

**PACIFIC LUTHERAN UNIVERSITY  
403(b) RETIREMENT PLAN**

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**PACIFIC LUTHERAN UNIVERSITY  
403(b) RETIREMENT PLAN**

**ARTICLE I.**

**INTRODUCTION**

Pacific Lutheran University initially adopted the Pacific Lutheran University 403(b) Retirement Plan (the “Plan”) effective January 1, 2009. This document amends and restates the Plan effective January 1, 2009, except as otherwise indicated herein, to incorporate amendments to date, reflect administrative practices, and update the document for compliance with the final regulations issued under Section 403(b) of the Internal Revenue Code. This Plan is a defined contribution plan intended to meet the requirements of Code Section 403(b).

**ARTICLE II.**

**DEFINITIONS**

- A. “Board”** means the University’s Board of Regents.
- B. “Code”** means the Internal Revenue Code of 1986, as amended.
- C. “Compensation”** means an Employee’s base salary or wages including salary reduction contributions hereunder, under the Employer’s eligible deferred compensation plan described in Code Section 457 and the Employer’s cafeteria plan under Code Section 125 and qualified transportation fringe benefit plan under Code Section 132(f). Employer contributions to any other similar retirement plan, payments by the Employer on account of medical, dental, disability, and life insurance, supplemental earnings such as overtime, stipends and bonuses are excluded. Compensation received while on paid leave is included. Compensation paid pursuant to a grant is excluded unless the grant includes an amount for retirement contributions.

Compensation paid to a faculty member pursuant to a part-time teaching agreement is excluded for purposes of determining the Employer Base Contribution under Article IV, Paragraph B.

Compensation paid to a faculty member pursuant to a summer sessions contract shall be included for all purposes under the Plan, including determining the Employer Base Contribution under Article IV, Paragraph B. Effective as of the first day of the Plan Year beginning on or after July 1, 2007, for purposes of Plan Contributions, Compensation shall also include Compensation received during the applicable post-severance period only to the extent included in the definition of Compensation for 415 purposes, and unless otherwise excluded under this paragraph.

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 of each employee taken into account under the Plan shall not exceed the annual compensation limit as provided in Code Section 401(a)(17). The annual compensation limit (e.g. \$230,000 for the 2008 Plan Year), shall be adjusted by the Commissioner for increases in the cost of living in accordance with Code Section 401(a)(17)(B). 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 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.

**D. “Eligible Employee”** means an Employee of the Employer who is not in an excluded category of employment, as described in Article III, and who has met the eligibility requirements to participate in the Plan.

**“Employee”** means any individual in the employ of the Employer, including individuals who are employed on either a part-time or full-time basis, and who are either salaried or hourly paid. Notwithstanding any provision of this Plan to the contrary, any individual who is classified as an independent contractor by the Employer (regardless of whether such individual is classified as an employee by any federal, state or local agency) shall not be considered eligible under this Plan.

**F. “Employer”** means Pacific Lutheran University.

**G. “Enrollment Date”** means the date on which an Employee who has complied with the eligibility requirements becomes eligible to participate in the Plan. The Enrollment Dates are the first day of each month.

**H. “Excess Contribution”** means an amount in excess of the indexed amount contained in Code Section 402(g)(1), in effect for the taxable year; provided, however, that a Participant shall be entitled to make a special election under Code Section 402(g)(8) in any Plan Year that the Employer constitutes a “qualified organization” under that Code Section and provided further an eligible Participant shall be entitled to make a catch-up contribution to the extent permitted under Article IV, Paragraph A and Section 414(v) of the Code.

**I. “Funding Contract”** means an annuity contract or a custodial account created to hold registered investment company shares.

**J. “Hour of Service”** means, effective January 1, 2008:

**1.** Each hour for which the Employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of duties. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed. An

Employee in qualified military service as defined in Code Section 414(u)(5) shall be credited with Hours of Service at his or her customary rate; and

2. Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship was terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 Hours of Service shall be credited under this subsection (b) for any single continuous period (whether or not such period occurs in a single computation period). Hours under this subsection (b) shall be calculated and credited pursuant to Section 2530.200b-2(b) and 2(c) of the Department of Labor Regulations which are incorporated herein by this reference; and

3. Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited under subsection (a) or (b), as the case may be, and under this subsection (c). These hours shall be credited to the Employee for the Eligibility Period or Periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

Provided, for the purpose of determining whether an Employee has incurred a One-Year Break in Service, (i) Hours of Service described in subsection (2) shall be credited without regard to the 501-hour limitation of subsection (2); (ii) hours at the Employee's customary rate shall be credited during any period the Employee is on authorized leave of absence or temporary layoff, and (iii) in the case of an Employee who is absent from work for any period by reason of pregnancy, birth of a child, placement with the Employee of a child for adoption, or caring for such child immediately following birth or placement, Hours of Service (up to 501 hours) shall be

credited equal to the Hours of Service that otherwise would normally have been credited to the Employee but for such absence (or if such hours cannot be determined, equal to 8 Hours of Service per day of absence). The hours credited under (iii) above shall be credited to the applicable computation period in which the absence begins if such crediting will prevent a One-Year Break in Service, or otherwise to the following computation period. No such credit shall be given unless the Employee provides the Committee with timely information (including, if requested, a written statement of a doctor or adoption official) to establish that the absence is for reasons referred to in this Paragraph and the number of days for which there was such an absence. Provided, further, there shall be no duplication of credit under the Plan.

Hours of Service for any other trade or business that is along with the Employer a member of a group of trades or businesses (whether or not incorporated) which are under common control, as defined in Code Sections 414(b) and (c), or an affiliated service group as defined in Code Section 414(m) as modified by Code Sections 414(m)(5) and (6), shall be considered Hours of Service for the Employer.

Employees who are employed by the Employer on or before January 1, 2008 shall be credited with service under the Plan pursuant to the transition rules set forth in Department of Labor regulations relating to changing the method of crediting service from the elapsed-time method to the computation period method.

Effective for Plan Years beginning on or after January 1, 2008, Hourly Employees shall be credited with actual hours (i) for which they are paid or entitled to payment by the Employer, and (ii) for purposes of determining whether a One-Year Break in Service has occurred, at their regular rate during unpaid leave of absence. Salaried Employees shall be credited with 190 Hours of Service for each month in which the employee completes at least one Hour of Service.



**K. “One-Year Break in Service”** means the applicable computation period during which an Employee completes less than 501 Hours of Service.

**L. “Participant”** means an Eligible Employee who has satisfied the eligibility requirements of Article III and been enrolled in the Plan.

**M. “Plan Administrator”** means the University.

**N. “Plan Year”** means the 12-month period on which the records of the Plan are kept. Each Plan Year shall end on December 31.

**O. “Qualified Joint and Survivor Annuity”** means an immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is 50% of the amount payable during the joint lives of the Participant and the Spouse.

**P. “Spouse”** means the lawful husband or wife of a Participant.

**Q. “Student”** means an Employee exempt from FICA under Internal Revenue Code § 3121(b)(10).

**R. “University”** means Pacific Lutheran University, sometimes hereinafter referred to as Employer.

**S. “Year of Service”** means the applicable computation period during which the Employee completes not fewer than 1,000 Hours of Service as defined in Paragraph J.

**T. “Gender”** The masculine pronoun as used herein shall include the feminine.

**U. “Vendor”** means the provider of an Annuity Contract or Custodial Account.

### **ARTICLE III.**

#### **ELIGIBILITY**

**A. Eligibility for Employee Salary Reduction Contributions.** Prior to September 1, 2006, Employees who are Students or Employees and who are scheduled to work fewer than

20 hours per week shall not be eligible to participate in this Plan or make salary reduction contributions. Effective September 1, 2006, all Employees are eligible to make salary reduction contributions to this Plan except Students. All Eligible Employees shall become Participants and shall be permitted to make salary reduction contributions pursuant to Article IV, Paragraph A as of the date they are first credited with an Hour of Service. If a Participant initially elects not to make salary reduction contributions, he or she may elect to begin making salary reduction contributions by giving the Employer not less than two (2) weeks' notice before the pay day on which the salary reduction contributions are to commence.

Notwithstanding the foregoing, clergy who elect out of University benefits shall not be eligible to make salary reduction contributions.

**B. Eligibility for Employer Contributions.** Every Employee eligible to make salary reduction contributions pursuant to Paragraph A with the exception of clergy who elect out of University benefits and non-faculty Employees providing services pursuant to a written service agreement which does not provide for benefits shall become eligible to be enrolled in the Plan for purposes of receiving the Employer Base Contribution, pursuant to Article IV, Paragraph B, and the Employer Matching Contribution, pursuant to Article IV, Paragraph C, on the Enrollment Date following the date on which the Employee (a) reaches age 18, and (b) completes one (1) Year of Service.

In counting Years of Service, the Plan Administrator shall apply the following rules to determine Years of Service and One-Year Breaks in Service:

- 1.** All Service shall be counted.

2. If an Employee completes a Year of Service but has a Break in Service prior to receiving an Employer contribution, the Year of Service will be disregarded if the Employee incurs five (5) consecutive One-Year Breaks in Service.

3. If an Employee has a One-Year Break in Service, a preceding Break in Service of less than one (1) year shall be disregarded.

4. If at the time an otherwise eligible Employee is employed by the University, he or she was eligible to receive Employer contributions under a qualified plan governed by Code Section 401(a) or a tax-sheltered annuity plan governed by Code Section 403(b), at any time during the 12 consecutive months preceding commencement of employment, the Employee shall be deemed to have completed the Year of Service requirement and shall be eligible under Article III, Paragraph B as of the later of the first of the month following employment or the first of the month after attaining age 18, or in the case of employment on the first day of the month having previously attained age 18, as of the first day of employment.

#### **ARTICLE IV.**

#### **CONTRIBUTIONS**

**A. Participants' Salary Reduction Contributions.** Each Participant may sign a salary reduction agreement directing the Employer (1) to reduce his or her Compensation each pay period and (2) to contribute the amount of the Participant's salary reduction to this Plan. The Plan Administrator shall furnish the agreement to each Participant with instructions regarding the time period within which the agreement must be signed and returned. The amount of the contribution shall be equal to at least \$200 per Plan Year or \$16.66 per month, but may not be an Excess Contribution.

A Participant who contributes to more than one plan in any year in amounts that result in an Excess Contribution must submit to the Plan Administrator by March 1 of the year following the year of the Excess Contribution a written statement of the amount of the Excess Contribution to be allocated to this Plan. An Excess Contribution will be distributed together with income attributable thereto by April 15 of the year following the year of the Excess Contribution.

A Participant may enter into a salary reduction agreement at any time but may revise the amount to be contributed no more frequently than once per month. A Participant may terminate the agreement with respect to amounts not yet earned by advance written notice to the Plan Administrator. All Employees who are eligible to make contributions under this Paragraph A and who have attained age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Sections 402(g) and 415 of the Code. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing any other requirements of the Code by reason of the making of such catch-up contributions.

**B. Employer Base Contribution.** The Employer shall contribute on behalf of each Participant who meets the eligibility requirements of Article III, Paragraph B, an Employer contribution equal to seven and one-half percent (7.5%) of such Participant's Compensation. Only Compensation received after the Employee meets the eligibility requirements of Article III, Paragraph B shall be considered in determining the amount of the Employer's contribution.

**C. Employer Matching Contributions.** The Employer shall contribute on behalf of each Participant who meets the eligibility requirements of Article III, Paragraph B, an Employer matching contribution equal to 50% of the Participant's salary reduction contributions made

pursuant to Article IV, Paragraph A, but not on such contributions exceeding six percent (6%) of Compensation. Matching contributions shall be made each pay period based on salary reduction contributions for the pay period. Matching contributions are not adjusted at year end to reflect salary reduction contributions for the year.

**D. Maximum Contributions.** Except to the extent permitted under Paragraph A and Section 414(v) of the Code, if applicable, the annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

1. \$46,000 as adjusted for increases in the cost of living under Section 415(d) of the Code; or
2. 100% of the Participant's Compensation, within the meaning of Section 415(c)(3) of the Code, for the limitation year.

The Compensation limit referred to in subparagraph 2 shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition. The limitation year is the calendar year.

**E. Treatment of Contributions Made Pursuant to Veterans' Reemployment Rights.** Notwithstanding any provision of this Plan to the contrary, contributions with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

## **ARTICLE V.**

### **NONFORFEITABLE BENEFITS**

Employer contributions and Employee salary reduction contributions to this Plan shall be immediately 100% vested and nonforfeitable.

## ARTICLE VI.

### DISTRIBUTION OF BENEFITS

**A. Normal Retirement Age.** The normal retirement age shall be age 65 for all Participants, and each Participant shall be entitled to retire and receive his or her benefits under his or her Funding Contracts on or after the date he or she attains normal retirement age.

**B. Employment After Normal Retirement Age.** A Participant who continues as a Participant hereunder beyond his or her normal retirement age shall continue to have all the rights accruing to him or her under this Plan prior to such age.

**C. Required Receipt of Benefits.** Distribution of benefits shall commence to a Participant no later than the later of April 1 of the calendar year following the year in which the Participant attains age 70½ or incurs a Severance from Service Date. Notwithstanding any other provision of this Plan to the contrary, all distributions from the Plan will be made in accordance with the requirements of Internal Revenue Code Section 401(a)(9) including the minimum distribution incidental benefit requirements of Section 1.401(a)(9)-2 of the proposed regulations.

Effective with respect to distributions for calendar years beginning with the calendar year 2002, all distributions shall comply with the requirements of Article VII.

**D. Prohibition Against Early Distributions.** Each Funding Contract shall prohibit distributions attributable to (a) a Participant's Employer contributions that are invested in Code Section 403(b)(7) custodial accounts and investment earnings thereon, and (b) a Participant's post-1988 salary reduction contributions and post-1988 earnings thereon, prior to: the Participant's attainment of age 59½, separation from employment with the Employer, death or disability (within the meaning of Code Section 72(m)(7)). Earlier distributions may be permitted in the case of hardship (as described in Article VI, Paragraph I) but not of earnings attributable to

such contributions. Notwithstanding the foregoing, the prohibitions of this Article VI, Paragraph D are expressly inapplicable to payments made to an Alternate Payee pursuant to a Qualified Domestic Relations Order.

**E. Form of Payment.** The form of payment of a Participant's Plan benefits shall be selected by the Participant from among the options provided under the Funding Contract or Contracts. The normal form shall be a single life annuity for an unmarried Participant and a Qualified Joint and Survivor Annuity for a married Participant. If no optional form of distribution is selected by the Participant during the election period (with the Spouse's consent where applicable), the form of payment shall be the normal form.

No Funding Contract shall permit distribution to a married Participant in a form other than a Qualified Joint and Survivor annuity without the Spouse's written consent. The Spouse's consent must be obtained during the election period which commences not more than 90 days prior to the annuity starting date. The consent must acknowledge the effect of the consent and must be witnessed by the Plan Administrator or a notary public. A Participant's election of a form of payment other than the normal form may be revoked if permitted by the Funding Contract. The Spouse's consent to a revocation is not required. However, the Spouse's consent to another election of a form of distribution other than the Qualified Joint and Survivor Annuity is required. Information shall be provided the Participant by the issuer of the Funding Contract which shall comply with the final regulations under the Retirement Equity Act of 1984.

**F. Death Benefits.** Each Participant shall designate a beneficiary or beneficiaries to receive his or her Plan benefits under his or her Funding Contracts in the event of his or her death, pursuant to procedures set forth in the Funding Contracts. No Funding Contract shall permit the beneficiary of a married Participant to be other than his or her Spouse unless the

Spouse consents in writing to the designation of the other beneficiary and acknowledges the effect of the consent. The consent must be witnessed by the Plan Administrator or a notary public. A Participant may change his or her beneficiary pursuant to the procedures set forth in the Funding Contracts, but any change in a specified beneficiary other than by naming the Spouse requires a new spousal consent.

Notwithstanding the foregoing, effective September 1, 2006, in the event of the death of a married Participant before his or her annuity starting date, the surviving Spouse shall receive a death benefit equal to the qualified preretirement survivor annuity (QPSA). The QPSA shall be paid in the form of a life annuity with a value which is not less than 50% of the nonforfeitable account balance of the Participant as of the date of the Participant's death. This benefit shall be payable to the surviving Spouse within a reasonable time after the Participant's death. Provided, the surviving Spouse may waive the QPSA and in lieu thereof elect any optional form permitted under the Funding Contract. Effective on and after September 1, 2006, the written explanation provided in the following paragraph is no longer applicable. The Participant may designate a beneficiary or beneficiaries to receive his or her remaining Plan benefits under his or her Funding Contract in the event of his or her death pursuant to procedures set forth in the Funding Contracts.

The Plan Administrator shall cause to be provided to each Participant at the time or times described below, a written explanation of (a) the death benefit provided under the Funding Contracts to the Participant's Spouse, (b) the Participant's right to designate a beneficiary other than his or her Spouse to receive that death benefit provided he or she obtains the Spousal consent, and (c) the Participant's and Spouse's right to revoke the designation or consent and the effect of such revocation. The notice shall be provided to a Participant both at the time he or she



wishes to elect a beneficiary other than his or her Spouse and during whichever of the following applicable periods ends last:

1. The period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35;
2. A reasonable period after the individual becomes a Participant, or
3. A reasonable period after separation from service in the case of a Participant who separates from service before attaining age 35.

Any beneficiary designation made prior to the first day of the Plan Year in which the Participant attains age 35 and which designates a beneficiary other than the Participant's Spouse is invalid after the first day of such Plan Year.

Commencing January 1, 2002, all death benefits shall be paid in a manner which is consistent with the requirements of Article VII. Subject to those requirements, the Participant's beneficiary shall select the method of distribution from among those permitted by the Funding Contracts and failing an election the fail-safe terms of such contract shall control.

**G. Severance from Service.** Upon incurring a Severance From Service Date, a Participant shall be entitled to elect the form of payment permitted under his or her Funding Contracts.

**H. Hardship Withdrawals.** A Participant may withdraw all or part of his or her salary reduction contributions (but not post-1988 earnings attributable to such contributions) as a hardship withdrawal if the Participant can adequately demonstrate an immediate and heavy financial hardship to the Plan Administrator in accordance with the provisions of this Paragraph and if the Funding Contracts permit hardship withdrawals. A hardship withdrawal (i) must be on

account of an immediate and heavy financial need and may not exceed the amount necessary to meet that need, and (ii) must be necessary to satisfy the financial need and may not be satisfied from other resources reasonably available to the Participant.

An immediate and heavy financial need shall be deemed to exist if the requested distribution is on account of:

1. Uninsured expenses for (or necessary to obtain) medical care that would be deductible without regard to whether the expenses exceed 7.5% of adjusted gross income;
2. The purchase of the Participant's principal residence (excluding mortgage or loan payments);
3. The payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Employee, or the Employee's Spouse, children or dependents (as defined in Section 152 of the Code without regard to Sections 152(b)(1), (b)(2) and (d)(1)(B)), or the Participant's designated Beneficiary or Beneficiaries;
4. Payment to prevent eviction of Participant from his or her principal residence or foreclosure of a mortgage on the Participant's principal residence;
5. Payment for burial or funeral expenses for the Employee's deceased parent, Spouse, children or dependents (as defined in Section 152 of the Code without regard to Section 152(d)(1)(B)), or the Participant's designated Beneficiary or Beneficiaries; or
6. Expenses for the repair of damage to the Employee's principal residence that would qualify for the casualty deduction under Section 165 of the Code (determined without regard to whether the loss exceeds 10% of adjusted gross income).

Such a distribution may include an amount necessary to pay taxes and penalties on the distribution.

If hardship withdrawals are permitted under the Funding Contracts, such withdrawals shall be administered by the Plan Administrator or the issuer of the particular Funding Contract in accordance with uniform and non-discriminatory standards applicable to all Participants.

**I. Disability.** Disability means that a Participant, by reason of mental or physical disability, is incapable of continuing any gainful occupation, and the Participant's condition constitutes total disability under the Federal Social Security Act. If permitted in his/her Funding Contract(s), in the event of disability as defined in this Paragraph J, such disabled Participant shall be entitled to the distribution rights (if any) granted him/her in the Funding Contract(s).

## **ARTICLE VII.**

### **MINIMUM REQUIRED DISTRIBUTION UNDER FINAL REGULATIONS**

With respect to minimum required distributions made on or after the Effective Date as defined in Paragraph A.1 below, the following provisions shall apply:

#### **A. General Rules.**

**1. Effective Date.** The provisions of this Article VII will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.

**2. Precedence.** The requirements of this Article VII will take precedence over any inconsistent provisions of the Plan as to the required minimum amount payable, provided that any provision of the Plan requiring faster payment or greater payments will remain in effect.

**3. Requirements of Treasury Regulations Incorporated.** All distributions required under this Article VII will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

**4. TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this Article XIII, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

**B. Time and Manner of Distribution.**

**1. Required Beginning Date.** The Participant's nonforfeitable Accrued Benefit will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date, as defined in Paragraph E(e) below.

**2. Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's nonforfeitable Accrued Benefit will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later, unless subparagraph 3 below applies.

(b) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by

December 31 of the calendar year immediately following the calendar year in which the Participant died, unless subparagraph 3 below applies.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire nonforfeitable Accrued Benefit will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subparagraph 2, other than subparagraph 2(a), will apply as if the surviving spouse were the Participant.

For purposes of this subparagraph 2 and Article VII, Paragraph D below, unless subparagraph 2(d) above applies, distributions are considered to begin on the Participant's Required Beginning Date. If subparagraph 2(d) above applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subparagraph 2(a) above. If the Plan permits an annuity contract as a form of payment and distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subparagraph 2(a)), the date distributions are considered to begin is the date distributions actually commence.

**3. Five-Year Rule.** If the Participant dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date specified above in Paragraph B.2, as long as the Participant's entire nonforfeitable Accrued Benefit will be distributed to the designated beneficiary by December 31

of the calendar year containing the fifth anniversary of the Participant's death ("five-year rule"). If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to either the Participant or the surviving spouse begin, this election will apply as if the surviving spouse were the Participant.

Beneficiaries may elect on an individual basis whether the foregoing 5-year rule or the life expectancy rule specified in Paragraph B.2 above and Paragraph D.2 below applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of (a) December 31 of the calendar year in which distribution would be required to begin under Paragraph B.2, or (b) December 31 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If the beneficiary does not make an election under this paragraph, distributions will be made in accordance with the five-year rule.

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

**4. Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, then for each distribution calendar year distributions will be made in accordance with Paragraph C below and Paragraph D below of this Article VII. If the Plan permits an annuity contract as a form of payment and the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be

made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

**C. Required Minimum Distributions During Participant's Lifetime.**

**1. Amount of Required Minimum Distribution For Each Distribution**

**Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) the quotient obtained by dividing the Participant's nonforfeitable Accrued Benefit by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(b) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's nonforfeitable Accrued Benefit by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

**2. Lifetime Required Minimum Distributions Continue Through Year of**

**Participant's Death.** Required minimum distributions will be determined under this Article VII, Paragraph C beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

**D. Required Minimum Distributions After Participant's Death.**

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

(a) **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the

minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's nonforfeitable Accrued Benefit by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

**(b) No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's entire nonforfeitable Accrued Benefit by the Participant's remaining



life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

**2. Death Before Date Distributions Begin.**

(a) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's nonforfeitable Accrued Benefit by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Article VII, Paragraph D.1 above.

(b) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire nonforfeitable Accrued Benefit will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Article VII, Paragraph B.2(a) above, this Article VII, Paragraph D.2 will apply as if the surviving spouse were the Participant.

**E. Definitions.**

(a) **Designated beneficiary.** The individual who is designated as the beneficiary under Article VI, Paragraph F of the Plan (including any individual who is a default

beneficiary under the terms of a Custodial Account), and is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4, Q&A-1, of the Treasury regulations.

**(b) Distribution calendar year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Article VII, Paragraph B.2. The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.

**(c) Life expectancy.** Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

**(d) Participant's Nonforfeitable Accrued Benefit.** The Participant's nonforfeitable Accrued Benefit as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the nonforfeitable Accrued Benefit as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The nonforfeitable Accrued Benefit for the valuation calendar year includes any amounts rolled over or transferred to the

Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(e) **Required Beginning Date.** The date specified in Article VI, Paragraph C of the Plan.

## **ARTICLE VIII.**

### **PROVISION AGAINST ANTICIPATION**

**A. No Alienation of Benefits.** Until distribution pursuant to the terms hereof and except as hereinafter provided, no Participant shall have the right or power to alienate, anticipate, commute, pledge, encumber, or assign any of the benefits, proceeds, or avails of the funds set aside for him or her under the terms of this Plan. No such benefits, proceeds, or avails shall be subject to seizure by any creditor of the Participant under any writ or proceedings at law or in equity.

**B. Qualified Domestic Relations Order.** Notwithstanding any other Plan provision, the following procedures shall apply when any domestic relations order is received by the Plan with respect to a Participant.

**1.** The Plan Administrator shall promptly notify the Participant and (a) each person named in the order as entitled to payment of Plan benefits; and (b) any other person entitled to any portion of the Participant's Plan benefits (persons referred to in (a) and (b) are hereafter Alternate Payees) of the receipt of such order and of the Plan Administrator's procedures for determining the qualified status of the order. The Plan Administrator shall permit each Alternate Payee to designate a representative for receipt of copies of notices.

2. Immediately upon receipt of a domestic relations order, the Plan Administrator shall notify the issuer of the Funding Contract(s) to segregate in a separate account the amounts that are in pay status and which are payable to the Alternate Payee under the order.

3. The Plan Administrator shall determine, within a reasonable time after receipt of the domestic relations order, whether the order is a Qualified Domestic Relations Order. The Plan Administrator shall then notify the Participant and each Alternate Payee of its decision. A Qualified Domestic Relations Order is any judgment, decree or Order (including approval of a property Settlement agreement) that:

(a) relates to the provision of child support, alimony payments, or marital property rights to a Spouse, former Spouse, child, or other dependent of the Participant;

(b) is made pursuant to a state domestic relations law (including a community property law);

(c) creates or recognizes the existence of an Alternate Payee's right to receive all or a portion of a Participant's Plan benefits;

(d) clearly specifies (1) the name and last known mailing address, if any, of the Participant, and the name and mailing address of each Alternate Payee covered by the order; (2) the amount or percentage of the Participant's benefits to be paid by the Plan to each Alternate Payee, or the manner in which the amount or percentage is to be determined; (3) the number of payments or period to which the order applies; and (4) the Plan to which the order applies; and

(e) does not require the Plan to provide any form of benefit not otherwise provided by the Plan (except as permitted by law) or any increased benefits, and does not require the payment of benefits to an Alternate Payee that are required to be paid to another

Alternate Payee under another order previously determined to be a Qualified Domestic Relations Order.

4. The Plan Administrator's decision shall be final unless the Participant or an Alternate Payee gives written notice of appeal within 60 days after receipt of the decision.

5. If within 18 months after the date on which the first payment would be required to be made under the order, an order is finally determined to be a Qualified Domestic Relations Order, the segregated amounts including any interest thereon shall be paid to the persons entitled thereto, and thereafter the Alternate Payee shall receive payments pursuant to the terms of the order. Amounts subject to the order which are not in pay status shall be transferred to a separate account in the name of the Alternate Payee and thereafter held for such payee's benefit pursuant to the terms of the order. If within 18 months after the date in which the first payment would be required to be made under the order, the order is determined not to be a Qualified Domestic Relations Order, or if the issue has not been finally determined, the Plan Administrator shall instruct the issuer of the Funding Contracts to pay the segregated amounts (including any interest thereon) to the person who would have otherwise been entitled thereto if there had been no order. Any determination that an order is qualified after the close of the 18-month period shall be applied prospectively only.

6. The Plan Administrator's procedures shall generally conform to this Plan's claims procedures.

7. Nothing in this Article VII, Paragraph B shall be construed to prohibit the immediate distribution of amounts in a Funding Contract or Contracts to a Participant's Alternate Payee pursuant to the terms of a Qualified Domestic Relations Order.

## **ARTICLE IX.**

### **ADMINISTRATION**

**A. Plan Administrator.** The Plan Administrator means the person or organization approved by the Employer to administer the Plan. In the absence of such designation, the Employer shall be the Administrator and the Vendors shall be allocated administrative duties over amounts held pursuant to each Individual Agreement.

The Plan Administrator shall be the named fiduciary of this Plan and shall have the power and authority in its sole, absolute and uncontrolled discretion to control and manage its operation and administration of this Plan, and shall have all powers necessary to accomplish those purposes. The responsibility and authority of the Plan Administrator shall include but shall not be limited to the following:

1. Determining all questions relating to the eligibility of Employees to participate;
2. Computing and certifying the amount and kind of benefit payable to Participants, Spouses and Beneficiaries;
3. Authorizing all disbursements;
4. Establishing and reducing to writing and distributing to any Participant or Beneficiary a claims procedure, and administering that procedure including the processing and determination of all appeals thereunder;
5. Maintaining all necessary records for the administration of the Plan; and
6. Interpreting the provisions of the Plan and the publication of such rules for the regulation of this Plan as in the Administrator's sole, absolute and uncontrolled discretion are deemed necessary and are not inconsistent with the terms hereof.

In addition, the Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and Administrator shall exchange such information as may be necessary to satisfy the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive contributions under the Plan, the Employer shall keep the Vendor informed of the name and the Contact information of the Administrator in order to coordinate information necessary to satisfy the Code or other requirements of applicable law.

**B. Standard of Care.** The Plan Administrator shall discharge his or her duties with respect to this Plan solely in the interest of the Participants and beneficiaries and (1) for the exclusive purpose of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of the Plan; (2) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; and (3) in accordance with the Plan provisions. The Plan Administrator shall not be liable for any loss or for any breach of fiduciary responsibility that results from a Participant's exercise of control over all or part of the investment of his or her Employee and Employer contributions. Where a Participant is directing the investment of all or part of his or her Employee and Employer contributions, the Plan Administrator shall have no responsibility to maintain diversification of the self-directed portion of such contributions.

**C. Allocation and Delegation of Responsibility.** The Administrator may delegate, by separate agreement, any administrative or fiduciary responsibilities under the Plan to any persons, committees, Vendors or other organizations as it determines in its discretion. In the event that a responsibility is allocated or delegated, the Plan Administrator shall not be liable for

any act or omission of the person to whom the responsibility is allocated or delegated except as may otherwise be required by law.

**D. Bonding.** Where required by law, every fiduciary of the Plan and every person handling Plan funds shall be bonded. The Plan Administrator shall be responsible for compliance with the bond requirements.

**E. Claims Procedure.** The Plan Administrator shall establish a claims procedure which shall be reduced to writing and provided to any Participant or beneficiary whose claim for benefits under the Plan has been denied. The procedure shall provide for adequate notice in writing to such Participant or beneficiary and the notice shall set forth the specific reasons for denial of benefits written in a manner calculated to be understood by the Participant or beneficiary. The procedure shall afford a reasonable opportunity to the Participant or beneficiary for a full and fair review of the decision denying the claim. Any dispute or claim with respect to the terms of the Plan will be determined in accordance with such claims procedure. Any dispute or claim which involves the Individual Agreement shall be determined as provided under such Individual Agreement. The Employer shall have no responsibility or obligation to assist the Participant or Beneficiary with respect to any dispute or claim that relates to an Individual Agreement.

**F. Funding Policy.** To the extent required by law, the Plan Administrator shall establish and carry out a funding policy for this Plan.

**G. Indemnification.** The Employer does hereby indemnify and hold harmless any Employee appointed by the Employer to serve as or perform functions of the Plan Administrator from any loss, claim, or suit arising out of the performance of obligations imposed hereunder and not arising from such individual's willful neglect or misconduct or gross negligence.



**H. Compensation, Expenses.** The Administrator members shall serve without compensation for services under this Plan. All expenses of Plan Administration shall be paid by Plan funds to the extent that the Employer does not elect to pay in accordance with applicable law. Such expense shall include any expense incident to the function of the Administrator, including but not limited to accountants, actuary, counsel, and other specialists, and other costs of administering this Plan. Provided, however, that the investment fees relating to the acquisition and disposition of investments shall be a charge against and paid from the appropriate Plan Participants' accounts and reasonable fees may be charged to Participants' Plan accounts in accordance with applicable law.

## **ARTICLE X.**

### **INVESTMENTS**

**A. Investment Options.** Contributions under this Plan will be paid by the Employer not less often than monthly to the issuer of the Funding Contracts for the individual account of the Participant on whose behalf the contribution is made. The issuers of Funding Contracts that will be offered to Plan Participants shall be selected by the Plan Administrator.

**B. ERISA Section 404(c) Participant Directed Investments.** Each Participant may elect to have the responsibility and authority to direct the Plan Administrator with respect to the management and control of his or her contributions and Employer contributions by filing with the Plan Administrator his or her election in writing on such form and within such time period as shall be established by the Plan Administrator. On such election, he or she shall elect to have his or her contributions made to acquire one or more Funding Contracts in accordance with rules adopted by the Plan Administrator and uniformly applied.

A Participant's authority to direct the investment of his or her accounts shall be subject to such limitations and restrictions as the Plan Administrator may impose for administration purposes or to comply with applicable law. With respect to Participants who do not elect to direct the investment of their Employee and Employer contributions, the Plan Administrator shall be the named fiduciary with respect to the management and control of such assets, and the Plan Administrator is granted full power and authority to allocate contributions on the Participant's behalf in the Plan Administrator's discretion to acquire one or more Funding Contracts.

#### **ARTICLE XI.**

#### **AMENDMENT AND TERMINATION**

The Employer represents that the Plan is intended to be a continuing and on-going program for Participants but reserves the right to terminate the Plan at any time by action of its Board. The Employer may modify, alter, or amend the Plan in whole or in part. No amendment shall reduce the accrued benefit of any Participant nor permit any part of the assets of the Plan to be used for or diverted to any purpose other than the exclusive benefit of the Participants and beneficiaries.

#### **ARTICLE XII.**

#### **ROLLOVER CONTRIBUTIONS; DIRECT ROLLOVER CONTRIBUTIONS**

**A. Direct Rollover Contributions.** Paragraph B of this Article applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the 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.

**B. Definitions.**

**1. Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (i) 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; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) any amount that is distributed on account of hardship. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

**2. Eligible Retirement Plan.** An Eligible Retirement Plan means an annuity contract described in Section 403(b) of the Code, an individual retirement plan or individual retirement annuity described in Section 408 of the Code, a trust described in Section 401(a) of the Code, and an eligible plan under Section 457(b) of the Code, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision

of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 31, 2006, Eligible Retirement Plan shall include an individual retirement plan, which shall be either an individual retirement account described in Code Section 408(a) or an individual retirement annuity described Section 408(b) of the Code, that has been established for the purpose of receiving a distribution on behalf of the designated beneficiary of the Participant who is not the surviving Spouse.

**3. Distributee.** A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse and the Employee's or former Employee's Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the Spouse or former Spouse. Effective December 31, 2006, distributee shall also include the employee's or former employee's designated non-spouse beneficiary solely for purposes of making a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving a distribution on behalf of a non-spouse beneficiary.

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

**C. Rollovers to this Plan.** Subject to such terms and conditions as may from time to time be established by the Plan Administrator, an Employee of an Employer, whether or not a Participant, may make a rollover contribution to this Plan. This Plan will accept rollover contributions from an eligible retirement plan as defined in Section 402(c)(8) of the Code. Rollover contributions shall be separately accounted for but shall be subject to all of the

provisions of the Plan otherwise applied to Employer contributions including the in-service withdrawal provisions of Article VI, Paragraph H.

IN WITNESS WHEREOF, this amended and restated Plan is executed by the Employer this 2<sup>nd</sup> day of December, 2008.

**PACIFIC LUTHERAN UNIVERSITY**

By Sheri Jean J  
Its VP, Finance & Operations