COLBY COLLEGE RETIREMENT PLAN

Amended and Restated Effective January 1, 2015
# COLBY COLLEGE RETIREMENT PLAN

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ARTICLE I. - INTRODUCTION

This document sets forth the provisions of the Colby College Retirement Plan, as amended and restated effective as of January 1, 2015. The Plan was previously amended and restated, effective January 1, 1997, January 1, 2002 and January 1, 2009. The College intends that contributions under the Plan will be used to purchase one or more Annuity Contracts or Custodial Accounts for the benefit of Participants and their beneficiaries and that contributions under the Plan will be excluded from the gross income of the Participants in accordance with section 403(b) of the Code. To the extent any provision of the Plan is inconsistent with any provision of an Annuity Contract or Custodial Agreement, the provision of the Plan will control. Effective January 1, 2009, the Plan became subject to ERISA, and this plan document is intended to comply with the requirements of Title I of ERISA as well as the requirements of the Treasury Regulations under Code section 403(b).
ARTICLE II. - DEFINITIONS

Wherever used herein, the following terms have the following meanings:

2.1 Administrator. “Administrator” means the College or such other person or committee as may be appointed by the College to administer the Plan.

2.2 Affiliated Employer. “Affiliated Employer” means the College and every other employer who, under Code section 414(b), (c), (m) or (o), is considered as a single employer with the College, but only for periods during which the other employer is required to be considered as such under the applicable Code provisions.

2.3 Annuity Contract. “Annuity Contract” means a non-transferable annuity contract, if any, as defined in Code sections 401(g) and 403(b) and the regulations thereunder that is issued by an insurance company qualified to issue annuities in a state (within the meaning of Treasury Regulation section 1.403(b)-2(b)(20), selected by the College to which contributions under the Plan may be made. The provisions of each Annuity Contract are hereby incorporated by reference into the Plan to the extent not inconsistent with the provisions of the Plan.

2.4 Annuity Starting Date. “Annuity Starting Date” means, with respect to a Participant, the first day of the first period for which a benefit is payable as an annuity or in any other form.

2.5 Board. “Board” means the Board of Trustees of the College.

2.6 Code. “Code” means the Internal Revenue Code of 1986, as amended from time to time. Reference to any section of the Code includes a reference to regulations issued by the Department of Treasury and notices and other releases issued by the Internal Revenue Service which interpret and implement such Code section.

2.7 College. “College” means the President and Trustees of Colby College.

2.8 College Contribution. “College Contribution” means a contribution made by the College for the benefit of a Covered Participant pursuant to Section 4.5.

2.9 Covered Participant. “Covered Participant” means an Eligible Employee who participates in the Plan in accordance with Section 3.1(b), who makes Required Contributions described in Section 4.4, and who receives College Contributions described in Section 4.5.

2.10 Custodial Account or Account. “Custodial Account” means a group or individual account established pursuant to a Custodial Agreement with a custodian that qualifies as a custodial account described in Code section 403(b)(7), as selected by the College to which contributions under the Plan may be made.

2.11 Custodial Agreement. “Custodial Agreement” means an agreement between a custodian (as defined in Code section 403(b)(7)) and a Participant or (in the case of a group agreement) the College, under which the assets of the Plan are held in Custodial Accounts for Participants and invested in shares of regulated investment companies, as defined in Code
section 403(b)(7)(C). The provisions of the Custodial Agreements are hereby incorporated by reference into the Plan to the extent not inconsistent with the provisions of the Plan.

2.12 **Eligible Employee.** “Eligible Employee” means, subject to Section 9.5, an Employee who is a Full Professor, Associate Professor, Assistant Professor or Instructor holding a half-time equivalent (or greater) appointment, or an Administrative Officer or a member of the College’s administrative or support staff. Support staff for purposes of this Plan shall mean those individuals who are on the support staff of the College and who receive regular stated remuneration other than a retirement allowance, severance pay, retainer or fee under contract. An Eligible Employee shall, as a condition of employment, be required to make Required Contributions to the Plan once he or she has become a Covered Participant in accordance with Section 3.1(b). An “Eligible Employee” shall not include (a) any Employee hired for a special project or special position who, for the 12-month period beginning on the first date the Employee completes an Hour of Service, is scheduled to work fewer than 1,000 Hours of Service per year and, for each Plan Year ending after the close of that 12-month period, has worked fewer than 1,000 Hours of Service, (b) students of the College who are enrolled as degree candidates and who are employed primarily because they are degree candidates, or (c) individuals who are required to be considered Employees solely by reason of section 414(n) or (o) of the Code.

2.13 **Employee.** “Employee” means any individual employed by the College or an Affiliated Employer, excluding students performing services described in section 3121(b)(10) of the Code.

2.14 **ERISA.** “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

2.15 **Hour of Service.** “Hour of Service” means, with respect to any person, the following:

(a) Each hour for which such person is directly or indirectly paid, or entitled to payment, by an Affiliated Employer for the performance of duties during the computation period in connection with which the term is used.

(b) Each hour for which such person is directly or indirectly paid, or entitled to payment, on account of any of the following periods during which no duties are performed (irrespective of whether the employment relationship has terminated), provided, however, that no more than five hundred one (501) Hours of Service shall be credited under this Subsection (b) to any person on account of any single continuous period during which he performs no duties:

(i) Periods of time during which such person has been excused from work by the applicable Affiliated Employer by reason of vacation, holiday, illness, incapacity (including disability), layoff, jury duty, or the provisions of the Family and Medical Leave act, provided that, in the event that such person fails to return to work upon the expiration of the period for which he or she has been so excused, his or her employment shall be deemed to terminate upon such expiration;

(ii) Periods covered by leaves of absence authorized in writing by an Affiliated Employer, provided that, in the event the person in question fails to return to
the active employ of the Affiliated Employer upon the expiration of such period, his or her employment shall be deemed to terminate upon such expiration; and

(iii) Periods of service with the Armed Forces of the United States during which the employment rights of the person in question are protected by law if such person leaves the employ of an Affiliated Employer to enter, and directly enters, such Armed Forces, provided that, in the event that such person fails to return to the employ of the Affiliated Employer within 90 days after his release from such Armed Forces (or within such further period as the Affiliated Employer may allow) without intervening employment elsewhere, his or her employment shall terminate upon the expiration of such 90 days or such further period.

(c) To the extent not already credited under Subsection a or b of this Section 2.15, each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by an Affiliated Employer, subject to the limitation of 501 Hours of Service set forth in Subsection b of this Section 2.14 in crediting Hours of Service for back pay awarded or agreed to with respect to periods described in said Subsection b.

(d) To the extent not already described under Subsection a, b, or c of this Section 2.15, each hour as is determined by an Affiliated Employer to be credited for periods covered by leaves of absence authorized by it, provided, however, that all such determinations shall be uniform in nature and applicable to all persons similarly situated.

The provisions relating to the special rule for determination of hours of service for reasons other than the performance of duties and to the crediting of hours of service to computation periods in Section 2530.200b-2(b) and (c), respectively, of the United States Department of Labor Regulations are incorporated herein by reference. Notwithstanding the foregoing provisions of this Section 2.15, any Employee who is a member of the College’s faculty shall be credited with 1,000 Hours of Service during any Plan Year during which he or she holds a half-time equivalent (or greater) appointment.

2.16 **Includible Compensation.** “Includible Compensation” means an Employee’s compensation received from the Affiliated Employer that is includible in gross income for federal income tax purposes (computed without regard to Code section 911) for the most recent period that is a year of service, as determined under Code section 403(b) and the Treasury Regulations thereunder, and increased (up to the dollar maximum) by any compensation-reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code. The amount of Includible Compensation is determined without regard to any community property laws. Effective January 1, 2009, “Includible Compensation” shall include any differential wage payment (as defined in Code section 414(u)(12)(D)) paid to an individual by an Affiliated Employer to the extent required under Code section 414(u)(12) (and, to the extent required by Code section 414(u)(12)(A)(i), such an individual shall be treated as an Employee).

2.17 **Participant.** “Participant” means each Employee who participates in the Plan in accordance with Article III.
2.18 **Plan.** “Plan” means the Colby College Retirement Plan, as set forth herein, together with any and all amendments and supplements hereto.

2.19 **Plan Year.** “Plan Year” means the twelve-month period ending each December 31.

2.20 **Required Beginning Date.** “Required Beginning Date” means the later of (1) the calendar year in which a Participant attains age 70 ½ or (2) the calendar year in which such Participant retires from employment.

2.21 **Required Contribution.** “Required Contribution” means a contribution described in Section 4.4.

2.22 **Rollover Contribution.** “Rollover Contribution” means a contribution described in Section 4.7.

2.23 **Salary.** “Salary” for any period means the cash salary or wages paid by the College to a Participant during the period, including overload payments (in the case of faculty), shift differential (in the case of support staff), but excluding grants, bonuses, payments from other sources and overtime payments. Salary shall also include any amounts which would have been included as compensation in the previous sentence but for a salary reduction under Code section 125, 132(f), 403(b) or 457(b). For the avoidance of doubt, in the case of an Eligible Employee receiving a grant in connection with his or her work for the College, such amount shall be considered to be Salary to the extent that (i) the grant provides for retirement plan support and (ii) the Salary portion of the grant, in combination with the income from the College, is equal to or less than the Salary the College would pay to an otherwise similarly situated full time employee. Salary for any period will be limited to $200,000 as adjusted from time to time by the Secretary of the Treasury under Code section 401(a)(17).

2.24 **Salary Reduction Agreement.** “Salary Reduction Agreement” means an agreement between a Participant and the College, satisfying the conditions described in Section 4.1(b), pursuant to which Voluntary Contributions are made by the College on a salary reduction basis.

2.25 **Voluntary Contribution.** “Voluntary Contribution” means any contribution made with respect to a Participant pursuant to a Salary Reduction Agreement under Section 4.1.

2.26 **Year of Service.** “Year of Service” means a period of twelve consecutive months during which a person has completed at least 1,000 Hours of Service. The twelve-month period shall start with the Eligible Employee’s date of employment (or re-employment) or with any anniversary of that date. “Date of employment” means, for any faculty member, the effective date of the faculty member’s appointment, and for any other Employee, the first date on which the Employee completes an Hour of Service.
ARTICLE III. - PARTICIPATION

3.1 Participation.

(a) Any Employee may become a Participant upon completion of a Salary Reduction Agreement.

(b) Each Eligible Employee who is a Covered Participant on December 31, 2013 and who remains an Eligible Employee on January 1, 2014 shall be a Covered Participant in the Plan. Each other Eligible Employee shall become a Covered Participant as of the first day of the pay period coinciding with or next following the date he or she completes two Years of Service.

3.2 Duration of participation. An individual who has become a Participant under the Plan will remain a Participant for as long as an Annuity Contract or Custodial Account is maintained under the Plan for his or her benefit, but not beyond his or her death or termination of the Plan. An individual who has become a Covered Participant will remain a Covered Participant so long as he or she remains an Eligible Employee.

3.3 Reemployment of former Participant. A former Participant who had previously been eligible for College Contributions shall again become a Participant (and be a Covered Participant) if and when he or she again becomes an Eligible Employee. Any other former Participant who is reemployed by the College shall become a Participant upon completion of a Salary Reduction Agreement.
ARTICLE IV. - CONTRIBUTIONS; INVESTMENT OPTIONS

4.1 Voluntary Contributions.

(a) In general. A Participant may make Voluntary Contributions by completing a Salary Reduction Agreement described in Section 4.1(b) below and returning it to the Administrator at least seven days before the first payroll date to which it applies.

(b) Salary Reduction Agreement. Each Salary Reduction Agreement shall:

1. be in writing, on a form provided by the Administrator, and signed by the Participant;

2. provide for a reduction in the Salary paid to the Participant by the College in exchange for the contribution of a like amount by the College to the Plan on behalf of the Participant;

3. specify the amount of Voluntary Contributions, expressed as a dollar amount or percentage of Salary, to be made on behalf of the Participant;

4. be binding upon the Participant with respect to Salary payable while it is in effect;

5. be terminable at any time, with respect to Salary not yet payable, with any termination effected by filing written notice with the Administrator as the Administrator may prescribe;

6. be subject to such limitations as may be imposed by the Administrator to assure compliance with Sections 4.2 and 4.3 and to leave sufficient Salary to allow other withholdings, reductions and deductions to be made; and

7. apply only to Salary payable after the Agreement is in effect.

A Participant may change the amount of his or her Voluntary Contributions at any time by filing a new Salary Reduction Agreement subject to the foregoing conditions.

4.2 Code section 402(g) limitation; distribution of excess deferrals. Except for age-50 catch-up contributions described in Section 4.6 below, the Plan does not permit Voluntary Contributions in excess of the limits on elective deferrals under Code section 402(g) for any year. The Administrator may cause any contribution in excess of such limit, adjusted for income, gains, losses or expenses attributable to such contributions, to be returned to the College or distributed to the Participant to the extent permitted by applicable law. However, in the event that an amount is included in a Participant’s gross income for a taxable year as a result of an excess deferral under Code section 402(g), and the Participant notifies the Administrator on or before the March 1 following the taxable year that all or a specified part of a Voluntary Contribution made for his or her benefit represents an excess deferral, the Administrator shall make reasonable efforts to cause such excess deferral, adjusted for allocable income or loss in accordance with Code section 402(g)(2), to be distributed to the Participant no later than the
April 15 following the calendar year in which such excess deferral was made. No distribution of an excess deferral shall be made during the taxable year of a Participant in which the excess deferral was made unless the correcting distribution is made after the date on which the Plan received the excess deferral and both the Participant and the Plan designates the distribution as a distribution of an excess deferral. All distributions of excess deferrals are subject to the terms of the Annuity Contract or Custodial Agreement in which such deferrals are invested, to the extent not inconsistent with the terms of this Plan.

4.3 **Code 415 limitation; separate accounting.** Notwithstanding Sections 4.1, 4.4 and 4.5, the total amount of Voluntary Contributions, Required Contributions and College Contributions made for a Participant in any limitation year shall not exceed the limitations under Code section 415 except as permitted under Section 4.6 below. All of the applicable requirements of Code section 415 and the Treasury Regulations thereunder are incorporated herein by reference. The annual addition (within the meaning of Code section 415) on behalf of a Participant under the Plan (taking into account all Annuity Contracts or Custodial Accounts maintained by the College) for any limitation year, when added to the annual additions, if any, on his or her behalf for such year under all other plans maintained by the Affiliated Employers (as determined under Treasury Regulation section 1.415(f)-1), shall not exceed the lesser of (i) the dollar limit under Code section 415(c)(1)(A), as adjusted for the cost of living under Code section 415(d), or (ii) 100 percent of the Participant’s Includible Compensation for such limitation year from the Affiliated Employers. (For purposes of determining the Code section 415 limits under the Plan, the “limitation year” shall be the Plan Year.) The Administrator may cause any contribution in excess of the Code section 415 limitations, adjusted for income, gains, losses or expenses attributable to such excess contributions, to be returned to the College or distributed to the Participant to the extent permitted by applicable law. In the event that the annual addition under the Plan, when combined with the annual addition under another Plan maintained by the College or an Affiliated Employer would cause the Code section 415 limitations for a limitation year to be exceeded, excess amounts shall first be corrected under this Plan. It shall be the responsibility of each Participant to determine and inform the Administrator of any contributions by an employer other than an Affiliated Employer which are to be aggregated with contributions under the Plan in determining the Code section 415 limits with respect to the Participant. Voluntary Contributions shall be reduced first, prior to the College Contributions, if a reduction is necessary in order to avoid exceeding the Code section 415 limitations.

4.4 **Required Contributions.** For each Plan Year, the compensation payable to each Covered Participant employed by the College shall be reduced by an amount equal to 2% of the Salary payable to the Participant in the Plan Year, and the amount of such reduction shall be contributed by the College.

4.5 **College Contributions.**

   (a) For each Plan Year, the College shall contribute for each Covered Participant who is an Eligible Employee during such Plan Year an amount equal to the sum of (i) and (ii):

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(i) 8% of that portion of the Salary payable to the Covered Participant in the Plan Year which does not exceed the Social Security wage base as in effect on January 1, 2002 (the “2002 Social Security Wage Base”); and

(ii) 10% of any other Salary payable to the Covered Participant in the Plan Year.

A portion of Salary will be considered not to be in excess of the 2002 Social Security Wage Base if (and only if) such portion, when aggregated with other Salary already paid to the Participant during a Plan Year, is not in excess of the 2002 Social Security Wage Base.

(b) In addition, on behalf of each Covered Participant who is a member of the support staff whose initial date of employment is on or before June 30, 1993, the College will make supplemental contributions in amounts such that the Covered Participant’s total College-provided retirement benefit will, in the College’s determination, be no less than the projected benefits the Covered Participant would have received had the Retirement Plan for Non-Academic Employees of Colby College not been terminated. Supplemental College Contributions shall be made annually (or more often, in the College’s sole discretion) in whole percentages of Salary. The amounts of any such supplemental College Contributions were determined by the College in 1993 in its sole discretion with the assistance of an actuary, and shall not be revalued in view of subsequent changes in College contribution rates unless the College decides otherwise in its sole discretion or as required by law.

4.6 Catch-up contributions. Any Participant who has 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 Code section 414(v). Such catch-up contributions shall not be taken into account in applying the limitations of sections 402(g) and 415 of the Code. Amounts in excess of the limitation set forth in Section 4.2 shall be allocated first to this age-50 catch-up contribution.

4.7 Rollover Contributions. A Participant may make a rollover contribution to the Plan from another plan described in section 401(a), 403(a), or 403(b) of the Code, from a plan described in section 457(b) of the Code that is maintained by a state or political subdivision or any agency or instrumentality of a state or political subdivision, or from an individual retirement account or annuity described in section 408 of the Code, upon a demonstration satisfactory to the Administrator that the amounts are eligible for rollover to the Plan under the Code. The Administrator may limit the Annuity Contracts or Custodial Accounts to which amounts may be contributed or the types of rollovers that will be accepted by the Plan.

4.8 Timing of contributions. In accordance with Department of Labor Regulation section 2510.3-102, Voluntary Contributions and Required Contributions for any pay period will be paid in cash to the Annuity Contract issuer or Custodial Account custodian, as the case may be, as soon after the pay period as such contributions can reasonably be segregated from the general assets of the College, but in any event within 15 days after the month during which the Salary to which such contributions relate is paid. College Contributions for a Plan Year will be contributed in cash to the Annuity Contract issuer or Custodial Account custodian, as the case may be, with such frequency as the College shall determine, but in any event no less frequently
than annually and no later than the 15th day of the 10th calendar month following the end of the calendar year or the close of the College’s fiscal year. In accordance with Section 302(c) of ERISA, all contributions for a Plan Year shall be contributed no later than 8½ months following the close of the Plan Year.

4.9 **Vesting.** Each Participant will at all times have a fully vested and nonforfeitable interest in all his or her Annuity Contract and/or Custodial Account accumulations.

4.10 **Investment options.**

(a) **Selection of investments.** All contributions made for the benefit of a Participant shall be invested in such one or more Annuity Contracts and/or Custodial Accounts as the Administrator shall make available from time to time. Each Annuity Contract issuer and Custodial Account custodian shall exchange such information as may be necessary to satisfy Code section 403(b) or other requirements of applicable law. In the case of an Annuity Contract issuer or Custodial Account custodian that is not eligible to receive contributions under the Plan (including if such issuer or custodian has ceased to be eligible to receive contributions under the Plan), the College shall keep such issuer or custodian informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Code section 403(b) or other requirements of applicable law. The College’s current choice of Annuity Contracts and/or Custodial Accounts is not intended to limit future additions or deletions by the College of Annuity Contracts and Custodial Accounts. The Administrator may prescribe rules permitting a Participant to direct the investment of the contributions made for his or her benefit within or among such Annuity Contracts and/or Custodial Accounts and, at such times as the Administrator may prescribe, to change such investment directions.

(b) **Investment responsibility.** In the case of a Participant’s direction of the investment of the contributions made for his or her benefit, no person, including the College, an Annuity Contract issuer, a Custodial Account custodian or the Administrator, shall be liable for any loss or for any breach of fiduciary duty which is the direct and necessary result of investment instructions given by such Participant. If a Participant fails to make a selection of investments within such time as the Administrator prescribes, such failure shall be deemed to be a direction to the Administrator to invest all contributions made for his or her benefit one or more default funds selected by the Administrator.

(c) **Application of ERISA section 404(c).** The Plan is intended to be an “ERISA section 404(c) plan” as described in section 404(c) of ERISA and Department of Labor Regulation section 2550.404c-1, and shall be administered and interpreted in a manner consistent with that intent. Consistent with the requirements of ERISA section 404(c), the Administrator shall prescribe the form and manner in which such instructions shall be made, as well as the frequency with which such instructions may be made or changed and the dates as of which they shall be effective. The investment options offered under the Plan shall provide a Participant or a Participant’s beneficiary an opportunity to choose from a broad range of investments within the meaning of ERISA section 404(c). The investment direction requirements of Department of Labor Regulation section 2550.404c-1(b)(2)(i)(B)(1)(iv) and (b)(2)(i)(A) and the requirements relating to the investment alternatives under the Plan are intended to be satisfied by this Section, in each case taking into account related communications to Participants and beneficiaries under
the summary plan description for the Plan and other communications. For purposes of ERISA section 404(c), the “identified plan fiduciary” obligated to comply with Participant and beneficiary investment instructions (except as provided in such section and regulations thereunder) and the “identified plan fiduciary” obligated to provide Participants and beneficiaries with the materials set forth in Department of Labor Regulation section 2550.404c-1(b)(2)(i)(B) shall be the Administrator. The Administrator may decline to implement Participant and beneficiary investment instructions which would result in a prohibited transaction described in ERISA section 406 or section 4975 of the Code or which would generate income that would be taxable to the Plan. Consistent with the foregoing, the Administrator may change the investment options offered under the Plan at any time, including with respect to amounts already invested, and may terminate the availability of an investment option at any time and cause the assets of a terminated option to be transferred to any other investment option, each to the extent consistent with the Annuity Contracts or Custodial Agreements. The Administrator will communicate to Participants and beneficiaries of Participants the investment options available under the Plan, including changes or terminations of available investment options.
ARTICLE V. - WITHDRAWALS PRIOR TO SEVERANCE FROM EMPLOYMENT

5.1 In general. Except as provided in this Article V, accumulations in an Annuity Contract or Custodial Account may not be withdrawn prior to the Participant’s severance from employment with the Affiliated Employers. Notwithstanding the foregoing, amounts attributable to Rollover Contributions or after-tax contributions may be withdrawn at any time, subject to the terms of the Annuity Contract or Custodial Agreement.

5.2 Withdrawals after age 59½. To the extent provided in an Annuity Contract or Custodial Agreement, and subject to Section 5.5, a Participant who has attained age 59½ may make a withdrawal of part or all of his or her interest in the Annuity Contract or Custodial Account attributable to Voluntary Contributions.

5.3 Hardship withdrawals.

(a) Immediate and heavy financial need. To the extent permitted by an Annuity Contract or Custodial Agreement and subject to Section 5.5, a Participant may withdraw an amount from an Annuity Contract or Custodial Account, not to exceed the amount of the Participant’s aggregate Voluntary Contributions (plus any earnings accrued thereon through December 31, 1988), if the withdrawal is to satisfy an immediate and heavy financial need arising from:

1. expenses for (or necessary to obtain) medical care, as described in Code section 213(d), for the Participant, his or her spouse or any of his or her dependents (as defined in Code section 152);

2. costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);

3. the payment of tuition, related educational fees, and room and board expenses for up to 12 months of post-secondary education for the Participant, his or her spouse, children or dependents (as defined in Code section 152, without regard to Code section 152(b)(1), (b)(2), or (d)(1)(B));

4. payments necessary to prevent the eviction of the Participant from, or foreclosure on the mortgage on, his or her principal residence;

5. payments for burial or funeral expenses for the Participant’s deceased parent, spouse, child or dependent (as defined in Code section 152, without regard to Code section 152(d)(1)(B)); or

6. expenses for the repair of damage to the Participant’s principal residence that would qualify for the casualty deduction under Code section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) Distribution of amount necessary to meet need. As soon as practicable after (i) the Administrator’s determination that an immediate and heavy financial need exists with respect to the Participant, and (ii) all other distributions and nontaxable loans currently
available under the Plan and all other plans maintained by the Affiliated Employers have been made, the Administrator will direct the Annuity Contract issuer or Custodial Account custodian to pay to the Participant the amount necessary to meet the need created by the hardship (but not in excess of the value of the Participant’s interest in an Annuity Contract or Custodial Account). The amount necessary to meet the need may include the amount of any federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal.

(c) **Effect of hardship withdrawal.** If a Participant receives a hardship withdrawal under this Section, then any Salary Reduction Agreement shall be suspended for 6 months, beginning with the pay period after the hardship withdrawal is approved.

(d) **Information Sharing.** Annuity Contracts and Custodial Agreements shall provide for the exchange of information among the College and the Annuity Contract issuer or Custodial Account custodian to the extent necessary to implement the Annuity Contracts and the Custodial Agreements, including implementation of the 6-month suspension of the Participant’s right to make Voluntary Contributions under the Plan. In addition, the Annuity Contract issuers and Account custodians shall share information with each other and the College as necessary to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need.

5.4 **Loans.** To the extent permitted by an Annuity Contract or Custodial Agreement, and subject to Section 5.5, an “Eligible Borrower” may borrow against his or her interest in the Annuity Contract or Custodial Account attributable to Voluntary Contributions, Rollover Contributions, and after-tax contributions. For purposes of this Section 5.4, an "Eligible Borrower" shall mean (i) a Participant in the Plan who is an Employee, or (ii) a former Employee, or a beneficiary of a deceased former Employee, for whom an Annuity Contract or Custodial Account is maintained under the Plan who is a "party in interest" with respect to the Plan within the meaning of ERISA Section 3(14). Loans from an Annuity Contract or Custodial Account will be made only in accordance with the terms of the Annuity Contract or Custodial Agreement, and only in the event that:

(a) the loans (i) are available to all Eligible Borrowers on a reasonably equivalent basis, (ii) are not made available to highly compensated employees (within the meaning of Code section 414(q)) in an amount (determined under Department of Labor Regulation section 2550.408b-1(d)) greater than the amount made available to other employees, (iii) are made in accordance with specific written procedures, (iv) bear a reasonable rate of interest, (v) are adequately secured, (vi) are amortized evenly and at least quarterly, and (vii) (except in the case of a loan used to acquire a principal residence) are repayable within 5 years; and

(b) the loan amount does not exceed the lesser of (i) 50% of the combined value of Annuity Contracts and Custodial Accounts maintained for the Eligible Borrower, or (ii) $50,000 (reduced by the highest aggregate outstanding loan balance under the Plan and any other plan of an Affiliated Employer during the year which ends on the date before the loan is made). For purposes of the limitations described in this paragraph (b), all loans from all plans of the Affiliated Employers are aggregated.
The Administrator shall promulgate such rules and procedures, not inconsistent with the express provisions of this Section, as it deems necessary to carry out the purpose of this Section. Such rules and procedures may impose a limit on the total number of loans that an Eligible Borrower may have outstanding at any time. In addition, the Annuity Contract or Custodial Account from which a loan is made may contain additional rules and procedures not inconsistent with this section. All such rules and procedures shall be deemed a part of the Plan for purposes of the Department of Labor Regulation section 2550.408b-1(d). Each Annuity Contract issuer or Custodial Account custodian 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 Eligible Borrowers have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 5.4(b), including the collection of information from Annuity Contract issuers or Custodial Account custodians, and transmission of information requested by any such issuer or custodian, concerning the outstanding balance of any loans made to an Eligible Borrower under the Plan or any other plan of the Affiliated Employers. The Administrator shall also take such steps as may be appropriate to collect information from Annuity Contract issuers or Custodial Account custodians, and transmission of information to any such issuer or custodian, concerning any failure by an Eligible Borrower to repay timely any loans made to an Eligible Borrower under the Plan or any other plan of the Affiliated Employers.

5.5 **Spousal consent.** No withdrawal or loan under this Article V may be made to a Participant who is married on the date of a withdrawal or loan unless the Participant’s spouse consents thereto (including the giving of security interests in the Annuity Contract or Custodial Account, in the case of a loan) within 90 days prior to such withdrawal or loan. Such consent must be made in the same manner as provided under Article VI below for distributions after severance from employment.

5.6 **Withdrawals on account of disability.** To the extent permitted by an Annuity Contract or Custodial Agreement, and subject to Section 5.5, a Participant who incurs a disability (within the meaning of Code section 72(m)(7)) but who has not otherwise had a severance from employment from the Affiliated Employers may make a withdrawal of all or a part of his or her interest in the Annuity Contract or Custodial Account for any reason and from any source, but with such prior notice as the Administrator may prescribe.

5.7 **Qualified Reservist Distributions.** To the extent permitted by an Annuity Contract or Custodial Agreement, a Participant who qualifies for a “qualified reservist distribution” within the meaning of Code section 72(t)(2)(G) may obtain such a distribution.
ARTICLE VI. - DISTRIBUTIONS AFTER SEVERANCE FROM EMPLOYMENT

6.1 Severance from employment. In the case of a Participant’s severance from employment of the Affiliated Employers for any reason other than death, amounts held in an Annuity Contract or Custodial Account for the Participant will be paid in accordance with this Section 6.1, subject to the statutory distribution rules under Section 6.4.

(a) Participants who are not married on their Annuity Starting Date. A Participant who is not married on his or her Annuity Starting Date will be entitled to elect to receive distributions from an Annuity Contract or Custodial Account upon the Participant’s retirement or termination of employment (for reasons other than death) in the form or forms provided under, and subject to the terms of, the applicable Annuity Contract or Custodial Agreement.

(b) Participants who are married on their Annuity Starting Date. In the case of a Participant who is married on his or her Annuity Starting Date, distributions will be made as provided in Section 6.1(a) above, provided, however, the following additional rules shall apply:

(i) In the case of a Participant whose total balances under the Plan exceed $5,000, or such larger limit as may be in effect under ERISA section 205, benefits payable to a Participant who is married on his or her Annuity Starting Date shall be paid in the form of a “qualified joint and survivor annuity” (unless waived as described in (ii) below) that pays a lifetime periodic benefit to the Participant, and after the Participant’s death pays a periodic benefit to the Participant’s surviving spouse during the spouse’s remaining lifetime in an amount that is at least 50% but not more than 100% of the periodic benefit payable during the Participant’s lifetime. In the event that no such percentage is specified in any particular Annuity Contract or Custodial Agreement, the percentage shall be 50%.

(ii) A Participant who is married on his or her Annuity Starting Date may waive the qualified joint and survivor annuity and elect any other form of benefit available under an Annuity Contract or Custodial Agreement as described in Section 6.1(a) above, or designate a joint annuitant other than the Participant’s spouse, if the Participant’s spouse consents to the election in the manner described in paragraph (iii), subject to the notice requirements in Section 6.2. Any such election must be executed and filed during the 90 day period ending on the Annuity Starting Date, except as otherwise provided in Section 6.2(c). The Administrator will provide such information to Participants in connection with the waiver and consent as may be required from time to time under ERISA section 205(c)(3).

(iii) Spousal consent as required under this Section must be in writing, must specify the optional form of benefit elected and any non-spouse beneficiaries, must acknowledge the effect of the election or action to which the consent applies, and must be witnessed by a notary public. Unless the consent form 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 of form of benefit or
beneficiary, or both, to which the consent relates. Spousal consent will be effective only with respect to that spouse, but shall be irrevocable once made. Spousal consent will not be required if it is established to the satisfaction of the Administrator that there is no spouse, that the spouse cannot be located, or that such other circumstances exist as the Secretary of the Treasury may by regulations prescribe.

(c) Repurchase, transition, and other TIAA-CREF benefits. Subject to 6.1(b) above, in the event employment of a Participant terminates for reasons other than retirement or disability and the Participant requests that TIAA-CREF repurchase his or her annuity, the College will approve such repurchase provided the Participant is not employed by or moving to another institution having a TIAA-CREF retirement plan for which he or she is eligible, and provided the repurchase is permitted under the terms of the Annuity Contract. The College permits the use of the TIAA-CREF “retirement transition benefit” and the receipt of benefits in a lump sum or in installments over a fixed period of years, provided that the conditions of subparagraph (b) above are satisfied.

6.2 Notice Requirements.

(a) General notice. The Administrator shall provide (or cause the Annuity Contract issuer or the Custodial Account custodian to provide) each Participant with a written general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit and the automatic forms of benefit as well as satisfy the requirements of Treasury Regulation section 1.401(a)-20 (to the extent applicable). If the Participant has not yet attained age 62, the notice shall also inform the Participant of his or her right to defer payment of benefits until the earlier of (1) the date he or she consents to payment and (2) the date he or she attains age 62, and shall include an explanation of the consequences of failure to defer receipt. This general notice shall be provided no more than 90 days and no less than 30 days (subject to Section 7.2(c) below) before the Participant’s Annuity Starting Date.

(b) Joint and survivor annuity notice. The Administrator shall also provide (or cause the Annuity Contract issuer or Custodial Account custodian to provide) to each married Participant who is eligible to receive benefits under the Plan a written explanation in non-technical language of the terms and conditions of the 50% (or such higher percentage as elected) joint and survivor annuity, the Participant’s right to make and the effect of an election not to receive benefits in such form, the rights of the Participant’s spouse with respect to receiving benefits as a 50% (or such higher percentage as elected) joint and survivor annuity, and the right to revoke and the effect of a revocation of an election not to receive benefits in the form of a joint and survivor annuity. The written explanation shall also include a general explanation of the relative financial effect on the Participant’s benefit of electing the 50% (or such higher percentage as elected) joint and survivor annuity and any other information required by Treasury Regulation section 1.401(a)-20 (to the extent applicable). The written explanation shall also include a description of the terms and conditions of the Plan’s “qualified optional survivor annuity” (within the meaning of Code section 417(g)). This explanation shall be provided no more than 180 days and no less than 30 days (subject to Section 6.2(c) below) prior to the Participant’s Annuity Starting Date.
(c) **Expedited notice procedures.** Notwithstanding any provision of the Plan to the contrary, the Annuity Starting Date can be at any time more than 7 days after the written notification under Section 6.2(a) and (if required) under Section 6.2(b) is distributed to a Participant, provided that:

(i) The Administrator provides (or causes the Annuity Contract issuer or Custodial Account custodian to provide) information to the Participant clearly indicating that the Participant has a right to at least 30 days to consider whether to waive the Plan’s automatic forms of payment and consent to a form of distribution other than the automatic form of payment.

(ii) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the 7-day period that begins after the written explanation is provided to the Participant.

(iii) Distribution in accordance with the Participant’s affirmative election does not commence before the expiration of the 7-day period that begins on the day after the written explanation is distributed to the Participant.

6.3 **Death benefits.** Benefits payable upon the death of a Participant will be paid only as provided in this Section 6.3, subject to the statutory distribution rules under Section 6.4.

(a) **Death prior to Annuity Starting Date: unmarried participants.** In the case of a Participant who dies prior to his or her Annuity Starting Date and is not married on the date of death, amounts held in an Annuity Contract or Custodial Account for his or her benefit will be paid to the beneficiary designated by the Participant in accordance with the terms of the Annuity Contract or Custodial Agreement (or, where no such beneficiary is designated, the Participant’s estate). Distribution will be made in the form or forms provided in such Annuity Contract or Custodial Agreement.

(b) **Death prior to Annuity Starting Date: married participants.** In the case of a Participant who dies prior to his or her Annuity Starting Date and is married on the date of death:

(i) The Participant’s surviving spouse will be entitled to receive an annuity during the spouse’s lifetime having a present value, at the time of the Participant’s death, equal to a percentage (no less than 50%, and no more than 100%) of the value of each Annuity Contract or Custodial Account of the Participant as may be specified in the Annuity Contract or Custodial Agreement. In the event that no such percentage is specified in any particular Annuity Contract or Custodial Agreement, the percentage shall be 50%. Any portion of an Annuity Contract or Custodial Account not payable to the Participant’s surviving spouse as provided in this paragraph (b)(i) will be paid to the beneficiary designated by the Participant pursuant to the terms of the Annuity Contract or Custodial Agreement (or, where no such beneficiary is designated, the Participant’s surviving spouse). The form of distribution available to a nonspouse
beneficiary, and any optional forms available to a surviving spouse, will be as provided in the Annuity Contract or Custodial Agreement.

(ii) To the extent permitted by an Annuity Contract or Custodial Agreement, a married Participant may waive the preretirement death benefit for his or her surviving spouse described in paragraph (b)(i) above and name a beneficiary entitled to receive benefits in the event the Participant dies before his or her Annuity Staring Date in lieu of the Participant’s surviving spouse. Any such waiver must be made within the period beginning on the first day of the Plan Year in which the Participant attains age 35 and ending on the earlier of the Annuity Starting Date or the date of the Participant’s death. In addition, the Participant’s spouse must consent to the waiver in writing and as otherwise described in Section 6.1(b)(iii) above. The Administrator will provide such information to Participants in connection with the preretirement survivor benefits and the Participant’s right to waive those benefits as may be required from time to time under ERISA section 205.

(c) Death on or after Annuity Starting Date. In the case of a Participant who dies on or after his or her Annuity Starting Date, no benefits will be payable to a surviving spouse or other beneficiary after the Participant’s death except to the extent provided in the form or forms of distribution in effect with respect to the Participant pursuant to Section 6.1.

6.4 Statutory distribution rules.

(a) Small account balances. In the case of a Participant whose total balances under the Plan do not exceed $5,000 (or such larger limit in effect under ERISA section 205(g)(1)), the terms of the Annuity Contract or Custodial Agreement may permit distributions to be made in the form of a lump-sum payment, but no payment may be made under the Plan without the consent of the Participant or beneficiary.

(b) Minimum required distributions: In general. The Plan shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the Treasury Regulations thereunder, as modified by the Treasury Regulations under Code section 403(b).

(c) Minimum required distributions – Custodial Accounts: Distributions before death.

(i) The entire value of the Custodial Account of the Participant for whose behalf the Custodial Account is maintained will commence to be distributed no later than the Required Beginning Date over the life of such Participant or the lives of such Participant and his or her designated beneficiary, except that distributions to a 5-percent owner must commence by April 1 of the calendar year following the calendar year in which the owner attains age 70-1/2.

(ii) The amount to be distributed each year, beginning with the calendar year the Participant attains age 70-1/2 or retires and continuing through the year of death, shall not be less than the quotient obtained by dividing the value of the Custodial Account, including outstanding rollovers and transfers, as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of
section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant’s age as of his or her birthday in the year. However, if the Participant’s sole designated beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Participant, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of section 1.401(a)(9)-9 of the Treasury Regulations, using the ages as of the Participant’s and spouse’s birthdays in the year.

(iii) The required minimum distribution for the year the Participant attains age 70-1/2 or retires can be made as of the Required Beginning Date. The required minimum distribution for any other year, including the year that contains the Required Beginning Date, must be made by the end of such year.

(d) Minimum required distributions – Custodial Accounts: Distributions upon death on or after Required Beginning Date. If the Participant dies on or after the Required Beginning Date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:

(i) If the designated beneficiary is someone other than the Participant’s surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the designated beneficiary, with such life expectancy determined using the beneficiary’s age as of his or her birthday in the year following the year of the Participant’s death, or over the period described in Section 6.4(d)(iii), if longer.

(ii) If the Participant’s sole designated beneficiary is the Participant’s surviving spouse, the remaining interest will be distributed over such spouse’s life or over the period described in Section 6.4(d)(iii), if longer. Any interest remaining after such spouse’s death will be distributed over such spouse’s remaining life expectancy determined using the spouse’s age as of his or her birthday in the year of the spouse’s death, or, if the distributions are being made over the period described in Section 6.4(d)(iii), over such period.

(iii) If there is no designated beneficiary, or if applicable by operation of Section 6.4(d)(i) or 6.4(d)(ii), the remaining interest will be distributed over the Participant’s remaining life expectancy determined in the year of the Participant’s death.

(iv) The amount to be distributed each year under Section 6.4(d)(i), 6.4(d)(ii) or 6.4(d)(iii), beginning with the calendar year following the calendar year of the Participant’s death, is the quotient obtained by dividing the value of the account as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse’s remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse’s age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary’s or Participant’s age in the year specified in Section 6.4(d)(i), 6.4(d)(ii) or 6.4(d)(iii) and reduced by one for each subsequent year.
(v) The “value” of the account for purposes of this Section 6.4(d) includes the amount of any outstanding rollover and transfer.

(e) Minimum required distributions – Custodial Accounts: Distributions upon death before Required Beginning Date. If the Participant dies before the Required Beginning Date, his or her entire interest will be distributed at least as rapidly as follows:

(i) If the designated beneficiary is someone other than the Participant’s surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the individual’s death, over the remaining life expectancy of the designated beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the Participant’s death, or, if elected, in accordance with Section 6.4(e)(iii).

(ii) If the Participant’s sole designated beneficiary is the Participant’s surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year in which the Participant would have attained age 70-1/2, if later, over such spouse’s life, or, if elected, in accordance with Section 6.4(e)(iii). If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse’s death, over the spouse’s designated beneficiary’s remaining life expectancy determined using such beneficiary’s age as of his or her birthday in the year following the death of the spouse or, if elected, will be distributed in accordance with Section 6.4(e)(iii). If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse’s remaining life expectancy determined using the spouse’s age as of his or her birthday in the year of the spouse’s death.

(iii) If there is no designated beneficiary, or if applicable by operation of Section 6.4(e)(i) or 6.4(e)(ii), the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Participant’s death (or of the spouse’s death in the case of the surviving spouse’s death before distributions are required to begin under Section 6.4(e)(ii)).

(iv) The amount to be distributed each year under Section 6.4(e)(i) or 6.4(e)(ii) is the quotient obtained by dividing the value of the Custodial Account as of the end of the preceding year by the remaining life expectancy specified in such section. Life expectancy is determined using the Single Life Table. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse’s remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse’s age in the year. In all cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary’s age in the year specified under Section 6.4(e)(i) or 6.4(e)(ii) and reduced by one for each subsequent year.

(v) The “value” of the Custodial Account for purposes of this Section 6.4(e) includes the amount of any outstanding rollover and transfer.
(f) Minimum required distributions – Annuities: Distributions before death.

(i) The entire interest of the Participant for whose benefit the contract is maintained will commence to be distributed no later than the first day of April following the Required Beginning Date over (a) the life of such Participant or the lives of such Participant and his or her designated beneficiary or (b) a period certain not extending beyond the life expectancy of such Participant or the joint and last survivor expectancy of such Participant and his or her designated beneficiary, except that benefit distributions to a 5-percent owner must commence by April 1 of the calendar year following the calendar year in which the owner attains age 70-1/2. Payments must be made in periodic payments at intervals of no longer than one year and must be either non-increasing or they may increase only as provided in Q&As-1 and -4 of section 1.401(a)(9)-6 of the Treasury Regulations. In addition, any distribution must satisfy the incidental benefit requirements specified in Q&A-2 of section 1.401(a)(9)-6 of the Treasury Regulations.

(ii) The distribution periods described in Section 6.4(f)(i) cannot exceed the periods specified in section 1.401(a)(9)-6 of the Treasury Regulations.

(iii) The first required payment can be made as late as the Required Beginning Date and must be the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval.

(g) Minimum required distributions – Annuities: Distributions upon death on or after required distributions commence.

(i) If the Participant dies on or after the date on which required distributions commence, the remaining portion of his or her interest will continue to be distributed under the contract option chosen.

(ii) For purposes of this Section 6.4(g), the “interest” in the annuity includes the amount of any outstanding rollover and transfer and the actuarial value of any other benefits provided under the annuity such as guaranteed death benefits.

(iii) For purposes of this Section 6.4(g), required distributions are considered to commence on the Participant’s Required Beginning Date. However, if distributions start prior to the applicable date in the preceding sentence on an irrevocable basis (except for acceleration) under an Annuity Contract meeting the requirements of section 1.401(a)(9)-6 of the Treasury Regulations, then required distributions are considered to commence on the annuity starting date.

(h) Minimum required distributions – Annuities: Distributions upon death before required distributions commence. If the Participant dies before required distributions commence, his or her entire interest will be distributed at least as rapidly as follows:

(i) If the designated beneficiary is someone other than the Participant’s surviving spouse, the entire interest will be distributed, starting by the end
of the calendar year following the calendar year of the Participant’s death, over the remaining life expectancy of the designated beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the individual’s death, or, if elected, in accordance with Section 6.4(h)(iii).

(ii) If the Participant’s sole designated beneficiary is the Participant’s surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the Participant’s death (or by the end of the calendar year in which the Participant would have attained age 70-1/2, if later), over such spouse’s life, or, if elected, in accordance with Section 6.4(h)(iii). If the surviving spouse dies before required distributions commence to him or her, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse’s death, over the spouse’s designated beneficiary’s remaining life expectancy determined using such beneficiary’s age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with Section 6.4(h)(iii). If the surviving spouse dies after required distributions commence to him or her, any remaining interest will continue to be distributed under the contract option chosen.

(iii) If there is no designated beneficiary, or if applicable by operation of Section 6.4(h)(i) or 6.4(h)(ii), the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the Participant’s death (or of the spouse’s death in the case of the surviving spouse’s death before distributions are required to begin under Section 6.4(h)(ii)).

(iv) Life expectancy is determined using the Single Life Table. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse’s remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse’s age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary’s age in the year specified in Sections 6.4(h)(i) and 6.4(h)(ii) and reduced by one for each subsequent year.

(v) The “interest” in the annuity includes the amount of any outstanding rollover and transfer and the actuarial value of any other benefits provided under the annuity such as guaranteed death benefits.

(vi) For purposes of this Section 6.4(h), required distributions are considered to commence on the Participant’s Required Beginning Date or, if applicable, on the date distributions are required to begin to the surviving spouse under Section 6.4(h)(ii). However, if distributions start prior to the applicable date in the preceding sentence on an irrevocable basis (except for acceleration) under an Annuity Contract meeting the requirements of section 1.401(a)(9)-6 of the Treasury Regulations, then required distributions are considered to commence on the annuity starting date.
6.5 Optional direct transfer of eligible rollover distributions.

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee’s election, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution that is equal to at least $500 paid directly to an Eligible Retirement Plan specified by the distributee in a direct rollover. If an eligible rollover distribution is less than $500, a distributee may not make the election described in the preceding sentence to roll over only a portion of the eligible rollover distribution. In addition, if an eligible rollover distribution is made to a Roth IRA (as such term is defined in Code section 408(A)(b)), the distributee shall recognize ordinary income in the amount of the Eligible Rollover Distribution to the extent provided in Code section 408A(d)(3)(A).

(b) For purposes of this Section 6.5, the following terms shall have the following definitions:

(i) 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:

   (A) 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 period of 10 years or more;

   (B) any distribution to the extent such distribution is required under Code section 401(a)(9);

   (C) any hardship withdrawal;

   (D) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and

   (E) any distribution(s) that is reasonably expected to total less than $200 during a year.

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 non includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code section 408(a) or 408(b), or to a qualified defined contribution plan described in Code 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 includible in gross income and the portion of such distribution which is not so includible.
(ii) **Eligible Retirement Plan.** An Eligible Retirement Plan is a qualified plan described in Code section 401(a), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a Roth IRA described in Code section 408A or an eligible plan under Code section 457(b) which is maintained by a state, a 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, that accepts the distributee’s eligible rollover distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code section 414(q). If the distributee is a nonspouse beneficiary within the meaning of Code section 402(c)(11), an Eligible Retirement Plan shall mean only an individual account or described in Code section 408(a) or an individual retirement annuity described in Code section 408(b) that is established on behalf of the Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11).

(iii) **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 Code section 414(p), are distributees with regard to the interest of the spouse or former spouse. A distributee also includes a nonspouse beneficiary within the meaning of Code section 402(c)(11). In this case, the determination of any required minimum distribution under Code section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A-17 and 18, 2007 I.R.B. 395.

6.6 **2009 Required Minimum Distributions.** Notwithstanding any other provision of this Article VI, a Participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code section 401(a)(9)(H) ("2009 Required Minimum Distributions") and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 Required Minimum Distributions or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 Required Minimum Distributions) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s designated beneficiary, or for a period of at least 10 years, will receive those distributions for 2009 unless the Participant or beneficiary chooses to not receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, for purposes of Section 6.5, 2009 Required Minimum Distributions shall be treated as eligible rollover distributions.
ARTICLE VII.  -  ADMINISTRATION

7.1  **Powers and responsibilities of the Administrator.** The Administrator will have full discretionary authority to administer the Plan in all of its details, subject, however, to ERISA, and shall be responsible for determining that the requirements of the Plan and the Code are properly applied. The Administrator will have all those discretionary powers necessary to carry out the terms of the Plan including, but not limited to, the power: to make and enforce such rules as it deems necessary or proper for the efficient administration of the Plan, including establishment of claims and appeal procedures in accordance with ERISA section 503; to interpret the Plan; to decide all questions concerning the Plan and the eligibility of any person to participate in the Plan; to amend the Plan in minor respects in order to incorporate recent changes in the law or applicable guidance; to decide which Annuity Contracts and Custodial Accounts will be available for contribution, from time to time; to require Participants to transfer their accounts from one or more Annuity Contracts or Custodial Accounts which no longer will be available for investment, to other Annuity Contracts or Custodial Accounts; to authorize the payment of benefits; to appoint such agents, counsel, and consultants as it deems necessary to assist in administering the Plan; to determine whether contributions to the Plan comply with the applicable limitations under the relevant section(s) of the Code; and to allocate and delegate, by written instrument, any of its duties and responsibilities. Any interpretation of the Plan or other determination with respect to the Plan by the Administrator or its delegate shall be final and conclusive on all persons in the absence of clear and convincing evidence that the Administrator or its delegate acted arbitrarily and capriciously.

7.2  **Named fiduciary.** The Administrator will be a “named fiduciary” for purposes of section 402(a)(1) of ERISA with respect to the Plan. The Administrator will have authority to control and manage the operation and administration of the Plan and will be responsible for complying with all of the reporting and disclosure requirements of Part I of Subtitle B of Title I of ERISA.

7.3  **Expenses of administration.** Any reasonable and necessary expense of administering the Plan or of any Annuity Contract or Custodial Account, unless paid by the College, a Participant’s Annuity Contract or Custodial Account, or from an account established for such purpose by the Annuity Contract issuer or Custodial Account custodian in the nature of “revenue sharing” or similar deposits of asset management fees in excess of a negotiated amount as determined by the Administrator or the College, shall be apportioned among and charged against the individual Annuity Contracts and/or Custodial Accounts in such manner as the Administrator may direct. To the extent consistent with ERISA and the Code, expenses allocable to a specific Annuity Contract or Custodial Account (such as loans) may be charged against such Annuity Contract or Custodial Account, as may be set forth in the Annuity Contract, Custodial Agreement, or other services agreement. The Administrator shall determine the extent to which any such expense qualifies for direct payment or reimbursement under ERISA Section 408(c)(2).

7.4  **Indemnification.** The College agrees to indemnify and defend to the fullest extent permitted by law any Employee serving as Administrator, or as a member of a committee appointed to serve as Administrator or assisting the Administrator in administering the Plan as part of his or her employment or trustee duties, including any Employee or former Employee
who formerly served as Administrator or as a member of such committee or assisted the Administrator in administering the Plan, against all liabilities, damages, costs and expenses (including attorneys’ fees and amounts paid in settlement of any claims approved by the College) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

7.5 **Paperless media.** For purposes of the Plan, the term “written” or “in writing” shall also include use of such paperless media as may be approved by the Administrator.

7.6 **Authority to correct operational defects.** The Administrator will have full discretionary power and authority to correct any “operational defect” in any manner or by any method it deems appropriate in its sole discretion in order to cause the Plan (i) to operate in accordance with its terms or, (ii) to maintain its tax-qualified status under the Code. For purposes of this section, an “operational defect” is any operational or administrative action (or inaction) in connection with the Plan which, in the judgment of the Administrator, fails to conform with the terms of the Plan or causes or could cause the Plan to lose its tax-qualified status under the Code.

7.7 **Claims and Review Procedures.** The Administrator shall adopt procedures for the filing and review of claims for benefits in accordance with ERISA section 503.
ARTICLE VIII. - MISCELLANEOUS

8.1 Amendment and termination. The Board shall at all times have the power to amend or terminate the Plan by a written instrument signed by a duly authorized officer thereof, any such amendment or termination to take effect retroactively if the provisions so provide to the extent permitted by applicable law. The Board may also delegate any of its powers and duties with respect to the Plan or annuities to a committee of the Board or to any one or more officers or other employees of the College. Any such delegation shall be set forth in writing. Notwithstanding the foregoing, each of the Vice President and the Chief Financial Officer is authorized to approve amendments which: (i) are necessary or desirable to conform the Plan with applicable law; (ii) clarify ambiguous Plan language; (iii) simplify or modify Plan administration; or (iv) affect Plan language of a technical or clerical nature. Any termination or modification of the Plan cannot adversely affect the benefits accrued by Participants prior to the date of discontinuance or modification, except as permitted by law and shall comply with Treasury Regulation section 1.403(b)-10(a).

8.2 Limitation of rights. Neither the establishment of the Plan nor any amendment thereof will be construed as giving to any Participant or other person any legal or equitable right against any Affiliated Employer or the Administrator except as provided in this document. In no event will the terms of employment or service of any Participant be modified or in any way be affected by the existence of the Plan.

8.3 Benefits not alienable. Benefits under the Plan may not be assigned or alienated and shall inure to the exclusive benefit of Participants and beneficiaries. However, to the extent provided by a qualified domestic relations order (within the meaning of Code section 414(p) and ERISA section 206(d)), benefits may be paid to an alternate payee from an Annuity Contract or Custodial Account, or a new Annuity Contract or Custodial Account may be established in favor of an alternate payee from a Participant’s Annuity Contract or Custodial Account, even if the Participant is not otherwise entitled to benefits at the time of such payment or establishment. Also, in accordance with ERISA section 206(d)(4), the benefits paid to a Participant from an Annuity Contract or a Custodial Account may be offset by an amount the Participant is ordered or required to pay to the Plan if the order or requirement to pay arises under a judgment of conviction for a crime involving the Plan, or under a civil judgment entered by a court (or pursuant to a settlement agreement between the U.S. Secretary of Labor and the Participant) in connection with a violation of Part 4 of Subtitle B of Title I of ERISA. The Administrator shall adopt procedures to determine the qualified status of domestic relations orders, to administer distribution under qualified orders, and to administer any offset of payments pursuant to a judgment, order, decree or settlement. Participants and beneficiaries may obtain, at no charge, a copy of the Plan’s procedures governing qualified domestic relations order determinations from the Administrator. In addition, the Administrator may pay from a Participant’s or beneficiary’s Annuity Contract or Custodial Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or beneficiary.

8.4 Participants’ periods of military service. Notwithstanding the provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified
military service will be provided in accordance with Code section 414(u). Without limiting the
generality of the foregoing, to the extent required under Code section 401(a)(37), in the case of a
Participant who dies on or after January 1, 2007 while performing qualified military service, the
Participant's survivors are entitled to any additional benefits (other than benefit accruals relating
to the period of qualified military service) provided under the Plan had the Participant resumed
employment with an Affiliated Employer in accordance with his or her reemployment rights
under the Uniformed Services Employment and Reemployment Rights Act of 1994 and then
terminated employment on account of death.

8.5 **Reclassification of employment status.** Notwithstanding anything herein to the
contrary, an individual who is not characterized or treated by the College as a common law
employee of the College shall not be eligible to receive contributions under Sections 4.4 or 4.5.
However, in the event that such an individual is reclassified by the College as a common law
employee of the College, contributions under Sections 4.4 or 4.5 shall be made on the
individual’s behalf on and after the actual date on which such reclassification occurs (to the
extent such individual otherwise qualifies as a Participant and an Eligible Employee hereunder).
In no event shall any reclassified individual be treated as a Participant on whose behalf College
Contributions are made under Section 4.5 prior to the actual date such reclassification by the
College occurs.

8.6 **Governing law.** The Plan will be construed, administered and enforced
according to the laws of the State of Maine to the extent not preempted by federal law.

8.7 **Procedure when distributee cannot be located.** The Administrator shall make
all reasonable attempts to determine the identity and address of a Participant or a Participant’s
beneficiary entitled to benefits under the Plan. For this purpose a reasonable attempt means (a)
the mailing by certified mail of a notice to the last known address shown on the College’s or the
Administrator’s records, (b) notification sent to the Social Security Administration or the
Pension Benefit Guaranty Corporation (under their program to identify payees under retirement
plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to
locate such a person entitled to benefits hereunder, or if there has been no claim made for such
benefits, the Annuity Contract or Custodial Account shall continue to hold the benefits due such
person.

8.8 **Payment on behalf of Participants.** If the Administrator shall determine that
any Participant or beneficiary entitled to benefits under the Plan is unable to care for his or her
affairs due to mental or physical incapacity, or is a minor, any benefits payable to him or her may
be paid for his or her benefit to his or her spouse, parent, brother or sister, or other person
deeded by the Administrator to have incurred expenses for such person unless prior claim
therefor has been made by a duly qualified guardian or other legal representative. Any such
payment shall be a payment for the account of such Participant or beneficiary and shall be a
complete discharge of any liability of the Plan therefor.
IN WITNESS WHEREOF, the College has caused this document to be executed by its duly authorized officer this 16th day of May, 2015.

PRESIDENT AND TRUSTEES OF COLBY COLLEGE

By: ____________________________

Date: May 10, 2015