual Accounts**

The Administrator shall establish and maintain an account in the name of each Participant to which there shall be credited (or debited) a Participant's contributions made in accordance with Section 3.1 or 3.2 above that the Participant has designated are to be allocated to the Trust pursuant to Section 5.1(b) above. The Administrator shall adjust, as of each Valuation Date, the balance of each Participant's account to reflect the current market value of the Investment Funds in which the account was invested. A Participant's interest in any Investment Fund shall be determined and accounted for based on his beneficial interest in any such Fund, and no Participant shall have any interest in or rights to any specific asset of any Investment Fund.

##### **(b) Investment of Accounts**

- (I) The balance held for the benefit of each Participant in his account shall be invested at the direction of each Participant among one or more of the Plan's Investment Funds. The nature and the quality of the investments in each of these Funds shall be determined by the Administrator in its sole discretion. There will be at least three Investment Funds to which a Participant may allocate his Accounts and each of these Funds will have a different one of the following primary objectives:
  - (A) The generation of the highest level of income consistent with the preservation of capital over the long term;
  - (B) Capital appreciation; and
  - (C) A balance between capital appreciation and preservation of capital and generation of income.
- (II) The Administrator shall provide Participants with directions as to how to obtain information sufficient to enable Participants to make informed investment directions. Neither the Administrator nor the Trustees, however, shall provide investment advice to a Participant with respect to an investment.
- (III) Each Participant shall be responsible for directing the investment of all contributions in his or her account. Participant investment directions shall be made in a manner prescribed by the Administrator. Investments shall be made in one (1) or more of the Investment Funds made available under subsection (I) hereof.
- (IV) Subject to the terms and limitations of the various Investment Funds, each Participant may direct at such time or times as the Administrator may prescribe that amounts held in one or more of the Investment Funds described in subsection (I) hereof, may be transferred to, from or among such Investment Funds.

(c) Allocations of Earnings and Losses

Allocations of earnings and losses to Participant accounts shall be accomplished as follows:

- (I) The dividends, capital gains distributions, and other earnings received on any share or unit of an Investment Fund that is specifically credited or earmarked to a Participant's account under the Plan in accordance with the directed investment provisions of this Section 5.3 shall be allocated to such account and immediately reinvested, to the extent practicable, in additional shares or units of such Investment Fund.

(II) To the extent not otherwise provided in paragraph (I) above, the assets of each Investment Fund shall be valued by the Trustee at their current fair market value of as each Valuation Date, and the earnings and losses of the Investment Fund since the immediately preceding Valuation Date shall be allocated to the accounts of all Participants with interests in that Investment Fund in the ratio that the fair market value of each such interest as of the immediately preceding Valuation Date, reduced by any distributions or withdrawals therefrom since such preceding Valuation Date, bears to the total fair market value of all such interests as of the immediately preceding Valuation Date, reduced by any distributions or withdrawals therefrom since such preceding Valuation Date.

(d) Allocation to Individual Accounts

The accounts of each Participant shall be adjusted as of each Valuation Date by (I) reducing such accounts by any payments made therefrom since the preceding Valuation Date, and then (II) increasing or reducing such accounts by the Participant's share of earnings and losses, determined pursuant to (c) above, and the expense of administering the Investment Funds since the preceding Valuation Date, and (III) crediting such accounts with any contributions allocated thereto since the preceding Valuation Date.

(e) Valuation for Withdrawal and Distribution

For purposes of paying the amounts to be withdrawn or distributed to a Participant or beneficiary pursuant to Section 6.2 below, the value of the Participant's Accumulation Account allocated to the Trust shall be determined in accordance with the provisions of this Section 5.3 as of the Valuation Date that is on or immediately preceding the date the distribution is made.

#### 5.4 Reallocation Among Annuity Contracts and the Trust

A Participant may reallocate all or a portion of his or her Accumulation Account invested in annuity contracts to the Trust, or vice versa, to the extent permitted, if at all, by the sponsor of the annuity and the Administrator.

## **SECTION 6**

### **DISTRIBUTIONS**

#### **6.1 Distributions of Amounts Allocated to Annuity Contracts**

Distribution of the portion of a Participant's Accumulation Account allocated to annuity contracts shall be distributed in accordance with the terms of the applicable annuity contract.

#### **6.2 Distributions of Amounts Allocated to the Trust**

Distribution of the portion of a Participant's Accumulation Account allocated to the Trust shall be distributed in the following manner:

(a) **Election to Receive Benefits**

A Participant who is no longer employed by the Employer or any other entity controlled by the Board may elect to receive his or her benefits any time on or after the day he or she separates from service. Such distribution shall be made on the later of sixty (60) days from the receipt of request for such distribution or the date the Administrator determines the value of the Participant's Accumulation Account for purposes of distribution. The amount to be distributed shall be determined based on the value of the portion of the Former Participant's Accumulation Account balance allocated to the Trust as determined pursuant to Section 5.3(e). Such request shall be made on a written form prescribed or approved by the Administrator.

(b) **Forms of Distribution**

A Participant may elect to receive a distribution of the portion of his or her Accumulation Account allocated to the Trust in one of the following forms:

- (I) Lump sum,
- (II) Joint and Survivor Annuity, or
- (III) Life Annuity.

(c) Mandatory Distribution Date

(I) Required Beginning Date

In no event shall distributions commence later than April 1 of the calendar year following the calendar year in which the Participant attains age seventy-and-one-half (70½) except if the Participant is an Employee in the calendar year he or she attains age 70½, in which case the distribution may commence April 1 of the calendar year following the calendar year in which the Participant retires.

(II) Failure to Make an Election Under Section 6.2(a)

If a Participant fails to make an election under Section 6.2(a) above before the date described in (I) above, the Administrator shall direct the Trustee to distribute the portion of Participant's Accumulation Account allocated to the Trust in a lump sum in accordance with (I) above.

(d) Pre-Distribution Death Benefits

(I) Election of Form of Distribution by Designated Beneficiary

If a Participant dies prior to having commenced distribution of benefits under Section 6.2(a), the Participant's designated beneficiary may elect to receive the portion of the Participant's Accumulation Account allocated to the Trust either in a lump sum or a Life Annuity to be paid over the life of the designated beneficiary. Such request shall be made within six months of the Participant's death on a written form prescribed or approved by the Administrator. Distribution shall be made on the later of sixty (60) days from the receipt of request for such distribution or the date the Administrator determines the value of the Participant's Accumulation Account for purposes of distribution. The amount to be distributed shall be determined based on the value of the portion of the Former Participant's Accumulation Account balance allocated to the Trust as determined in accordance with Section 5.3(e).

(II) Failure of Designated Beneficiary to Elect a Form of Distribution

If a designated beneficiary fails to elect a form of distribution within six months immediately following the Participant's death, the Administrator shall have the Participant's Accumulation Account allocated to the Trust distributed in a lump sum. Distribution shall be made on the later of sixty (60) days from the last day of the sixth month immediately following the month in which the Participant died or the date the Administrator determines the value of the Participant's Accumulation Account for purposes of distribution. The amount to be distributed shall be determined

based on the value of the portion of the Former Participant's Accumulation Account balance allocated to the Trust as determined on the last day of the sixth month immediately following the month in which the Participant died.

(III) Absence of Valid Designation of Beneficiaries

If a Participant has no valid beneficiary designation on file with the Administrator, or the beneficiary has predeceased the Participant, the Administrator shall designate as the beneficiary, in the following order of priority: surviving spouse; surviving children, including adopted children, in equal shares; surviving parents, in equal shares; or the Participant's estate. The Administrator's determination of this matter shall be binding. The beneficiary(ies) determined by the Administrator in accordance with this paragraph shall be treated as the designated beneficiary(ies) for purposes of (I) and (II) above.

(IV) Surviving Spouse Dies Prior to Receiving Benefits as Described in (I) and (II) Above

If the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of (I) and (II) above shall be applied as if the surviving spouse were the Participant.

(V) Children as Beneficiaries

For purposes of this Section 6.2(d), any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(e) Incompetence of Distributee

If the Administrator receives evidence that a person entitled to receive any distribution under the Plan is physically or mentally incompetent or incompetent by any reason of age to receive such distribution and give valid release therefore, the Administrator shall direct the Trustee to make such distribution to the Participant's legal representative (such as a guardian) provided the Administrator, in its sole and absolute discretion, determines that such individual has the authority as legal representative to request payment from the Plan. Any such payment made under this Section 6.2(e) shall constitute a complete discharge of any liability under the Plan.

(f) Location of Participant or Beneficiary Unknown

In the event that all, or any portion, of the distribution payable to a Participant or his or her beneficiary under this Section 6.2 remains unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or beneficiary after sending a registered letter, return receipt required, to the last known address, and further diligent effort, a savings account at a local financial institution shall be established in the person's name and the distribution shall be deposited therein.

(g) Direct Rollover

(I) General

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 6.2(g), a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(II) Definitions

(A) Eligible Rollover Distributions

An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); and 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).

(B) Eligible Retirement Plan

An eligible retirement plan is an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), a qualified trust described in Code section 401(a), that accepts the distributee's eligible rollover distribution or effective for distributions made on or after January 1, 2002, an eligible deferred compensation plan described in section 457(b) of the Code maintained by a governmental employer described in section 457(e)(1)(A) of the Code, or an annuity contract/custodial account described in section 403(b) of the Code. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(C) Distributee

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

(D) Direct Rollover

A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

6.3 Reemployment of Participant

Notwithstanding anything to the contrary in the foregoing, if a Former Participant returns to the service of the Employer as an Eligible Employee after distribution of his or her benefits has begun, such distributions shall immediately cease and no benefits shall be paid until such Participant again becomes entitled to benefits under the terms of this Plan.

6.4 Payments Made Pursuant to an Administrative Domestic Relations Order

Notwithstanding any other provision of this Plan, the Administrator may direct the distribution of any portion of the Participant's Accumulation Account payable to an alternate payee (as defined in Code section 414(p)(8)) pursuant to an administrative domestic relations order prior to the date on which the Participant attains his or her earliest retirement age (as defined in Code section 414(p)(4)), provided that the Administrator has properly notified the affected Participant and each alternate payee of the order and has determined that the order is an administrative domestic relations order.

The alternate payee shall be paid his or her separate accounts or his or her percentage of the Participant's Accumulation Account in a lump sum payment unless the domestic relations order specifies a different manner of payment permitted by the Plan. The alternate payee shall not be required to consent to such lump sum payment.

## SECTION 7 AMENDMENT AND TERMINATION

### 7.1 Amendment

The University reserves the right to amend the Plan, through affirmative action by the Board at any time and from time to time, in whole or in part, including, without limitation, retroactive amendments necessary or advisable to qualify the Plan and Trust under the provisions of Code sections 401(a) and 403(a). However, except as set forth in Section 7.3, no such amendment shall (1) cause any part of the assets of the Plan and Trust to revert to or be recoverable by the University or be used for or diverted to purposes other than the exclusive benefit of Participants, Former Participants, and beneficiaries; (2) deprive any Participant, Former Participant, or beneficiary of any benefit already vested; (3) alter, change, or modify the duties, powers, or liabilities of the Trustee without its written consent; or (4) permit any part of the assets of the Plan and the Trust to be used to pay premiums or contributions of the University under any other plan maintained by the University or for the benefit of its employees. No amendment to the vesting schedule shall deprive a Participant of non-forfeitable rights to benefits accrued to the date of the amendment.

### 7.2 Termination, Partial Termination, or Complete Discontinuance of Contributions

Although the University has established the Plan with the intention and expectation that it will make contributions indefinitely, nevertheless the University shall not be under any obligation or liability to continue its contributions or to maintain the Plan for any given length of time. The University may in its sole and absolute discretion through an affirmative action by its Board discontinue contributions or terminate the Plan in whole or in part in accordance with its provisions at any time without any liability for the discontinuance or termination. However, the Trust shall continue until the portions of Participants' Accumulation Accounts that have been allocated to the Trust have been completely distributed to or for the benefit of such Participants in accordance with the Plan.

### 7.3 Permissible Reversions

- (a) Notwithstanding any other provision of the Plan:
  - (I) No Participant or beneficiary shall have any right or claim to any assets of the Trust or to any benefit under the Plan before the Internal Revenue Service determines that the Plan and Trust qualify under the provisions of Code section 401(a), or any statute of similar import, other than any vested rights or benefits accrued represented by any assets transferred from the VRS, to the extent vested upon transfer to this Plan and Trust from the VRS. Upon the distribution to the Participants of any vested amounts or benefits transferred from the VRS and the return of any remaining contributions to the Employer following the denial of initial

qualification of the Plan and Trust under the provisions of Code section 401(a), the Trust provided for in this Plan shall be terminated and the Trustees shall be discharged from all obligations hereunder.

- (II) To the extent the Employer's contributions are made by reason of a mistake of fact, they may be returned to the Employer within one (1) year from the date of contribution.
- (b) The amounts that may be returned to the Employer under Section 7.3(a)(II) above shall be the excess of the amounts contributed over the amounts that would have been contributed had there not been a mistake of fact. No earnings on the mistaken contributions may be returned to the Employer and losses sustained by the Trust after the date of contribution shall proportionately reduce the amount that may be returned to the Employer.

## **SECTION 8**

### **CLAIMS**

#### **8.1 Claims for Benefits Under an Annuity Contract**

A Participant's (or beneficiary's) claim for benefits for the portion of the Participant's Accumulation Account allocated to an annuity contract shall be resolved by the sponsor of the annuity contract based on procedures it has established.

#### **8.2 Claims for Benefits Under the Trust**

A Participant's (or beneficiary's) claim for benefits for the portion of the Participant's Accumulation Account invested in the Trust may be presented in writing by the Participant to the Administrator.

If the claim for benefits is wholly or partially denied, the Administrator shall notify the Participant (or beneficiary) in writing of such denial of benefits within sixty (60) days of receipt of the claim.

Any notice of a denial of benefits shall advise the Participant (or beneficiary) of:

- (a) the specific reason or reasons for the denial;
- (b) the specific provisions of the Plan on which the denial is based;
- (c) any additional material or information necessary for the Participant (or beneficiary) to perfect the claim and an explanation of why such material or information is necessary; and
- (d) the steps which the Participant (or beneficiary) must take to have the claim reviewed.

A Participant (or beneficiary) whose claim has been denied may file a written request for a review by the Administrator of the denial of this claim. Such written request for review must be filed within sixty (60) days after receipt of written notification of the denial of this claim. The Administrator shall review the written comments and any submissions of the Participant (or beneficiary) and render its decision regarding the appeal within sixty (60) days of receipt of such appeal. Such decision shall be in writing setting forth the specific reasons and specific Plan provisions on which the Administrator based its decision.

## **SECTION 9** **ADMINISTRATION**

### **9.1**    Plan Administrator

The Administrator shall administer the Plan. The President of the University is designated as the agent of the Plan for the service of legal process.

The Administrator's duties shall include, without limitation, powers with respect to the administration of the Trust as may be conferred upon it by the Trust. It shall have the power to take all action and to make all decisions that shall be necessary or proper in order to carry out the provisions of the Plan and, without limiting the generality of the foregoing, it shall have the following powers:

- (a) to make (and enforce by suspension or forfeiture) such rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;
- (b) to interpret or construe the Plan;
- (c) to decide questions concerning the Plan and the eligibility of any Employee to participate therein and the right of any person to receive benefits thereunder;
- (d) to decide any dispute arising under the Plan;
- (e) to compute the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan;
- (f) to authorize all disbursements by the Trustees;
- (g) to prescribe and require the use of such forms as it shall deem necessary or desirable in connection with the administration of the Plan;
- (h) to supply any remedies or corrections to omissions in the Plan;
- (i) to reconcile and correct any errors or inconsistencies in the Plan; and
- (j) to make equitable adjustments for any mistakes or errors made in the administration of the Plan.

The Administrator shall establish rules and regulations and shall take other necessary or proper action to carry out its duties and responsibilities.

### **9.2**    Actions Conclusive

Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. The decisions of the Administrator on any matter

within its authority shall be made in the sole discretion of the Administrator and shall be final and binding on all parties, including without limitation, the Employer, Participants and beneficiaries.

### 9.3 [Appointment of Agents](#)

The Administrator may employ or engage such accountants, counsel, other experts, and other persons as it deems necessary in connection with the administration of the Plan to the extent permitted by law.

### 9.4 [Reliance on Opinions, Etc.](#)

The Administrator and each member thereof and each person to whom it may delegate any power or duty in connection with administering the Plan shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by them or any of them in good faith reliance upon any valuation, certificate, opinion, or report which shall be furnished to them or any of them by the Trustees or by any accountant, counsel, other expert, or other person who shall be employed or engaged by the Trustees or the Administrator.

### 9.5 [Records and Accounts](#)

The Administrator shall keep or cause to be kept all data, records and documents pertaining to the administration of the Plan, and shall execute all documents necessary to carry out the provisions of the Plan. The Administrator shall advise the Trustees of such facts as may be pertinent to the Trustees' administration of the Trust and shall give proper instruction to the Trustees for carrying out the purposes of the Plan.

### 9.6 [Payment of Expenses](#)

- (a) Subject to the provisions of paragraph (b) below, expenses in connection with the administration of the Plan and Trust including commissions, taxes, and expenses of the Trustees and of any accountant or other person who shall be employed by the Administrator or Trustees in the administration thereof, shall be paid by the Trust unless paid by the University.
- (b) In the event of permanent discontinuance of contributions or termination any further payment of expenses which arise or have arisen in connection with the administration of the Plan and Trust shall be paid by the Trust unless paid by the University.

### 9.7 [Liability](#)

The Administrator shall incur no liability for any action taken or not taken in good faith reliance on advice of counsel, who may be counsel for the University or taken or not taken in good faith reliance on a determination as to a matter of fact which has been

represented or certified by a person reasonably believed to have knowledge of the fact so represented or certified, or taken or not taken in good faith reliance on a recommendation or opinion expressed by a person reasonably believed to be qualified or expert as to any matter where it is reasonable or customary to seek or rely on such recommendations or opinions. Nor shall any employee of the Administrator be liable for the wrongful or negligent conduct of any other or any person having fiduciary responsibilities with respect to the Plan unless the employee (i) knowingly participates in or undertakes to conceal an act or omission of such other person knowing the act or omission is a breach of fiduciary duty, (ii) by failing to act solely in the interests of Participants and beneficiaries or to exercise the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would exercise, has enabled the other fiduciary to commit a breach, or (iii) has knowledge of a breach by the other fiduciary and does not make reasonable efforts under the circumstances to remedy it. The University shall indemnify any employee and hold him harmless from loss, liability and expense in respect of the Plan for actions taken within the scope of his duties, including the legal cost of defending claims and amounts paid in satisfaction or settlement thereof provided only that no indemnification is intended that would be void as against public policy or the laws of the Commonwealth.

**SECTION 10**  
**TRUST AGREEMENT**

10.1 [The Trust Agreement](#)

“Trust Agreement” means the “Trust for the Defined Contribution Retirement Plan for Faculty of George Mason University.” The Trustees are to hold, invest, and distribute the Trust Fund in accordance with the terms and provisions of the Trust Agreement. The duties and rights of the Trustees shall be determined solely by reference to the Trust Agreement.

10.2 [No Diversion of Corpus or Income](#)

In no event shall any portion of the corpus or income of the Trust Fund be used for or diverted to purposes other than the exclusive benefit of Participants and their beneficiaries.

**SECTION 11**  
**QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT**

**11.1 Allocation of Excess Benefit Amounts**

- (a) The Administrator shall determine periodically during the Plan Year whether an Excess Benefit Amount is projected for each Participant for the Limitation Year. If an Excess Benefit Amount is projected for a Participant, such Participant's Employer contribution, if any, under the Supplemental Defined Contribution Plan for Employees of George Mason University shall be allocated to the Participant's Excess Benefit Account to the extent necessary to satisfy the limitation in Section 3.3(a) above.
- (b) If following the allocations described in (a) above a projected Excess Benefit Amount remains, such Participant's Employer contribution, if any, to the George Mason University Cash Match Plan shall also be allocated to the Participant's Excess Benefit Account to the extent necessary to satisfy the limitation in Section 3.3(a) above.
- (c) If following the allocations described in (a) and (b) above a projected Excess Benefit Amount remains, such Participant's Employer contribution, if any, to this Plan shall also be allocated to the Participant's Excess Benefit Account to the extent necessary to satisfy the limitation in Section 3.3(a) above.

Any amount credited in accordance with (a) – (c) above shall be credited effective December 31 of the Plan Year to which the Excess Benefit Amount relates.

**11.2 Crediting of Investment Return to the Participant's Excess Benefit Account**

(a) Crediting of Investment Return

The Administrator shall credit to each Participant's Excess Benefit Account an investment return (positive or negative) equal to the rate of return on shares of the Investment Fund, or Funds, selected pursuant to section 11.2(b) below, assuming reinvestment of dividends and distributions from the Fund. For purposes of measuring the investment return, amounts held in a Participant's Excess Benefit Account, shall be treated as though they were invested and reinvested in one or more of the Investment Funds designated by the Participant pursuant to section 11.2(b) below.

The return shall be credited by the Administrator to the Participant's Excess Benefit Account on a quarterly basis.

Notwithstanding the foregoing, if

- (I) the Participant does not furnish the Administrator with a written

designation,

- (II) the written designation from the Participant is unclear, or
- (III) less than all of the Participant's Excess Benefit Account is covered by such written designation,

then the Participant's Excess Benefit Account shall receive no return until such time as the Participant shall provide the Administrator with valid instructions.

(b) Fund Designation

The Participant shall make a designation of one or more Investment Funds on a form provided by the Administrator which shall remain effective until another valid direction has been made by the Participant as herein provided. The Participant may amend his or her designation of investment return as of the end of any calendar quarter by giving written direction to the Administrator at least 30 days prior to the end of such quarter. A timely change to a Participant's designation of investment return shall become effective on the first day of the calendar quarter following receipt by the Administrator.

The Administrator in its sole discretion shall designate which Investment Funds will be available for initial designation by the Participants and may change or add to the Investment Funds which may be designated by the Participant under this Section 11.2.

(c) Quarterly Statements

The Administrator shall provide a statement to the Participant quarterly showing such information as is appropriate, including the aggregate amount in the Participant's Excess Benefit Account, as of a reasonably current date.

### 11.3 Vesting of Excess Benefit Amounts

A Participant shall vest in Employer contributions allocated to his Excess Benefit Account in accordance with the provisions of the applicable plan from which such contributions of Excess Benefit Amounts were allocated pursuant to Section 11.1.

### 11.4 Distributions from Excess Benefit Accounts

(a) Election of Distribution

A Participant shall elect the form of distribution of his or her Excess Benefit Account as of his or her date of separation from service. Distribution of the Participant's Excess Benefit Account shall commence on the later of: (I) first day of the first month following 180 days from the Participant's date of separation

from service, or (II) the first day of the Plan Year following the Plan Year in which the Participant separated from service. In the event the Participant makes no such election, his or her Excess Benefit Account shall be distributed in the form of a lump sum within 180 days after the Participant's separation from service.

The amount to be distributed to the Participant under this Section 11.3 shall be determined based on the value of the Participant's Excess Benefit Account as determined on the last day of the month in which the Participant separates from service with the Employer.

(b) Forms of Distribution

A Participant may elect to receive a distribution of his or her Excess Benefit Account in one of the following forms:

- (I) lump sum, or
- (II) equal annual installments over a period of five (5) years.

If a Participant elects option (II), no additional earnings shall be credited to the Participant's Excess Benefit Account pursuant to Section 11.2 during the period over which the Excess Benefit Account is distributed.

(c) Incompetence of Participant

If the Administrator receives evidence that a Participant with an Excess Benefit Account is physically or mentally incompetent or incompetent by any reason of age to receive a distribution and give valid release therefore, the Administrator shall make such distribution to the Participant's legal representative (such as a guardian) provided the Administrator, in its sole and absolute discretion, determines that such individual has the authority as legal representative to request payment of the amount credited to the Participant's Excess Benefit Account. Any such payment made under this Section 11.3(c) shall constitute a complete discharge of any liability under this Section 11.

(d) Location of Participant or Beneficiary Unknown

In the event that all, or any portion, of the distribution payable to a Participant or his or her beneficiary under this Section 11.3 remains unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or beneficiary after sending a registered letter, return receipt required, to the last known address, and further diligent effort, a savings account at a local financial institution shall be established in the person's name and the distribution shall be deposited therein.

(e) Distributions upon the Participant's Death

In the event that the Participant dies before receiving a distribution of the entire amount credited to his or her Excess Benefit Account, any remaining amount shall be distributed in the form of a lump sum within 180 days of the Participant's death to the person who is the Participant's beneficiary under Section 6.2. The amount to be distributed to the Participant's designated beneficiary shall be determined based on the value of the Participant's Excess Benefit Account as determined on the last day of the month in which the Participant died.

(f) Distribution upon Termination of Arrangement

If the University terminates the Qualified Governmental Excess Benefit Arrangement described in this Section 11, each Participant shall receive a distribution of the entire balance of his or her Excess Benefit Account within 180 days of such termination. The amount to be distributed to the Participant shall be determined based on the value of the Participant's Excess Benefit Account as determined on the last day of the month prior to the effective date of such termination.

11.5 No Trust Established

All amounts credited to Participants' Excess Benefit Accounts shall be payable from the Employer's general assets. Participants' Excess Benefit Amounts shall not be contributed to the Trust, and no trust or other type of funding vehicle shall be established to hold the amounts credited to Participants' Excess Benefit Accounts.

**SECTION 12**  
**MISCELLANEOUS**

**12.1 Limitation of Rights; Employment Relationship**

Neither the establishment of the Plan and the Trust nor any modifications of them, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as modifying or affecting in any way the terms of employment of any Employee.

**12.2 Merger; Transfer of Assets**

- (a) If the Employer merges or consolidates with or into another entity, or if substantially all the assets of the Employer are transferred to another entity, the Plan shall terminate on the effective date of the merger, consolidation, or transfer. However, if the surviving entity resulting from the merger or consolidation, or the entity to which the assets have been transferred, adopts this Plan, the Plan shall continue and the successor entity shall succeed to all rights, powers, and duties of the Employer under the Plan, and the employment of any Employee who is continued in the successor entity's employ shall not be deemed to have been terminated for any purpose under the Plan.
- (b) This Plan shall not be merged or consolidated with any other employee benefit plan, nor shall there be any transfer of assets or liabilities from this Plan to any other plan, unless, immediately after the merger, consolidation, or transfer, each Participant's benefits, if the other plan were then to terminate, are at least equal to the benefits to which the Participant would have been entitled had this Plan been terminated immediately before the merger, consolidation, or transfer.

**12.3 Prohibition Against Assignment**

- (a) Except as provided below, the benefits provided by this Plan may not be assigned or alienated. Neither the Administrator nor the Trustees shall recognize any transfer, mortgage, pledge, hypothecation, order, or assignment by any Participant or beneficiary of all or part of his or her interest under the Plan, and the interest shall not be subject in any manner to transfer by operation of law and shall be exempt from the claims of creditors or other claimants from all orders, decrees, levies, garnishment, and/or executions, and other legal or equitable process or proceedings against the Participant or beneficiary to the fullest extent that may be permitted by law.
- (b) This provision shall not apply to the extent a Participant or beneficiary is indebted to the Plan, for any reason, under any provision of this Agreement. At the time a distribution is to be made to or for a Participant's or beneficiary's benefit, such proportion of the amount distributed as shall equal such indebtedness, shall be paid by the Trustees to the Trustees or the Administrator, at the direction of the Administrator, to apply against or discharge such indebtedness. Prior to making a

payment, however, the Participant or beneficiary must be given written notice by the Administrator that such indebtedness is to be so paid in whole or in part from his account. If the Participant or beneficiary does not agree that the indebtedness is a valid claim against his vested Accounts, he shall be entitled to a review of the validity of the claim in accordance with procedures provided in Section 8.

- (c) This provision shall not apply to an administrative domestic relations order, and those other domestic relations orders permitted to be so treated by the Administrator. To the extent provided under an administrative domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

#### 12.4 [Applicable Law; Severability](#)

This Plan shall be construed, administered, and governed in all respects in accordance with the laws of the Commonwealth, provided, however, that if any provision is susceptible to more than one interpretation, it shall be interpreted in a manner consistent with the Plan's being a qualified plan within the meaning of the Code. If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

#### 12.5 [Reliance Upon Copy of Plan](#)

Any person dealing with the Trustees may rely upon copies of the Plan and the Trust Agreement, and any amendments thereto, certified by the Administrator to be true and correct copies.

#### 12.6 [Gender and Number; Captions or Headings](#)

Wherever appropriate to the meaning or interpretation of this Plan, the masculine gender shall include the feminine, and the singular number shall include the plural and vice versa. Captions or headings are inserted and intended for organizational format and convenience of reference only; they are not to be given independent substantive meaning or effect.

**IN WITNESS WHEREOF**, the undersigned, being an authorized officer of the University, has caused this Plan to be executed on behalf of George Mason University this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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

Title: \_\_\_\_\_