

# WASHINGTON STATE UNIVERSITY

## Voluntary Investment Program (VIP)

As Amended and Restated  
Effective January, 2024

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## **SECTION 1. ESTABLISHMENT OF VOLUNTARY INVESTMENT PROGRAM**

**1.1 Establishment of Program.** The Board of Regents of Washington State University established a Washington State University Tax-Deferred Annuity Program as of January 1, 1983, as allowed under State of Washington RCW 28.B.10.480. This plan document sets forth the provisions of the Plan, as amended March, 2020 but with a general retroactive effective date of January 1, 2010 as provided for in Rev. Proc.2013-22. This plan is a governmental plan as defined in Code Section 414(d) and is intended to satisfy the provisions of Code Section 403(b).

## **SECTION 2. DEFINITIONS**

The words and phrases defined in this Article have the following meanings throughout this plan document:

**2.1 Account** means the account maintained for the benefit of any Participant or Beneficiary under a Funding Vehicle. The Plan Administrator will establish and maintain such separate Accounts for each Participant as may be necessary to properly account for Pre-Tax Elective Deferrals versus Roth Elective Deferrals and the Earnings thereon, and otherwise as may be necessary for proper Plan administration.

**2.2 Account Balance** means the total benefit to which a Participant or a Beneficiary is entitled under all Funding Vehicles, taking into account all VIP Contributions made to the Funding Vehicle and all Earnings and expenses allocable to the Account, and any distributions made to the Participant or Beneficiary.

**2.3 Annuity Contract** means a nontransferable group or individual contract described in Code Section 403(b)(1) that is issued by a Fund Sponsor and that includes payment in the form of an annuity.

**2.4 Beneficiary** means the person(s), including one or more trusts or other entities the Participant designates in writing, contingently or successively, to receive the Participant's Account (or remaining Account) under the Plan in the event of the Participant's death. If the Participant is married or remarries, the Participant's designation (including a pre-existing designation in the case of remarriage) of someone other than the spouse as a primary Beneficiary requires the written consent of the spouse. Any such consent must be witnessed by a notary public. Unless the consent expressly provides that the Participant may designate an additional Beneficiary or Beneficiaries without further consent of the spouse, the consent will be effective only with respect to the specific designation to which the consent relates. Spousal consent will be effective only with respect to that spouse. Such consent will not be required if it is established to the satisfaction of the Plan Administrator that there is no spouse or that the spouse cannot be located. A Participant's Beneficiary designation must be made on a form provided for this purpose by the Plan Administrator or by a Fund Sponsor and must be on file with the Plan Administrator or Fund Sponsor. If a Participant fails to designate a Beneficiary, the Participant's Account (or remaining Account remaining on the Participant's death) will be paid in the following order of priority: (a) to the Participant's surviving spouse, and, if none; (b) to the Participant's surviving children and

lineal descendants, by right of representation and not per capita, and, if none; (c) to the Participant's surviving parents, and, if none; (d) to the Participant's estate. For purposes of Sections 6.4 and 6.7, a Designated Beneficiary means as described in Treas. Reg. Section 1.401(a)(9)-4 and, as applicable and the context requires, an "Eligible Designated Beneficiary" under the Secure Act.

**2.5 Board** means the Board of Regents of Washington State University.

**2.6 Code** means the Internal Revenue Code of 1986, as amended.

**2.7 Compensation** means W-2 taxable income and includes Post-Severance Compensation which consists of regular pay.

**2.8 Custodial Account** means the group or individual custodial account or accounts, described in section 403(b)(7) of the Code, Plan to hold regulated investment company stock issued by a Fund Sponsor.

**2.9 Differential Wage Payment** means as defined in Code Section 3401(h).

**2.10 Earnings** means the net income, gain or loss earned by an Account or with respect to a contribution or distribution, as the context requires. A Roth Elective Deferral Account will be credited and charged only with its own Earnings as attributable to Roth Elective Deferrals.

**2.11 Election** means any Participant or Beneficiary written election (including made in electronic form) under the Plan and which is made on/in the form the Plan Administrator or the Fund Sponsor provides for this purpose. An Election must be made in the manner and within the time period the Plan, the Plan Administrator, or the Fund Sponsor prescribe, and as is consistent with Code Section 403(b) or other applicable law.

**2.12 Elective Deferral** means a Participant's Pre-Tax elective deferrals or Roth elective deferrals (and as the context requires, Age 50 Catch-up Deferrals and Qualified Organization Catch-up Deferrals) which WSU contributes to the Participant's Account at the Participant's Election under a Salary Reduction Agreement, in lieu of the Participant receiving cash compensation.

**2.13 Eligible Employee** means any Employee of Washington State University, except nonresident aliens who receive no U.S.-source earned income.

**2.14 Employee** means each individual who is a common law employee of the State of Washington performing services for WSU, including an individual who is appointed or elected. This definition is not applicable unless the Employee's compensation for performing services for WSU is paid by the State of Washington. Further, a person occupying an elective or appointive public office is not an Employee unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education.

A public office includes any elective or appointive office of the State of Washington. An individual receiving a Differential Wage Payment from WSU is treated as a WSU Employee.

**2.15 Employment Commencement Date** means the date on which the Employee first performs Service for WSU. The Re-Employment Commencement Date means the date on which the Employee first performs Service for WSU after WSU re-hires the Employee.

**2.16 Fund Sponsor** means an insurance, variable annuity, or investment company that provides Funding Vehicles to Participants under the Plan.

**2.17 Funding Vehicles** means the Annuity Contracts and Custodial Accounts available for investing contributions under this Plan and specifically approved by WSU under Section 5.1.

**2.18 Includible Compensation** means an Employee's compensation received from the Employer that is includible in the Participant's gross income for Federal income tax purposes (computed without regard to Code Section 911 relating to United States citizens or residents living abroad), including Differential Wage Payments, for the most recent period that is a Year of 403(b) Service. Includible Compensation also includes any Elective Deferral or other amount contributed or deferred by the Employer at the election of the Employee that would be includible in the Employee's gross income but for the rules of Code Sections 125, 132(f)(4), 402(e)(2), 402(h)(1)(B), 402(k), or 457(b). Includible Compensation does not include any Compensation other than Post-Severance Compensation, paid after Severance of Employment. The amount of Includible Compensation is determined without regard to any community property laws. Except as provided in Treas. Reg. Section 1.401(a)(17)-1(d)(4)(ii) with respect to eligible participants in governmental plans, the amount of Includible Compensation of any Participant taken into account in determining contributions will not exceed \$330,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B) for periods after 2023.

**2.19 IRA** means an individual retirement account under Code Section 408(a) or an individual retirement annuity under Code Section 408(b).

**2.20 IRS** means the Internal Revenue Service.

**2.21 Participant** means any employee of WSU who participates in the Plan in accordance with Section 3.1.

**2.22 Plan** means the Washington State University Voluntary Investment Program as set forth in this document.

**2.23 Plan Administrator** is defined in Section 8.1.

**2.24 Plan Year** means the calendar year.

**2.25 Post-Severance Compensation** means Compensation paid after a Participant's Severance from Employment from WSU, to include regular pay, leave cash-outs, or deferred

compensation paid within the time period described herein. Any other payment paid after Severance from Employment is not Compensation even if payment is made within the time period described below. Post-Severance Compensation does not include severance pay, parachute payments under Code Section 280G(b)(2) or payments under a nonqualified unfunded deferred compensation plan unless the payments would have been paid at that time without regard to Severance from Employment. Post-Severance Compensation includes regular pay, leave cash-outs, or deferred compensation only to the extent WSU pays such amounts by the later of two and one-half (2 ½) months after Severance from Employment or by the end of the Limitation Year (under Section 4.12(b)(viii)) that includes the date of such Severance from Employment. Regular pay means the payment of regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, but only if the payment would have been paid to the Participant prior to a Severance from Employment if the Participant had continued in employment with WSU. Leave cash-outs means payments for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and if Compensation would have included those amounts if they were paid prior to the Participant's Severance from Employment. Deferred compensation means the payment of deferred compensation pursuant to an unfunded deferred compensation plan, if Compensation would have included the deferred compensation if it had been paid prior to the Participant's Severance from Employment, but only if the payment would have been paid at the same time if the Participant had continued in employment with WSU and only to the extent that the payment is includible in the Participant's gross income.

**2.26 Qualified Military Service** means as defined in Code Section 414(u)(5). Notwithstanding any provision in the Plan to the contrary, as to Qualified Military Service, the Plan will credit Service, the Employer will make VIP Contributions, and the Plan will provide benefits in accordance with Code Section 414(u).

**2.27 Related Employer** means WSU and any other entity which is related to WSU under Code Sections 414(b), (c), (m) or (o). WSU will determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under IRS Notice 89-23.

**2.28 Salary Reduction Agreement (SRA)** means a written agreement (including made in electronic form) between the Employee and WSU under which the Employee's Compensation is reduced by an amount equal to the Elective Deferrals that the Employee wishes to have made to his or her Account. An SRA shall be subject to such rules and restrictions as may be imposed by the Plan Administrator not inconsistent with Code Section 403(b) and the regulations thereunder.

**2.29 SECURE Act and SECURE Act 2.0** means the Setting Up Every Community for Retirement Enhancement Act of 2019 and 2022.

**2.30 Service** means any period of time the Employee is in the employ of WSU, including any period the Employee is on an unpaid leave of absence authorized by WSU under a uniform policy applicable to all Employees.



**2.31 Severance from Employment or “Separation from Service”** occurs when an Employee ceases to be employed by WSU or a Related Employer that is eligible to maintain a section 403(b) Plan under Treas. Reg. Section 1.403(b)-2(b)(8), even if the Employee remains employed with another entity that is a Related Employer where either: (a) such Related Employer is not an eligible employer; or (b) the Employee is employed or in a capacity that is not employment with an eligible employer.

**2.32 Spouse** means the person to whom the Participant is legally married and for this Plan also includes a registered domestic partner under RCW 26.60 et seq or other applicable law.

**2.33 Taxable Year** means the taxable year of a Participant.

**2.34 USERRA** means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

**2.35 VIP Contributions** means Pre-Tax Elective Deferrals and/or Roth Elective Deferral contributions to the Plan by a Participant.

**2.36 WSU** means Washington State University.

**2.37 Year of 403(b) Service** means for purposes of determining Includible Compensation and for Qualified Organization Catch-up Deferrals, each full year during which an individual is a full-time Employee, plus fractional credit for each part of a year during which the individual is either a full-time Employee of the Employer for a part of a year or a part-time Employee of the Employer, determined under Treas. Reg. Section 1.403(b)-4(e). An Employee’s number of Years of 403(b) Service equals the aggregate of such years or parts of years. The work period is the Employer’s annual work period.

### **SECTION 3. ELIGIBILITY AND PARTICIPATION**

**3.1 Eligibility and Participation.** All Eligible Employees may begin Plan participation as of their Employment Commencement Date or any later date they may elect by making an Election to enroll, which includes entering into a Salary Reduction Agreement (SRA). Participation will commence effective as of the first (1<sup>st</sup>) administratively practicable payroll date or payroll period on or following the Plan Administrator’s actual receipt of the Election. An Eligible Employee must make their Election in the form/format as provided by the Plan Administrator. Funding Vehicles selection must be made with the Fund Sponsor(s) as directed by the Plan Administrator.

**3.2 Revision to SRA.** A Participant may elect to stop Elective Deferrals, revise the amount of their Elective Deferrals, or change from Pre-Tax to Roth Elective Deferrals or vice versa (including any combination thereof) at any time by making an Election on a SRA.

**3.3 Termination of Contributions.** A Participant may not make additional VIP Contributions after: (a) the Participant ceases to be an Eligible Employee; (b) WSU terminates the Plan; or (c) as to a Taxable Year or Limitation Year, the Participant has reached the Elective Deferral Limit or the Annual Additions Limit for that Year.

#### **SECTION 4. VIP CONTRIBUTIONS**

**4.1 VIP Contributions.** A Participant's VIP Contributions may consist of any or all of the following Elective Deferrals:

(a) Pre-Tax Deferral. Pre-Tax Deferral means an Elective Deferral which is not a Roth Deferral.

(b) Roth Deferral. Roth Deferral means an Elective Deferral which the Participant irrevocably designates as a Roth deferral under Code Section 402A at the time of deferral and which is subject to income tax when made to the Plan. Except as the Plan otherwise provides, a Roth Deferral is treated as an Elective Deferral for all purposes under the Plan.

(c) Age 50 Catch-up Deferral. Age 50 Catch-up Deferral means an Elective Deferral by a Catch-up Eligible Participant and which exceeds the Annual Additions Limit under Section 4.4(b) or the Elective Deferral Limit under Section 4.4(a). A Catch-up Eligible Participant is a Participant who is eligible to make Elective Deferrals and who has attained age 50 or who will attain age 50 before the end of the Taxable Year in which he or she will make an Age 50 Catch-up Deferral. A Participant who dies or who incurs a Separation from Service before attaining age 50 is a Catch-up Eligible Participant in such Taxable Year. A Participant's Age 50 Catch-up Deferrals for a Taxable Year may not exceed the lesser of: (a) 100% of the Participant's Compensation for the Taxable Year when added to the Participant's other Elective Deferrals; or (b) the Catch-up Deferral dollar limit in effect for the Taxable Year (\$7,500 for 2023). After the 2023 Taxable Year, the IRS will adjust the Age 50 Catch-up Deferral dollar limit normally in multiples of \$500 under Code Section 414(v)(2)(C). A Participant's Age 50 Catch-up Deferrals are not subject to the Annual Additions Limit under Section 4.4(b) or to the Elective Deferral Limit under Section 4.4(a). Initially to be effective January 1, 2024, and postponed to January 1, 2026\*, under Secure Act 2.0 all Age 50 Catch-up contributions must be processed as Roth Deferrals, for participants who earned \$145,000 or more in the prior plan year, to be adjusted in accordance with regulatory changes. (\*IRS Notice issued on August 25, 2023 identified an administrative transition period through December 31, 2025. During this period, all catch-up contributions can be made as pre-tax or Roth contributions, based on Participant election.)

(d) Qualified Organization Catch-up Deferral. A Participant who has completed at least fifteen (15) Years of 403(b) Service with WSU is a Qualified Participant and may elect to make a Qualified Organization Catch-up Deferral. The elective Deferral Limit for a Qualified Participant increases by the lesser of: (i) \$3,000; (ii) \$15,000 reduced

by the Participant's Qualified Organization Catch-up Deferrals for prior Taxable Years; or (iii) the excess of \$5,000 multiplied by the Participant's Years of 403(b) Service with WSU over the Participant's deferral contributions made for prior Taxable Years pursuant to Code Sections 401(k), 408(k)(6), 408(p) or 403(b), other than under Code Section 414(v). A Qualified Organization Catch-up Deferral is subject to the Annual Additions Limit under Section 4.4(b) but is not subject to the Elective Deferral Limit under Section 4.4(a).

(e) Catch-up Ordering. A Participant who is eligible may elect to contribute both Age 50 Catch-up Deferrals and Qualified Organization Catch-up Deferrals. The Plan Administrator will treat any such amounts as first attributable to Qualified Organization Catch-up Deferrals.

**4.2 Salary Reduction Minimum.** A Participant's Salary Reduction Agreement must provide for minimum contributions of at least \$15.00 per pay period; provided, that a Participant is not required to make Elective Deferrals which exceed \$200 per Taxable Year.

**4.3 Leave of Absence.** During a leave of absence from WSU with pay, VIP Contributions will continue to be made in accordance with the Salary Reduction Agreement. No VIP Contributions will be made during a leave of absence without pay.

**4.4 Maximum Contribution.** VIP Contributions for a Participant for any calendar year, together with contributions for the Participant under any other plan subject to Code Sections 402(g) or 403(b), shall not exceed the Elective Deferral Limit and the Annual Additions Limit, except as permitted by Code Section 414(v) as to age 50 Catch-up Deferrals.

(a) Annual Elective Deferral Limitation. A Participant's Elective Deferrals for a Taxable Year may not exceed the Elective Deferral Limit. Age 50 Catch-up Deferrals and Qualified Organization Catch-up Deferrals are not subject to the Elective Deferral Limit.

(i) Definition of Elective Deferral Limit. The Elective Deferral Limit is the Code Section 402(g) limitation on each Participant's Elective Deferrals for each Taxable Year. The Elective Deferral Limit is \$22,500 in 2023, and in future years is subject to adjustment by the IRS normally in multiples of \$500 under Code Section 402(g)(4). However, in no event shall a Participant's Elective Deferrals exceed the Participant's Compensation for the Taxable Year. If the Participant's Taxable Year is not a calendar year, the Plan Administrator must apply the Code Section 402(g) limitation in effect for the calendar year in which the Participant's Taxable Year begins.

(ii) Definition of Excess Deferral. A Participant's Excess Deferral is the amount of Elective Deferrals for a Taxable Year which exceeds the Elective Deferral Limit.

(iii) Suspension after Reaching Limit. If the Plan Administrator determines a Participant's Elective Deferrals to the Plan for a Taxable Year would exceed the Elective Deferral Limit, the Plan Administrator will suspend the Participant's Elective Deferrals, if any, until the following January 1 and will pay to the Participant in cash the portion of the Elective Deferrals which would result in the Participant's Elective Deferrals for the Taxable Year exceeding the Elective Deferral Limit.

(iv) Correction. If the Plan Administrator determines a Participant's Elective Deferrals already contributed to the Plan for a Taxable Year exceed the Elective Deferral Limit, the Plan Administrator will distribute the Excess Deferrals as adjusted for Allocable Income, no later than April 15 of the following Taxable Year (or if later, the date permitted under Code Sections 7503 or 7508A).

(v) 415 Interaction. If the Plan Administrator distributes the Excess Deferrals by the April 15 deadline under Section 4.4(a)(iv), the Excess Deferrals are not an Annual Addition under Section 4.4(b), and the Plan Administrator may make the distribution irrespective of any other provision under this Plan or under the Code. Elective Deferrals distributed to a Participant as an Excess Amount in accordance with Section 4.4(b) are not taken into account in determining the Participant's Elective Deferral Limit.

(vi) More than One Plan. If a Participant participates in another plan subject to the Code Section 402(g) limitation under which the Participant makes elective deferrals pursuant to a 401(k) Plan, elective deferrals under a SARSEP, elective contributions under a SIMPLE IRA or salary reduction contributions to a 403(b) plan (irrespective of whether WSU maintains the other plan), the Participant may provide to the Plan Administrator a written claim for Excess Deferrals made to the Plan for a Taxable Year. The Participant must submit the claim no later than the March 1 following the close of the particular Taxable Year and the claim must specify the amount of the Participant's Elective Deferrals under this Plan which are Excess Deferrals. The Plan Administrator may require the Participant to provide reasonable evidence of the existence of and the amount of the Participant's Excess Deferrals. If the Plan Administrator receives a timely claim which it approves, the Plan Administrator will distribute the Excess Deferrals as adjusted for Allocable Income the Participant has assigned to this Plan, under this Section 4.4(a)(vi). If a Participant has Excess Deferrals because of making Elective Deferrals to this Plan and other WSU plans (but where the Elective Deferral Limit is not exceeded based on the Participant's Elective Deferrals to any single plan), the Participant for purposes of this Section 4.4(a)(vi) is deemed to have notified the Plan Administrator of this Plan of the Excess Deferrals.

(vii) Definition of Allocable Income. Allocable Income means Earnings allocable to the Excess Deferrals for and through the end of the Taxable Year in which the Participant made the Excess Deferral. To calculate Allocable Income for

the Taxable Year, the Plan Administrator will use a uniform method which reasonably reflects the manner used by the Plan Administrator to allocate Earnings to Participants' Accounts or the "alternative method" under Treas. Reg. Section 1.402(g)-1(e)(5)(iii).

(viii) Roth and Pre-Tax Deferrals. If a Participant who will receive a distribution of Excess Deferrals, in the Taxable Year for which the corrective distribution is made, has contributed both Pre-Tax Deferrals and Roth Deferrals, the Plan Administrator operationally will determine the Elective Deferral Account source(s) from which it will direct the Fund Sponsor to make the corrective distribution. The Plan Administrator also may permit the affected Participant to elect the source(s) from which the Fund Sponsor will make the corrective distribution. However, the amount of a corrective distribution of Excess Deferrals to any Participant from the Pre-Tax Deferral or Roth Deferral sources under this Section 4.4(a)(viii) may not exceed the amount of the Participant's Pre-Tax Deferrals or Roth Deferrals for the Taxable Year of the correction.

(b) Annual Code Section 415 Limit. The amount of Annual Additions which the Plan Administrator may allocate under this Plan to a Participant's Account for a Limitation Year may not exceed the Annual Additions Limit.

(i) Prevention. If the Annual Additions the Plan Administrator otherwise would allocate under the Plan to a Participant's Account for the Limitation Year would exceed the Annual Additions Limit, the Plan Administrator will not allocate the Excess Amount, but instead will take any reasonable, uniform action the Plan Administrator determines necessary to avoid allocation of an Excess Amount including: (1) suspending or limiting a Participant's additional Mandatory Contributions or Elective Deferrals; (2) reducing WSU's future Plan Contribution(s); or (3) suspending or limiting the allocation to a Participant of any Plan Contribution previously made to the Plan (exclusive of Elective Deferrals). If the Plan Administrator allocates to a Participant an Excess Amount, the Plan Administrator must dispose of the Excess Amount in accordance with Section 4.12(b)(ix).

(ii) Aggregation of WSU 403(b) Plans. If Annual Additions are credited to any other WSU Code Section 403(b) Plan in addition to those credited under this Plan for a Limitation Year, the sum of the Participant's Annual Additions for the Limitation Year under the other plan and this Plan may not exceed the Annual Additions Limit.

(iii) Aggregation where Participant Controls any Employer. If a Participant is in control of any other employer for a Limitation Year, the sum of the Participant's Annual Additions for the Limitation Year under this Plan, any other WSU Code Section 403(b) plan, any defined contribution plans maintained by the controlled employers, and any Code Section 403(b) plans of any other employers

may not exceed the Annual Additions Limit for the Limitation Year. The Plan Administrator determines “control” under Code Sections 414(b) or 414(c), as modified by Code Section 415(h), in accordance with the rules of Treas. Reg. Section 1.415(f)-1(f). A “defined contribution plan” means a defined contribution plan qualified under Code Sections 401(a) or 403(a), a Code Section 403(b) plan, or a simplified employee pension plan under Code Section 408(k). The Plan Administrator will provide written or electronic notice to Participants that explains the limitation in this Section 4.12(b)(iii) in a manner calculated to be understood by the average Participant and informs Participants of their responsibility to provide information to the Plan Administrator that is necessary to satisfy this Section. The notice will advise Participants that the application of the limitations in this Section will take into account information supplied by the Participant and that failure to provide necessary and correct information to the Plan Administrator could result in adverse tax consequences to the Participant, including the inability to exclude contributions to the Plan under Code Section 403(b). The notice will be provided annually, beginning no later than the year in which the Employee becomes a Participant.

(iv) Ordering Rules. If a Participant's Annual Additions under this Plan and any other plans aggregated with the Plan under this Section 4.12(b) result in an Excess Amount, such Excess Amount will consist of the Amounts last allocated. If the Plan Administrator allocates an Excess Amount to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will equal the product of: (1) the total Excess Amount allocated as of such date, multiplied by (2) the ratio of (a) the Annual Additions allocated to the Participant as of such date for the Limitation Year under the Plan to (b) the total Annual Additions allocated to the Participant as of such date for the Limitation Year under this Plan and the other aggregated plans.

(v) Definition of Annual Addition. An Annual Addition means the VIP Contributions credited to a Participant's Account under this Plan and employer contributions, elective deferrals, employee contributions, mandatory contributions, allocations under a simplified employee pension plan and forfeitures credited to any other plan aggregated with the Plan under this Section 4.12(b); provided that Age 50 Catch-up Contributions, distributed Excess Deferrals under Section 4.12(a)(v) and certain other amounts described in Treas. Reg. Section 1.415(c)-1(b) are excluded. For purposes of the dollar limitation under Section 4.12(b)(vi), Annual Additions also include amounts allocated to an individual medical account (as defined in Code Section 415(l)(2)) included as part of a pension or annuity plan maintained by WSU and contributions paid or accrued attributable to post-retirement medical benefits allocated to the separate account of a key-employee (as defined in Code Section 419A(d)(3)) under a WSU welfare benefit fund (as defined in Code Section 419(e)).

(vi) Definition of Annual Additions Limit. The Annual Additions Limit is the lesser of: (i) \$667,000 in 2023 and as adjusted in future Limitation Years under Code Section 415(d), or (ii) 100% of the Participant's Compensation for the Limitation Year.

(vii) Definition of Excess Amount. An Excess Amount is an excess of a Participant's Annual Additions for a Limitation Year over the Annual Additions Limit.

(viii) Definition of Limitation Year. The Limitation Year means the calendar year. However, if the Participant is in control of an employer under Section 4.12(b)(iii), the Limitation Year is the Limitation Year as defined in the defined contribution plan controlled by the Participant.

(ix) Correction of Excess Amount. If a Participant's Account exceeds the Annual Additions Limit for the Limitation Year, then the Plan may correct such excess in accordance with Section 9.7(b). Alternatively, the Plan Administrator may hold the Excess Amount in a separate account. The Excess Amount held in the separate account is includible in the Participant's gross income or the taxable year in which the VIP Contributions exceed the Annual Additions Limit. This separate account will be treated as a separate contract to which Code Section 403(c) (or another application provision of the Code) applies. Amounts in the separate account may be distributed at any time, notwithstanding any other provisions of the Plan.

#### **4.5 Rollover Contributions and Transfers.**

(a) Eligible Rollover Contributions. To the extent provided in the Annuity Contracts and Custodial Account agreements, a Participant who is entitled to receive an Eligible Rollover Distribution from another Eligible Retirement Plan may request to have all or a portion of the Eligible Rollover Distribution paid directly or indirectly to the Plan. Such rollover contributions shall be made in the form of cash only. The Fund Sponsor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such other plan is an Eligible Retirement Plan.

(i) Eligible Rollover Distribution. An Eligible Rollover Distribution means any distribution of all or any portion of the Participant's Account Balance, except: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, or for a specified period of ten (10) years or more; (b) any required minimum distribution under Section 6.3; (c) the portion of any distribution which is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); (d) any hardship distribution; (e) any distribution which otherwise

would be an Eligible Rollover Distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200 (treating a Participant's Roth deferral amount as separate plan for purposes of the \$200 amount); (f) any corrective distribution of excess amounts under Code Section 402(g), 401(k), 401(m), and/or 415(c) and income allocable thereto; (g) any loans that are treated as deemed distributions under Code Section 72(p) (h) dividends paid on employer securities described in Code Section 408(k); (i) the costs of life insurance coverage (P.S. 58 costs); (j) prohibited allocations treated as deemed distributions under Code Section 409(p); and (k) permissible withdrawals from a EACA described in Code Section 414(w). 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 includible in gross income. However, such portion may be transferred only to (i) an IRA or (ii) a qualified plan described in Code Sections 401(a) or 403(a), or (iii) a tax-sheltered annuity described in Code Section 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(ii) Eligible Retirement Plan. An Eligible Retirement Plan means an IRA, an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an arrangement described in Code Section 403(b), or an eligible deferred compensation plan described in Code Section 457(b) sponsored by a governmental employer which accepts the Participant's or alternate payee's Eligible Rollover Distribution. With regard to a Participant's designated Roth account, an Eligible Retirement Plan is a Roth IRA or another designated Roth account. In the case of a Beneficiary described in Section 6.5(c)(3), an Eligible Retirement Plan is limited to an IRA that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Code Section 408(d)(3)(C)).

(iii) Separate Accounts. The Fund Sponsor shall establish and maintain for the Participant a separate Account for any Eligible Rollover Distribution paid to the Plan. No such rollover shall be taken into account in applying the limits of Section 4.4.

(iv) Roth Rollovers. A rollover contribution to the Plan may include Roth elective deferrals made to another plan, as adjusted for earnings in such plan; provided that such amounts must be directly rolled from the other plan to this Plan and the other plan must be a qualified plan under Code Section 401(a), a Code Section 403(b) plan or a government Code 457(b) plan.

**4.6 Vesting of Contributions.** Each contract and certificate issued in accordance with the provisions of the Plan is the property of the Participant. Amounts attributable to VIP Contributions are immediately vested and shall be nonforfeitable. However, VIP Contributions



based on a mistake of fact shall be returned to WSU if WSU so requests as provided in Section 8.6(a).

**4.7 Account Statement.** At least once a year the Fund Sponsor(s) will send each Participant a report summarizing the status of his or her Account. A Participant may obtain similar reports or illustrations upon Separation from Service or at any other time by writing directly to the Fund Sponsor(s).

**4.8 No Reversion.** Under no circumstances will any VIP Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the WSU, except as provided in the second sentence of Section 10.5.

**4.9 Military Service.** This Section 4.9 applies to an Employee who: (1) has completed Qualified Military Service under USERRA; (2) the Employer has rehired under USERRA; and (3) is a Participant entitled to make-up contributions under Code Section 414(u). This Section 4.9 also applies to an Employee who dies or becomes disabled while performing Qualified Military Service.

(a) Compensation. For purposes of this Section 4.9, the Plan Administrator will determine an affected Participant's Compensation as follows. A Participant during his or her period of Qualified Military Service is deemed to receive Compensation equal to that which the Participant would have received had he or she remained employed by WSU, based on the Participant's rate of pay that would have been in effect for the Participant during the period of Qualified Military Service. If the Compensation during such period would have been uncertain, the Plan Administrator will use the Participant's actual average Compensation for the twelve (12) month period immediately preceding the period of Qualified Military Service, or if less, for the period of employment.

(b) Elective Deferrals. During a Participant's period of Qualified Military Service, the Plan Administrator must allow a Participant to make up Elective Deferrals to his or her Account. The Participant may make up the maximum amount of Elective Deferrals which he or she under the Plan terms would have been able to contribute during the period of Qualified Military Service (less any such amounts the Participant actually contributed during such period) and the Participant must be permitted to contribute any lesser amount as the Plan would have permitted. The Participant must make up any contribution under this Section 4.9(b) commencing on his or her Re-Employment Commencement Date and not later than five (5) years following the Re-employment Commencement Date (or if less, a period equal to three (3) times the length of the Participant's Qualified Military Service triggering such make-up contribution).

(c) Limitations. Contributions under this Section 4.9 are Annual Additions under Section 4.4(b) and are subject to the Elective Deferral Limit under Section 4.4(a) in the year to which such contributions are allocated, but not in the year in which such contributions are made.

(d) Differential Wage Payments. The Plan is not treated as failing to meet the requirements of any provision described in this Section 4.9 by reason of any contribution or benefit which is based on a Differential Wage Payment. The preceding sentence applies only if all Employees performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive Differential Wage Payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code Sections 410(b)(3), (4), and (5)). The Plan Administrator operationally may determine, for purposes of any provision described in this Section 4.9, whether to take into account any Elective Deferrals, attributable to Differential Wage Payments.

(e) No Earnings. A Participant making any make-up contribution under this Section 4.9 is not entitled to an allocation of any Earnings on any such contribution prior to the time that WSU timely deposits the Participant's own make-up Elective Deferrals to the Plan.

(f) HEART Act Death Benefits. If a Participant dies while performing Qualified Military Service, the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military Service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death.

**4.10 Contribution Transmission.** WSU will transmit to the Fund Sponsors all VIP Contributions as soon as is administratively practicable and within any time period required under applicable law.

## **SECTION 5. FUND SPONSORS AND FUNDING VEHICLES**

**5.1 The Fund Sponsors and Funding Vehicles.** VIP Contributions are invested in one or more of the Funding Vehicles made available to Participants under this Plan and in accordance with any applicable law restricting investments by Participants not residing in the United States. A Participant or Beneficiary may allocate VIP Contributions among Funding Vehicles in any whole number percentages totaling one hundred percent (100%). Participants and Beneficiaries are solely responsible for the investment of their Account. If a Participant or Beneficiary fails to direct the investments of his or her Account, the Account will be invested in a Funding Vehicle selected by WSU for such non-directing Participants and Beneficiaries. WSU's current choice of Fund Sponsor(s) and Funding Vehicles is not intended to limit future additions or deletions by WSU of Fund Sponsors and Funding Vehicles. The Plan Administrator shall maintain a list of all Fund Sponsors under the Plan. Such list is hereby incorporated as part of the Plan. The Fund Sponsor(s) and WSU shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the case of a Fund Sponsor that is not eligible to receive contributions under the Plan (including a Fund Sponsor that has ceased to be a Fund Sponsor eligible to receive contributions under the Plan), WSU shall keep the Fund Sponsor informed of the name and contact information of the Plan Administrator in order to

coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the event the Plan terms and the Funding Vehicles are in conflict, the Plan terms are controlling; provided that as to the timing or form of any Plan distribution, such timing or form must be permitted under the Funding Vehicle as well as under the Plan.

**5.2 Allocation of Contributions.** A Participant may allocate VIP Contributions among Funding Vehicles in any whole number percentages that equal 100 percent.

**5.3 Funding Vehicle Exchange.** A Participant may exchange all or a part of his or her Account between Funding Vehicles offered by a Plan Sponsor, subject to Fund Sponsor and/or Funding Vehicle contractual requirements, and to Code Section 403(b) and the regulations thereunder. However, effective on and following the execution of this Plan, an investment exchange to an investment with a Fund Sponsor that is not eligible to receive VIP Contributions under Section 5.1 is not permitted.

**5.4 Third Party Trading.** The Participant, or his or her Beneficiary in the event of the Participant's death, is responsible for directing all funds invested under this Plan, and cannot assign that responsibility to another party, except that a Participant or Beneficiary may assign that responsibility to a third party that has been given a power of attorney and directions may be given by the legal representative of a Participant or Beneficiary who is under a legal disability. Any investment direction under this section 5.4 must be given in accordance with applicable law and any reasonable Plan Administrator or Fund Sponsor requirements.

## **SECTION 6. BENEFITS**

**6.1 Benefits in General.** The Participant is entitled to receive benefits under any of the Funding Vehicles at any time and in any form offered by the Fund Sponsors, not inconsistent with Code Section 403(b) and the regulations thereunder, and subject to the written consent of the Participant's spouse or state registered domestic partner under RCW 26.60 et seq ("domestic partner"), if any, in accordance with Section 6.5. However, distributions may be paid only after a Participant attains age 59 1/2, severs from employment with WSU and all Related Employers, dies or becomes disabled, or in the case of hardship. Hardship distributions are subject to the rules and restrictions set forth in Section 6.3. Distributions to a Participant made prior to attaining age 59 1/2 may be subject to early withdrawal penalties under the Code.

**6.2 Death Benefits.** On the death of a Participant, the entire value of the Participant's Account (or of the remaining Account) is payable to the Participant's Beneficiary or Beneficiaries. The Beneficiary may make an Election as to the time and form of payment under any payment option available under the Funding Vehicles, provided such payment options are consistent with Code Sections 403(b), 401(a)(9) and the regulations thereunder. A Beneficiary will make such Elections directly to the Fund Sponsor(s). However, to the extent such Account has previously been applied to purchase an annuity, payments shall be made only if and to the extent provided by the form of annuity. All death benefits are further subject to the required minimum distribution requirements of Section 6.4.

**6.3 Hardship Distributions.** Hardship distributions under Section 6.1 shall be approved only if the Participant has an immediate and heavy financial need or unforeseeable emergency, and the distribution is necessary to satisfy the need. In such cases, there shall be paid to such Participant out of his or her Account only such portion of the amount requested as is necessary to prevent or alleviate the hardship. The Plan Administrator's determination shall be final and binding.

The following are deemed to be immediate and heavy financial needs of the Participant: (a) medical expenses described in Code section 213(d) incurred by the Participant or his or her spouse, dependents, or primary beneficiary; (b) purchase (excluding mortgage payments) of a principal residence for the Participant; (c) payment of tuition, room and board for the next 12 months of post-secondary education for the Participant, his or her spouse, his or her children, his or her dependents, or primary beneficiary; (d) the payment of amounts necessary to prevent the eviction of the Participant from his or her principal residence or the foreclosure on the mortgage of his or her principal residence; (e) burial or funeral expenses for the Participant's deceased parent, spouse, children, dependents or primary beneficiary; (f) expenses for the repair of damage to the Participant's principal residence described in section 165 of the Code; or (g) expenses and losses (including loss of income) incurred by a Participant on account of a disaster declared by FEMA, provided the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual disaster assistance. For purposes of this Section 6.3, a "primary beneficiary" is an individual who is a named beneficiary under the Plan (whether by Participant designation or application of the Plan terms) and who has an unconditional right, on the Participant's death, to all or a portion of the Participant's Account. Under Secure 2.0 Act, and effective January 1, 2023, a Participant may self-certify they have a safe harbor event that constitutes a deemed hardship for purposes of taking a hardship withdrawal. They also may self-certify that the distribution is not in excess of the amount required to satisfy the financial need, and that they have no alternative means available to satisfy the financial need.

Hardship distributions will be deemed to be necessary to satisfy an immediate and heavy financial need of the Participant only to the extent that: (a) the distribution does not exceed the amount of the applicable need under the second paragraph of Section 6.3 including any amounts necessary to pay any federal, state or local taxes or penalties reasonable expected to result from the distribution; (b) the Participant has reasonably obtained all distributions, other than hardship distributions. Plan To obtain a hardship distribution after 2019, a Participant must represent in writing that he or she has insufficient cash or liquid assets reasonably available to satisfy the need and the Plan Administrator must not have actual knowledge to the contrary.

#### **6.4 Minimum Distribution Requirements.**

(a) Applicable Law. All distributions under this Plan will be made in accordance with Code Sections 403(b)(10) and 401(a)(9), as each is amended and in effect from time to time, and regulations thereunder. Notwithstanding anything to the contrary in this Section 7.3, required minimum distributions are subject to changes made under the SECURE Act and any regulations or other binding guidance issued thereunder.

(b) Lifetime Required Minimum Distributions. Participants who attained age 70 ½ in 2019 or earlier, , must have received distribution or commence distribution of his or her Account no later than April 1 following the calendar year in which the Participant attained age 70 1/2 or, if later, April 1 following the calendar year in which the Participant Separates from Service. For Participants who attain age 70½ in 2020, 2021 or 2022 required minimum distributions must begin no later than April 1 of the calendar year following the calendar year in which the Participant attains age 72, or, if later, by April 1 following the calendar year in which the Participant Separates from Service. For Participants who attain age 72 in 2023 or later the required minimum distributions must begin no later than April 1 of the calendar year following the calendar year in which the Participant attains age 73, or, if later, by April 1 following the calendar year in which the Participant Separates from Service. The annual lifetime minimum distribution amount will be calculated in accordance with Treas. Reg. §§1.401(a)(9)-9. The entire Account of each Participant will be distributed over a period not to exceed the life (or life expectancy) of the Participant or over the lives (or life expectancies) of the Participant and Designated Beneficiary. Notwithstanding the above, the Account for each Participant as of December 31, 1986, will be distributed in accordance with Treas. Reg. Section 1.403(b)-6(e)(6).

(c) Death Required Minimum Distributions. The annual death minimum distribution amount will be calculated in accordance with Treas. Reg. §§1.401(a)(9)-3 and 1.401(a)(9)-5.

(i) Death Before the Required Beginning Date. If the Participant dies prior to January 1, 2020 and before benefit payments are required to begin under Section 6.3(b), any benefits payable to a Designated Beneficiary will be paid, as the Designated Beneficiary elects: (a) by December 31 of the calendar year which contains the fifth (5th) anniversary of the Participant's death; or (b) beginning no later than December 31 of the calendar year following the calendar year of the Participant's death, over a period not exceeding the life expectancy of the Designated Beneficiary. If the Designated Beneficiary is the surviving spouse, payment may be delayed until the date the Participant would have attained age 70½.

If the Participant died in 2020, 2021 or 2022 and before benefit payments were required to begin under Section 6.3(b), any benefits payable to (or for the benefit of) a Designated Beneficiary will be paid, as the Designated Beneficiary elects: (a) by the end of the tenth (10th) full calendar year after the Participant's death; or (b) beginning no later than the end of the first (1st) full calendar year after the Participant's death over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. If the Designated Beneficiary is the surviving spouse, the spouse may Elect to defer commencement of payments until the date the Participant would have attained age 72. Special rules apply as to payments to other (non-spouse) Designated Beneficiaries (10-Year rule). If the Beneficiary is not a Designated Beneficiary, or if a Designated Beneficiary fails to make a payment Election, payment will be made within five (5) years as described in Section 6.3(c)(i)(a).

If the Participant dies in 2023 or later and before benefit payments are required to begin under Section 6.3(b), any benefits payable to (or for the benefit of) a Designated Beneficiary will be paid, as the Designated Beneficiary elects: (a) by the end of the tenth (10th) full calendar year after the Participant's death; or (b) beginning no later than the end of the first (1st) full calendar year after the Participant's death over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary . If the Designated Beneficiary is the surviving spouse, the spouse may Elect to defer commencement of payments until the date the Participant would have attained age 73. Special rules apply as to payments to other (non-spouse) Designated Beneficiaries (10-Year rule). If the Beneficiary is not a Designated Beneficiary, or if a Designated Beneficiary fails to make a payment Election, payment will be made within five (5) years as described in Section 6.3(c)(i)(a).

(ii) Death After the Required Beginning Date. Upon the Participant's death after the time benefits are required to begin under Section 6.3(b), any remaining benefits will be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death. Minimum distributions will be calculated based on the longer life expectancy of the Participant or his or her Designated Beneficiary. If there is no Designated Beneficiary, the minimum distributions will be based on the Participant's remaining life expectancy.

(d) Separate Treatment of Contracts and Accounts. In applying the foregoing minimum distribution rules, each Annuity Contract or Custodial Account shall be treated as an IRA and distribution shall be made in accordance with the provisions of Treas. Reg. §1.408-8, except as provided in Treas. Reg. §1.403(b)-6(e).

**6.5 Application for Benefits; Spousal Consent.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsors. Benefits will be payable by the Fund Sponsors upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary by the Fund Sponsors. Any required consent of the Participant's spouse must be in writing, must acknowledge the effect of the Election or action to which the consent applies, and must be witnessed by a notary public or a Plan representative. Unless the consent expressly provides that the Participant may make further Elections without further consent of the spouse, the consent will be effective only with respect to the specific Election to which the consent relates. Spousal consent will be effective only with respect to that spouse. Spousal consent will not be required if it is established to the satisfaction of the Plan Administrator that there is no spouse, or that the spouse cannot be located.

**6.6 Loans.** Subject to the Code and terms of the Funding Vehicles, Plan loans are available to Participants before the commencement of benefit payments. Plan loans are subject to the spousal consent requirements of Section 6.5.

(a) Information Coordination Concerning Loans. Each Fund Sponsor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Plan Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in (b) below, including the collection of information from Fund Sponsors, and transmission of information requested by any Fund Sponsor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of WSU or any Related Employer. The Plan Administrator shall also take such steps as may be appropriate to collect information from Fund Sponsors, and transmission of information to any Fund Sponsor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of WSU or any Related Employer.

(b) Maximum Loan Amount. No loan to a Participant under the Plan may exceed the lesser of:

\$50,000, reduced by the excess of (i) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is made over (ii) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or one half of the present value of the Participant's Account.

For purposes of this Section 6.6(b), any loan from any other plan maintained by WSU and any Related Employer shall be treated as if it were a loan made from the Plan.

(c) Loan Terms. All Plan loans will require level amortization of principal and interest with quarterly (or more frequent) payments and over a payment term not exceeding five (5) years except where the loan is for the acquisition of the Participant's principal residence where a longer term may be available. Loan repayment will be by means of payroll deduction, AC or other means acceptable to the Plan Administrator and the Fund Sponsors. Plan loans will be treated as a directed investment of the borrower's Account as and when consistent with Fund Sponsor requirements.

## **6.7 Direct Rollover of Eligible Rollover Distributions.**

(a) Direct Rollover. A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Code Section 414(p)(1)(B)) who is entitled to an Eligible Rollover Distribution from the Plan may make an Election to have any portion of that distribution paid directly to an Eligible Retirement Plan specified by the Participant or Beneficiary in a Direct Rollover. In the case of a distribution to a Designated Beneficiary who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a Direct Rollover is payable only to an IRA that has been established on

behalf of the Beneficiary as an inherited IRA (within the meaning of Code Section 408(d)(3)(C)).

(b) Rollover and Tax Notice. Each Fund Sponsor within a reasonable time period (and within any period prescribed by applicable law) before making an initial Eligible Rollover Distribution, will provide an explanation to the Participant of his or her right to elect a Direct Rollover and the income tax withholding consequences of not electing a Direct Rollover.

(c) Election. A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner prescribed by the Fund Sponsor, to have any portion of his or her Eligible Rollover Distribution from the Plan paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover. For purposes of this Section 6.7, a Participant includes as to their respective interests: (1) a Participant's surviving spouse, (2) the Participant's spouse or former spouse who is an alternate payee under a QDRO, or (3) any other Beneficiary of a deceased Participant who is a Designated Beneficiary under Treas. Reg. Section 1.401(a)(9)-4.

(d) Rollover and Withholding Notice. At least 30 days and not more than 180 days prior to the distribution of an Eligible Rollover Distribution, the Plan must provide a written notice (including a summary notice as permitted under applicable IRS guidance) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice"). A recipient of an Eligible Rollover Distribution (whether he/she elects a Direct Rollover or elects to receive the distribution), also may elect to receive distribution at any administratively practicable time which is earlier than 30 days following receipt of the rollover notice. The provisions of this Section 6.7(d) do not apply to distributions to a Beneficiary described in Section 6.7(c)(3).

(e) Default Rollover. The Fund Sponsor, in the case of a Participant who does not respond timely to the rollover notice, may make a Direct Rollover of the Participant's Account in lieu of distributing the Participant's Account.

(f) Definitions. The following definitions apply to this Section 6.7:

(i) Direct Rollover. A Direct Rollover means a payment by the Plan to the Eligible Retirement Plan the distributee specifies in his or her Direct Rollover election or in the case of an automatic rollover, to the IRA that the Plan designates.

(ii) Eligible Retirement Plan. An Eligible Retirement Plan means as defined in Section 4.5(a)(ii).

(iii) Eligible Rollover Distribution. An Eligible Rollover Distribution means as defined in Section 4.5(a)(i).



## **SECTION 7. ADMINISTRATION**

**7.1 Plan Administrator.** WSU is the Plan Administrator, and has designated the WSU Human Resource Services to be responsible for the day to day administration of the Plan.

**7.2 Authority of the Plan Administrator.** The Plan Administrator has all the powers and authority conferred upon it herein and further shall have final authority to determine, in its discretion, all questions concerning eligibility and contributions under the Plan, to interpret all terms of the Plan, including any uncertain terms, to adopt Plan policies and procedures, and to decide any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Plan Administrator shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary and capricious. In exercising these powers and authority, the Plan Administrator will at all times exercise good faith, apply standards of uniform application, and refrain from arbitrary action.

**7.3 Delegation of Authority.** The Plan Administrator may delegate any power or powers to one or more other employees of WSU, or to any agent or independent contractor of WSU. Any such delegation shall be in writing, and may be obtained from the Plan Administrator.

## **SECTION 8. MISCELLANEOUS**

**8.1 Non-Alienation of Retirement Rights or Benefits.** Except as otherwise provided in this Section 8, to the fullest extent permitted by law, no benefit under the Plan may at any time be subject in any manner to alienation, encumbrance, the claims of creditors or legal process. No Participant or Beneficiary will have the power in any manner to transfer, assign, alienate, or in any way encumber his or her Account or benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. The Plan Administrator will comply with any judgment, decree or order (including a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child or other dependent of a Participant and made pursuant to the domestic relations law of any state. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Plan Administrator may pay from a Participant's Account an amount the Plan Administrator determines is lawfully demanded under a levy issued by the IRS with respect to a Participant or Beneficiary, or is sought to be collected by the U.S. Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**8.2 Plan Does Not Affect Employment.** Nothing in this Plan is a commitment or agreement by WSU or by any Employee to continue his or her employment with WSU, or by WSU to rehire a retired Participant, and nothing in this Plan is a commitment on the part of WSU to continue the rate of compensation of any Employee for any period. All Employees will remain subject to discharge to the same extent as if the Plan had never been put into effect.

**8.3 Claims of Other Persons.** The Plan does not give any Participant, Beneficiary or any other person, firm, or entity of any type, any legal or equitable right against WSU or against

its past present or future officers, employees, or Board members, except for the rights that are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

**8.4 Contracts and Certificates.** In the event there is any inconsistency or ambiguity between the terms of the Plan and the terms of the contracts between the Fund Sponsors and WSU and/or the Participants and any certificates issued to a Participant under the Plan, the terms of the Plan control.

**8.5 Requests for Information.** Any request for information concerning eligibility, participation, contributions, or other aspects of the operation of the Plan should be in writing and directed to the Plan Administrator via WSU Human Resource Services. Requests for information concerning the Fund Sponsors, the Funding Vehicles, their terms, conditions and interpretations thereof, claims thereunder, any requests for review of such claims and service of legal process, may be directed in writing to the Fund Sponsors.

**8.6 Mistaken Contributions or other Plan Failures.**

(a) Mistake of Fact. If any VIP Contribution (or any portion of a contribution) is made to the Plan by a mistake of fact, then within one (1) year after the payment of the Plan Contribution, the Plan Administrator may return the amount of the mistaken contribution (net of any investment loss, but not increased by any investment income or gains) to WSU. Thereafter, the Plan Administrator will determine if any or all of such amount should be refunded to the affected Participant.

(b) Other Failures. If any VIP Contribution exceeds the Plan or Code limits or is otherwise not in accordance with the Plan terms, or if there are other Plan related failures, the Plan Administrator will make correction in accordance with the Plan and with the Employee Plans Compliance Resolution System under Rev. Proc. 2019-19 or any other successor or applicable guidance.

**8.7 Governing Law.** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Washington.

**SECTION 9. AMENDMENT AND TERMINATION**

**9.1 Amendment and Termination.** The Board reserves the right at any time to amend or terminate the Plan, in whole or in part, or to discontinue any further VIP Contributions under the Plan. If the Plan is terminated or if VIP Contributions are discontinued, the Plan Administrator will notify all Participants, all Accounts will remain nonforfeitable, and all Salary Reduction Agreements that have been entered into will become void with respect to Compensation yet to be paid.

**9.2 Distribution Upon Termination of the Plan.** WSU may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Annuity

Contracts and Custodial Account agreements, all Accounts will be distributed, provided that WSU and any Related Employer on the date of termination do not make contributions to an alternative Code Section 403(b) contract that is not part of the Plan during the period beginning on the date of Plan termination and ending twelve (12) months after the distribution of all assets from the Plan, except as permitted by Code Section 403(b) and the regulations thereunder.

**9.3 Limitation.** Notwithstanding the provisions of Section 9.1, the Board shall not make any amendment to the Plan that operates to recapture for WSU any contributions previously made under this Plan except to the extent permitted by Section 8.6.