

**KANSAS BOARD OF REGENTS  
MANDATORY RETIREMENT PLAN**

**Adopted on March 16, 2006**

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**KANSAS BOARD OF REGENTS**  
**MANDATORY RETIREMENT PLAN**

**ARTICLE I.**

**ESTABLISHMENT AND RESTATEMENT OF PLAN**

The Kansas Board of Regents ("Board") established a retirement plan pursuant to Section 403(b) of the Internal Revenue Code ("Code") and K.S.A. §§ 74-4925, *et seq.* and the Board's regulations thereunder, effective January 1, 1962, and as amended from time to time thereafter. The plan was, and is intended to remain, a Code Section 403(b) plan.

The Board now desires to reduce the terms of the plan to writing in one document effective \_\_\_\_\_, 200\_\_, except as otherwise provided herein, to comply with all applicable provisions of the Code and Kansas statutes. Except as otherwise specifically provided herein, the Kansas Board of Regents Mandatory Retirement Plan ("Plan") as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after such dates, as applicable, and to transactions under the Plan on and after such dates, as applicable. The rights and benefits, if any, of individuals who are not Employees on or after such dates, as applicable, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance of Employment, except as otherwise specifically provided herein or in a subsequent amendment.

The Plan is funded exclusively through the purchase of Benefit Contracts from the Investment Providers described in Exhibit A attached hereto, as that Exhibit may be amended from time to time. The terms and conditions of such Benefit Contracts shall be considered part of, and shall be construed as having been incorporated into, this Plan. Notwithstanding the foregoing, however, to the extent there is any conflict between the terms of such Benefit Contracts and the terms of the Plan as provided herein, the terms of the Plan shall govern except as otherwise expressly provided herein.

**ARTICLE II.**

**DEFINITIONS**

**Section 2.01 Construction and Governing Law.**

(a) This Plan shall be construed, enforced, and administered and the validity thereof determined in accordance with the Code and, where not inconsistent therewith, the laws of the State of Kansas.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural where appropriate.

(c) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with the Uniform Services Employment and Reemployment Rights Act of 1994, Code Section 414(u).

(d) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified leave will be provided in accordance with the Family Medical Leave Act of 1993, 29 U.S.C. Section 2601 et.seq.

**Section 2.02 Definitions.** When the initial letter of a word or phrase is capitalized herein the meaning of such word or phrase shall be as follows:

(a) "Account" means the following separate bookkeeping accounts established and maintained under the Benefit Contract for each Participant, reflecting his or her interest in such Benefit Contract as follows:

(1) "Mandatory Participant Contribution Account" means the account maintained to reflect the interest of the Participant in the Benefit Contract attributable to his or her Mandatory Participant Contributions pursuant to Section 4.01. Such account may be further divided into a "Pre-1987 Mandatory Participant Contribution Account" reflecting Mandatory

Participant Contributions made to the Plan prior to 1987, and a "Post-1986 Mandatory Participant Contribution Account" made to the Plan after 1986, including any earnings on the Pre-1987 Mandatory Participant Contributions.

(2) "Employer Contribution Account" means the account maintained to reflect the interest of the Participant in the Benefit Contract attributable to his or her Employer Contributions pursuant to Section 4.02. Such account may be further divided into a "Pre-1987 Employer Contribution Account" reflecting Employer Contributions made to the Plan prior to 1987, and a "Post-1986 Employer Contribution Account" made to the Plan after 1986, including any earnings on the Pre-1987 Employer Contributions.

(3) "Disability Employer Contribution Account" means the account maintained to reflect the interest of the Participant in the Benefit Contract attributable to his or her Disability Employer Contributions pursuant to Section 4.03.

(4) "Rollover Account" means the account maintained to reflect the interest of the Participant in the Benefit Contract(s) attributable to his or her Rollover Contributions pursuant to Section 4.05.

(b) "Administrator" means the Board.

(c) "Applicable Form" means the appropriate form as designated and furnished by the Investment Provider or the Administrator to make the election or provide the notice required by the Plan.

(d) "Beneficiary" means the person, institution, trustee, or estate designated by the Participant on the Applicable Form to receive any benefits payable under the Plan in the event of the Participant's death.

(e) "Benefit Contract" means a contract issued by an Investment Provider that includes payment in the form of an annuity within the meaning of Treasury Regulation Section 1.401(f)-1(d)(2) and (c). "Benefit Contract" also means a custodial account as defined in Code Section 403(b)(7) held by an Investment Provider which is a bank or an approved non-bank trustee or custodian under Code Section 401(f), the assets (i) of which are invested exclusively in regulated investment company stock within the meaning of Code Section 851(a), (ii) are subject to the distribution restrictions in Code Section 403(b)(7)(A)(ii), and (iii) cannot be used or diverted for purposes other than for the exclusive benefit of Participants or their Beneficiaries. The terms of each Benefit Contract shall satisfy the requirements of Code Section 403(b) and the Treasury Regulations thereunder, and shall further provide that each Participant's rights under the Benefit Contract are subject to the terms of the Plan and are nonforfeitable and nontransferable at all times.

(f) "Benefits Eligible Position" means an employment position with an Employer with respect to which an Employee is entitled to receive benefits, as determined by each Employer.

(g) "Board" means the Kansas Board of Regents.

(h) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(i) "Compensation" for a Plan Year means all Form W-2 compensation from an Employer, but not including reimbursement for travel or moving expenses, taxable fringe benefits, or awards and gifts; provided, however, that "Compensation" shall include any amounts excludable from taxable income because of an election under Code Sections 403(b), 457, 125 and 132(f). Notwithstanding the preceding sentence: "Compensation" for a Participant who is Disabled means the Participant's Compensation at the time he or she became disabled within the meaning of the long-term disability program set forth in K.S.A. § 74-4927, as amended; "Compensation" for a Participant elected or appointed as a member of the Kansas State legislature as described in Section 2.02(1)(2)

means the Compensation of such Participant in effect on the date immediately preceding his or her leave of absence; "Compensation" for a Participant who accepts a position in the executive branch of government of the State of Kansas as described in Section 2.02(1)(2) means the remuneration of such Participant from the State for providing such services; and "Compensation" for a Participant who is a Cooperative Extension Service employee means the total of all remuneration paid by the federal, state and county for personal services performed as a member of the Cooperative Extension Service. Notwithstanding any other provision in this paragraph, Compensation shall be limited in accordance with Section 6.02.

(j) "Contributions" means Mandatory Participant Contributions, Employer Contributions, Disability Employer Contributions, and Rollover Contributions.

(k) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17), 402(g), or 415(d) for any applicable year.

(l) "Disability Employer Contributions" means the contributions made by an Employer on behalf of a Participant pursuant to Section 4.03.

(m) "Disabled" means the Participant is disabled within the meaning of the long-term disability program set forth in K.S.A. § 74-4927, as amended, and is receiving benefits under such program.

(n) "Eligible Employee" means any Employee appointed half-time or more to a Benefits Eligible Position in the unclassified service under the Kansas Civil Service Act, K.S.A. § 75-2935(1)(f), as amended, including county extension agents employed by Kansas State University under K.S.A. § 2-615, as amended; provided, however, that "Eligible Employee" does not include (i) students performing services described in Code Section 3121(b)(10), (ii) health care employees as defined under K.S.A. § 75-2935(1)(f), (iii) Cooperative Extension Service employees covered by a

federal retirement plan, (iv) employees of a private Code Section 501(c)(3) entity affiliated with an Employer, (v) employees who are part of any Employer's university support staff, and (vi) any person designated in good faith as an independent contractor regardless of whether such person is later determined to be a common law employee for tax purposes. Notwithstanding the preceding paragraph:

(1) An Eligible Employee who became an Eligible Employee after a reclassification or transfer from a position covered by KPERS and who has accrued benefits under KPERS, may file a one-time, irrevocable election on the Applicable Form to continue participation in KPERS. Conversely, a Participant in the Plan who is reclassified or transferred to a position for an Employer that qualifies for participation in KPERS pursuant to K.S.A. § 74-4911(5), as amended, may file a one-time, irrevocable election on the Applicable Form to continue participation in the Plan; provided, however, that a Participant who has terminated employment with an Employer and then subsequently been rehired by an Employer is not eligible to make such an election. Such elections must be filed prior to the first day of the first complete payroll period after the effective date of the reclassification or transfer, and will be effective on the first day of the first complete payroll period after the effective date of the reclassification or transfer.

(2) A Participant in the Plan who takes a leave of absence and accepts a position in the executive branch of government of the State of Kansas, may file a one-time, irrevocable election on the Applicable Form to continue participation in the Plan. A Participant in the Plan who takes a leave of absence and is elected or appointed as a member of the Kansas State legislature, may file a one-time, irrevocable election on the Applicable Form to continue participation in the Plan for purposes of Employer Contributions only. Such elections must

be filed prior to the first day of the first complete payroll period after commencement of service for the executive branch of government or the legislature, as applicable, and will be effective as of the effective date of such employment.

(3) An Eligible Employee who enters into an agreement under the Phased Retirement Program shall continue to be an Eligible Employee until the earlier of the Employee's Severance from Employment or termination of the agreement.

(4) An Eligible Employee who is a Participant in the Plan and who is or who becomes Disabled shall continue to be an Eligible Employee for the five year period commencing with the date that the Participant becomes Disabled, but for no longer than the period that the Eligible Employee has includible compensation under Code Section 403(b)(3).

(o) "Employee" means any common law employee performing services for an Employer.

(p) "Employer" means an Institution or the Board Office.

(q) "Employer Contributions" means the Contributions made by an Employer on behalf of a Participant pursuant to Section 4.02.

(r) "Institution" means Emporia State University, Fort Hays State University, Kansas State University, Pittsburg State University, University of Kansas, University of Kansas Medical Center, or Wichita State University.

(s) "Investment Options" means the financial instruments provided through Investment Providers and specifically approved by the Board for use under this Plan in accordance with Article VIII.

(t) "Investment Provider" means (i) a life insurance company authorized to do business in the State of Kansas or (ii) a bank or approved non-bank trustee or custodian under Code Section 401(f), the assets of which are invested exclusively in regulated investment company stock, that has

been approved by the Board to make Investment Options available to Participants under this Plan, and that is set forth in Exhibit A hereto, as amended from time to time.

(u) "KPERS" means the Kansas Public Employees Retirement System.

(v) "Mandatory Participant Contributions" means the Contributions required of Participants pursuant to Section 4.01.

(w) "Participant" means an Eligible Employee who has an Account balance under the Plan.

(x) "Phased Retirement Program" means the program described in K.S.A. § 76-746, as amended.

(y) "Plan or Plan Document" means the agreement as embodied herein, as amended from time to time, known as the "Kansas Board of Regents Mandatory Retirement Plan."

(z) "Plan Year" means January 1 through December 31.

(aa) "Rollover Contributions" means the Contributions rolled into the Plan pursuant to Section 4.05.

(bb) "Section" means, when not preceded by the word Code, a section of the Plan.

(cc) "Severance from Employment" means the complete termination of the employment relationship between the Employee and any Employer, State of Kansas agency, and/or all employers required to be aggregated with an Employer pursuant to Code Section 414(b), (c) or (m).

(dd) "Voluntary Plan" means the Kansas Board of Regents Voluntary Retirement Plan, as amended from time to time.

(ee) "Year of Service" means a period of 12 consecutive months of employment with an Employer as an Eligible Employee or in a position eligible for benefits under KPERS or other State of Kansas retirement plan with respect to which employee participation is mandatory. A period of

employment shall not satisfy this requirement if there is a break without pay for longer than 30 days. An Eligible Employee employed in a faculty position, pursuant to an academic year, shall complete a Year of Service at the expiration of 12 months following his or her initial appointment if he or she is still an Eligible Employee at that time.

### **ARTICLE III.**

#### **ELIGIBILITY**

**Section 3.01 Participation.** All Eligible Employees are required to participate in the Plan on the first day of the pay period coinciding with or next one following the completion of one Year of Service. Notwithstanding anything to the contrary herein:

(a) If at the time an Eligible Employee begins employment with an Employer, the Eligible Employee is covered by a retirement plan or program to which employer contributions have been made and benefits accrued for at least one year as a result of employment with an institution of higher education located in the United States that is not an Employer, the Eligible Employee shall begin participation in the Plan on the first day of the pay period coinciding with or next one following his or her appointment date with an Employer; provided, however, that the Eligible Employee must provide acceptable documentation of such prior qualifying participation no later than 90 days after the date of his or her appointment; and provided further that this one year period must be completed within the five year period immediately preceding employment with an Employer.

(b) If an employee in a position eligible for benefits under any mandatory State of Kansas retirement plan (other than this Plan) with respect to which said employee's participation is mandatory and the employee becomes an Eligible Employee, all service while in the position eligible for benefits under such retirement plan (including service during the plan's waiting period) shall be credited toward the Year of Service requirement. An Eligible Employee who has at least one year in a position eligible for benefits under the mandatory retirement plan shall begin participation in the

Plan on the first day of the pay period coinciding with or next one following the date of his or her appointment; provided, however, that the Eligible Employee must provide acceptable documentation of such prior qualifying participation no later than 90 days after the date of his or her appointment; and provided further that this one year period must be completed within the five year period immediately preceding employment with an Employer.

(c) For purposes of paragraphs (a) and (b), no employment as a (1) student performing services described in Code Section 3121(b)(10), (2) seasonal or temporary employee, or (3) employee who works less than half-time per year shall count toward the satisfaction of the Year of Service requirement.

**Section 3.02 Reemployment.** An Eligible Employee who is reemployed by an Employer following a prior period of employment in which he or she satisfied the participation requirements set forth in Section 3.01 shall immediately begin participation in the Plan with respect to Mandatory Participant Contributions and Employer Contributions pursuant to Sections 4.01 and 4.02 following his or her subsequent reemployment.

**Section 3.03 Cessation of Participation.** A Participant shall cease to be eligible to make or have made on his or her behalf Contributions under the Plan when the Participant ceases to be an Eligible Employee or the Plan is terminated.

#### **ARTICLE IV.**

#### **CONTRIBUTIONS AND VESTING**

**Section 4.01 Mandatory Participant Contributions.** Except as provided in Section 4.03, Participants are required to contribute 5.5% of their Compensation to the Plan. Such contributions shall be made by payroll deduction on a tax-deferred basis in accordance with Code Section 403(b) and all other applicable Code sections.

**Section 4.02 Employer Contributions.** The Employer for which a Participant is employed shall contribute an amount equal to 8.5% of the Participant's Compensation to the Plan. For purposes of this Section 4.02, "Compensation" for a Participant who enters into an agreement under the Phased Retirement Program with an Employer means the Compensation that the Participant would have been entitled to receive based upon the Participant's percentage appointment immediately preceding entry into a Phased Retirement Agreement. Employer Contributions shall be forwarded to the Investment Providers on a basis consistent with the Employer's payroll practices as soon as reasonably practicable, but in no case later than fifteen (15) business days following the month such amounts should be applied. The Employer Contribution shall be allocated to the Employer Contribution Account of the Participant as of the date of the Contribution.

**Section 4.03 Disability Employer Contributions.** In the event a Participant becomes Disabled, the Participant shall not be required nor permitted to make Mandatory Participant Contributions to the Plan under Section 4.01, and the Employer shall contribute an amount equal to 14% of the Participant's Compensation to the Plan. Contributions under this Section 4.03 shall cease at the earliest of (i) the date that the Participant is no longer entitled to an insured disability benefit under K.S.A. 74-4927a and amendments thereto or (ii) five years after the date that the Participant becomes Disabled. This Section 4.03 shall be construed in a manner consistent with Code Section 403(b)(3) and the Treasury Regulations thereunder.

**Section 4.04 Contributions While Serving In Kansas State Legislature.** In the event (1) a Participant takes an unpaid leave of absence from his or her Employer, (2) is elected or appointed as a member of the Kansas State Legislature, and (3) makes the one-time irrevocable election set forth in Section 2.02(1)(2), the Participant shall not be eligible to make Mandatory Participant Contributions to the Plan under Section 4.01.

**Section 4.05 Rollovers to the Plan.** At any time during a Plan Year, a Participant may transfer to a Benefit Contract under the Plan as a Rollover Contribution a distribution from a Code Section 401(a) qualified trust, a Code Section 403(b) plan, a Code Section 408 individual retirement account or annuity, or a Code Section 457(b) eligible deferred compensation plan which is maintained by a state or political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. Any Rollover Contribution shall be subject to the Investment Provider's acceptance of such contribution and determination, in its discretion, that the Rollover Contribution satisfies all applicable requirements of the Code. A Rollover Contribution shall be allocated to the Rollover Account of the Participant as of the date of the contribution. Before a Rollover Contribution is made, the Participant shall designate the Investment Options in which he or she wishes his or her Rollover Contribution to be invested. The Investment Provider shall separately account for the Rollover Contributions of the Participant, and such amounts shall be distributed at such time and in such manner that the Investment Provider permits and the Participant elects.

**Section 4.06 Leave of Absence.** During a paid leave of absence, the Employer shall continue to make Employer Contributions and the Participant shall continue to make Mandatory Participation Contributions. No Plan Contributions shall be made by or on behalf of a Participant who is on an unpaid leave of absence.

**Section 4.07 Vesting.** Subject to Section 15.06, Participants shall be immediately 100% vested in amounts contributed to their Accounts pursuant to this Article.

**Section 4.08 Expenses of Plan.** All reasonable expenses of administering the Plan shall be charged against and paid from the applicable Account or Benefit Contract.

## **ARTICLE V.**

### **LIMITATIONS ON CONTRIBUTIONS**

Notwithstanding anything in the Plan to the contrary, the Plan shall comply with Code Section 415(c). In any limitation year, in the event annual additions as defined in Code Section 415(c), when combined with any other employee or employer contributions made on behalf of the Participant to the Voluntary Plan, would exceed the Code Section 415(c) limitations, such contributions shall be reduced to the extent necessary to satisfy such Code Section, by first reducing any contributions made to the Voluntary Plan, then any Employer Contributions to this Plan, and then any Mandatory Participant Contributions to this Plan, in that order.

## **ARTICLE VI.**

### **NONDISCRIMINATION**

**Section 6.01 Compliance with Code Section 403(b)(12).** Contributions to the Plan shall be made in accordance with any applicable requirements of Code Section 403(b)(12).

**Section 6.02 Compliance with Code Section 401(a)(17).** For Plan Years beginning on or after January 1, 1996, Compensation during any Plan Year shall not exceed the Code Section 401(a)(17) limit (as increased by the Cost of Living Adjustment for the year). Notwithstanding anything in the Plan to the contrary, Compensation during a Plan Year shall be limited as follows:

(a) Effective for Plan Years beginning before January 1, 1996, the limitations on Compensation under Code Section 401(a)(17) shall be deemed to be satisfied in accordance with the applicable rules and regulations prescribed by the Secretary of Treasury for governmental plans;

(b) For Plan Years beginning on or after January 1, 1996, if and to the extent, required by Code Section 401(a)(17) for a governmental plan, Compensation taken into account under the Plan for any Plan Year for a Participant who was not a Participant on or before December 31, 1995 shall not exceed, (i) for Plan Years beginning after 1995 and before 2002, \$150,000 (as increased by the

Cost of Living Adjustment for the year) and, (ii) for Plan Years beginning after December 31, 2001, \$200,000, (as increased by the Cost of Living Adjustment for the year).

(c) For Plan Years beginning on or after January 1, 1996, as provided in the transitional rule of P.L. 103-66, § 13212(d)(3), Compensation taken into account under the Plan for any Plan Year for an individual who became a Participant on or before December 31, 1995 (an eligible participant within the meaning of P.L. 103-66, § 13212(d)(3)(B)) shall be limited to the greater of (i) the maximum amount of Compensation permitted to be taken into account under the Plan as in effect on July 1, 1993, or (ii), (A) for Plan Years beginning after 1995 and before 2002, \$150,000 (as increased by the Cost of Living Adjustment for the year), or, (B) for Plan Years beginning after December 31, 2001, \$200,000, (as increased by the Cost of Living Adjustment for the year). If the terms of the Plan as in effect on July 1, 1993, did not impose a limitation on the maximum amount of Compensation that could be taken into account under the Plan, there shall be no limitation on the maximum amount of Compensation that Participants can make as described in this paragraph.

## **ARTICLE VII.**

### **ACCOUNTING**

**Section 7.01 Participant Accounts.** The Investment Provider shall establish and maintain adequate records to reflect the Accounts of each Participant. Credits and charges shall be made to such Accounts to reflect additions, distributions, withdrawals, and to reflect gains or losses pursuant to the terms of each Benefit Contract. Each Participant shall have a separate Mandatory Participant Contribution, Employer Contribution, Disability Employer Contribution, and Rollover Account, as applicable. The maintenance of individual accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

**Section 7.02 Participant Statements.** The Investment Provider shall provide to each Participant as soon as possible following each calendar quarter and year end, a statement depicting the value of such Participant's Account as of the end of such calendar quarter or year, as appropriate.

**Section 7.03 Value of Account.** The value of the Account of a Participant as of any determination date is the value of the balance of the Account as determined by the Investment Provider. All transactions and Account records shall be based on fair market value.

## **ARTICLE VIII.**

### **INVESTMENT OF CONTRIBUTIONS**

**Section 8.01 Investment Providers/Investment Options.**

(a) Contributions are invested in one or more of the Investment Options available to Participants under this Plan, as selected by the Board and communicated to Participants. The current Investment Providers are listed in Exhibit A. The Board's current selection of Investment Providers and Investment Options is not intended to limit future additions or deletions of Investment Providers or Investment Options.

(b) On the Applicable Forms, each Participant shall select an Investment Provider and the Investment Options to which the Participant's Contributions under the Plan are to be deposited. A Participant can select one Investment Provider at a time to receive current Contributions. Once during each calendar year, the Participant may elect to direct all future Contributions to a different Investment Provider. The Participant will be responsible for following the requirements and restrictions of the Investment Provider and Investment Options selected.

(c) If Contributions cannot be deposited in an Investment Provider's Investment Options because the participant failed to designate an Investment Provider and/or Investment Options as provided herein, the Contributions shall be deposited in a default fund designated by the Board in its sole and absolute discretion.

**Section 8.02 Account Balance Transfer.** At any time prior to Severance from Employment, subject to a Benefit Contract's and/or Investment Option's rules for transfers (including application of any fees) and in accordance with the provisions of the Code for maintaining the tax deferral of the Account(s), a Participant may transfer his or her Account balance under the Plan from one Benefit Contract to another Benefit Contract. The transfer will be executed only if the Investment Provider to which the Participant requests that Accounts be transferred is included as an Investment Provider in the most recent listing of such sponsors that has been provided by the Board. In the event any amounts being held by an Investment Provider were transferred from a Code Section 403(b)(7) custodial account, the Investment Provider shall separately account for the transferred amounts and impose the distribution restrictions in Code Section 403(b)(7)(A)(ii). Except for the immediately preceding sentence, Participants who have entered into an agreement under the Phased Retirement Program or who have had a Severance from Employment are not subject to the limitations on transfers set forth in this Section 8.02.

**Section 8.03 General Provisions Regarding Investment Options.** All amounts in each Investment Option shall be nontransferable to any other person or entity other than the Participant or their Beneficiary, except as provided in Section 15.01.

## **ARTICLE IX.**

### **BENEFITS**

**Section 9.01 Distributions.** Distributions may be made from the Plan if a Participant (1) has a Severance from Employment, (2) enters into an agreement under the Phased Retirement Program, (3) becomes an employee in a temporary non-benefits eligible position, or (4) becomes a student employee of an Employer and is no longer an Eligible Employee; provided, however, that a Participant who has entered into an agreement under the Phased Retirement Program cannot receive a distribution of more than 99% of his or her Account balance. A Participant who receives

Distributions pursuant to this section shall no longer be entitled to benefits under the long-term disability program set forth in K.S.A. § 74-4927, as amended. Notwithstanding (2) and (3) of the preceding sentence, to the extent any amounts in a Participant's Account are invested by the Investment Provider in a Code Section 403(b)(7) custodial account, no distributions of amounts being so held shall be made prior to the date the Participant (1) attains age 59 ½, (2) has a Severance from Employment, (3) dies, or (4) becomes disabled within the meaning of Code Section 72(m)(7). In the event a Participant or former Participant is entitled to a distribution and requests such a distribution of Accounts on the Applicable Form, the Employer employing the Participant or who employed the former Participant shall certify that he or she has satisfied a condition for distribution.

**Section 9.02 Benefit Payable.** The benefit of a Participant, former Participant or a Beneficiary shall be based on the value of the Participant's or former Participant's Account as of the payment date. Benefits shall be paid under a payment option selected by the Participant, former Participant or Beneficiary and available from the Investment Provider.

**Section 9.03 Beneficiary and Death Benefit.** Upon the death of a Participant before Severance from Employment, the Account of the Participant shall be paid to the Participant's Beneficiary, under the payment options available to and elected by the Beneficiary. Each Participant may designate on the Applicable Form filed with the Investment Provider one or more primary and contingent Beneficiaries to receive any benefit payable under the Plan on the death of the Participant. Each such designation may be revoked, amended, or changed by the Participant by notice in writing on the Applicable Form filed with the Investment Provider.

**Section 9.04 Required Distribution Rules.** The provisions of this Section 9.04 take precedence over any inconsistent provisions of the Plan or of any Benefit Contract. All distributions under this Plan will be made in accordance with Code Section 401(a)(9) and the regulations

promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G), and shall comply with the following rules:

(a) Distributions may only be made over one of the following periods (or a combination thereof):

- (1) The life of the Participant;
- (2) The life of the Participant and a designated Beneficiary;
- (3) A period certain not extending beyond the life expectancy of the Participant; or
- (4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary.

(b) The Account(s) of a Participant shall be distributed to the Participant beginning no later than April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70 ½) or, if later, April 1 of the calendar year following the calendar year that the Participant severs employment.

(c) Notwithstanding anything to the contrary in this Section 9.04, if the Investment Provider(s) separately account for Contributions made prior to January 1, 1987, then distribution of such Contributions (but not any interest accumulated with respect thereto) need not commence until April 1 of the calendar year following the calendar year in which the Participant attains age seventy-five (75).

(d) Upon the death of the Participant, the following distribution provisions will take effect:

- (1) If the Participant dies after distribution of his or her Account(s) begins, any remaining portion of the Account(s) will continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(2) If the Participant dies before distributions of his or her Account(s) begins, and the Participant has no designated Beneficiary(ies), the Participant's Account(s) under the Plan will be distributed by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death.

(3) If the Participant dies before distributions of his or her Account(s) begins and any portion of his or her Account(s) are payable to a designated Beneficiary, the designated Beneficiary may elect for the Participant's Account(s) to be distributed (i) by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, 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 Beneficiary may elect to delay payment under subparagraph (ii) until December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2). If the designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) will be distributed in accordance with subparagraph (ii).

(4) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this Section 9.04(d).

(e) The Investment Providers(s) shall be solely responsible for complying with the provisions of this Section 9.04. The Investment Provider(s) shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions at least sixty (60) days prior to the date distributions must begin.

**Section 9.05 Transfer to Defined Benefit Governmental Plan.** To the extent permitted by the Code and the applicable regulations, and subject to approval of the Investment Provider, all or a portion of a Participant's Account may be transferred in a direct trustee-to-trustee transfer to KPERS in order to purchase permissive service credit (as defined by Code Section 415(n)(3)(A)) or make a repayment covered by Code Section 415(k)(3).

**Section 9.06 Early Distribution Penalties.**

(a) Generally, and except as described in subsection (b), if a Participant or former Participant receives any amount under a Benefit Contract, his or her tax for the taxable year in which such amount is received is increased by an amount equal to 10% of the portion of such amount which is includable in gross income. Such amount shall be included in gross income to the extent allocable to income on the Benefit Contract and shall not be included in gross income to the extent allocable to the investment in the Benefit Contract as provided in Code Section 72(e)(2)(b).

(b) The penalty described in subsection (a) generally does not apply to any distribution (i) made on or after the date on which the Participant attains age 59 ½, (ii) made on or after the death of the Participant, (iii) attributable to the Participant becoming disabled within the meaning of Code Section 72(m)(7), (iv) which is part of a series of substantially equal periodic payments made (not less frequently than annually) for the life or life expectancy of the Participant or the joint lives (or joint life expectancies) of such Participant and his or her designated Beneficiary, (v) made to a Participant after separation from service following the attainment of age 55, or (vi) any other circumstance permitted by the Code or the Internal Revenue Service.

(c) In the case of an amount received before the annuity starting date, such amount shall be included in gross income to the extent allocable to income on the contract and shall be excluded

from gross income to the extent allocable to the investment in the contract, as provided in Code Section 72(e)(2)(B).

## **ARTICLE X.**

### **LOANS**

Loans are not permitted under the Plan prior to a Severance from Employment; provided, however, that if permitted by an Investment Provider, loans are available to a Participant who enters into an agreement under the Phased Retirement Program.

## **ARTICLE XI.**

### **ROLLOVERS FROM THIS PLAN**

**Section 11.01 Definitions for this Article.** For purposes of this Article, the following definitions shall apply.

(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.

(b) "Distributee" means Participant or former Participant who is eligible to receive a distribution from the Plan.

(c) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means

(1) an individual retirement account described in Code Section 408(a);

(2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);

(3) any annuity plan described in Code Section 403(a);

(4) a contract described in Code Section 403(b);

(5) a qualified plan described in Code Section 401(a); and

(6) a Code Section 457(b) eligible deferred compensation plan which is maintained by a state or political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(d) "Eligible Rollover Distribution," as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under this Plan, excluding the following:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made over the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent to which such distribution is required under Code Section 401(a)(9);

(3) the portion of any distribution that is not includable in gross income;

(4) any distribution which is made upon hardship of the employee; and

(5) other items designated by regulations, or by the commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

**Section 11.02 Direct Transfer of Eligible Rollover Distribution.** A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Administrator and/or the Investment Provider. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover

Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 403, or 408.

**Section 11.03 Mandatory Withholding of Eligible Rollover Distributions.**

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory 20% federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e).

(b) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the 60th day following the day on which the Distributee received the distribution.

(c) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

**Section 11.04 Explanation of Plan Distribution and Withholding Requirements.** Each Distributee shall be provided by the Investment Provider, within a reasonable period of time before making an Eligible Rollover Distribution, a written explanation which explains the rules:

(a) Under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

(b) That require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan;

(c) That provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within 60 days after the date the Distribute receives the distribution; and

(d) If applicable, certain special rules regarding taxation of the distribution as described in Code Sections 402(d) and (e).

## **ARTICLE XII.**

### **ADMINISTRATION**

**Section 12.01 Authority of the Employers.** The Employers are responsible for advising their respective Eligible Employees of their rights to participate in the Plan and sending Contributions for each Participant to the selected Investment Providers. Each Employer shall have all power necessary or convenient to enable it to exercise this authority under the Plan.

**Section 12.02 Authority of the Administrator.** The Administrator shall have the power to construe and interpret the Plan, including any ambiguities, and to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning the administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as it may deem expedient and, subject to provisions of the Plan regarding claims to benefits, the Administrator should be the sole and final judge of such expediency. The Administrator may provide rules and regulations, not inconsistent with the terms of the Plan, for the operation and management of the Plan, and may from time to time amend or rescind such rules. The Administrator is authorized to accept service of legal process for the Plan. The Administrator shall have all powers necessary or convenient to enable it to exercise its authority under the Plan.

**Section 12.03 Delegation by Administrator.** The Administrator may delegate to an individual, committee, or organization to carry out its fiduciary duties or other responsibilities under

the Plan. Any such individual, committee or organization delegated fiduciary duties shall be a fiduciary until the Administrator revokes such delegation. A delegation of the Administrator duties or responsibilities may be revoked without cause or advance notice. Such individual, committee, or organization shall have the same power and authority with respect to such delegated fiduciary or other responsibilities as the Administrator has under the Plan.

**Section 12.04 Advice to Administrator.** The Administrator may employ or contract with one or more persons to render advice with regard to its duties, responsibilities and authority under the Plan.

**Section 12.05 Limitation on Recovery.** Participants, former Participants and Beneficiaries may not seek recovery against the Administrator, Employers, or any employee, contractor, or agent of the Administrator or Employers, for any loss sustained by any Participant, former Participant or Beneficiary due to the nonperformance of their duties, negligence, or any other misconduct of the above-named persons.

**Section 12.06 Benefit Payments.** The Administrator, or its designee, if in doubt regarding the correctness of its action with respect to a benefit payment, may direct suspension of payment until satisfied as to the correctness of the payment or the person to receive the payment. Alternatively, the Administrator, or its designee, may file, in any state court of competent jurisdiction, a suit, in the form it deems appropriate, for legal determination of the benefits to be paid and the persons to receive them. The Administrator, or its designee, may also bring a suit, or take other action as it deems appropriate, to resolve questions involving investment directions. The Administrator shall comply with the final order of the court in any such suit, and Participants, former Participants, Beneficiaries, and the Administrator shall be bound by such an order, insofar as it affects the benefits payable under this Plan, or the method or manner of payment.

**Section 12.07 Questions of Interpretation.** The Administrator shall have the power to construe this Plan and to determine all questions of fact or law arising thereunder. It may correct any defect, supply any omission or reconcile any inconsistency in this Plan in such manner and to such extent as they may deem expedient.

**Section 12.08 Reliance.** If the Administrator or any other fiduciary with respect to the Plan acts in reliance on an election, consent, or revocation made pursuant to this Plan, the election, consent, or revocation shall be treated as valid for purposes of discharging the Plan from liability to the extent of payments made pursuant to such acts.

**Section 12.09 Disputes.** In the event there is a dispute over any terms and conditions of this Plan affecting any individual, such individual shall notify the Administrator in writing of his position. The decision of the Administrator shall be final and binding on all parties, and this appeal shall be the sole exclusive remedy in any such dispute.

### **ARTICLE XIII.**

#### **REQUESTS FOR INFORMATION AND OTHER CLAIMS PROCEDURES**

**Section 13.01 Requests for Information Concerning Eligibility, Participation, Contributions.** Requests for information concerning eligibility, participation, Contributions, or other aspects of the operation of the Plan should be directed to the Employer. Service of legal process should be in writing and directed to the Administrator. If a request is denied, the Employer or Administrator may, within a reasonable time, provide a written denial to the Participant. If the Administrator does not provide a written response within a reasonable time, the claim shall be deemed denied.

**Section 13.02 Requests for Information Concerning Benefit Contracts.** Requests for information concerning the Benefit Contracts and 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 Investment Provider. If a written request is denied, the Investment Provider shall within a reasonable period of time provide a written denial to the Participant. It shall include the specific reasons for denial, the provisions of the Benefit Contracts on which the denial is based, and how to apply for a review of the denied claim. Where appropriate, it shall also include a description of any material which is needed to complete or perfect a claim and why such material is necessary. Within 60 days after the Participant receives notification of the denial, a Participant may request in writing a review of a claim denied by the Investment Provider and review pertinent documents and submit issues and comments in writing to the Investment Provider. The Investment Provider shall provide in writing to the Participant a decision upon such request for review of a denied claim within a reasonable period of time following receipt of the request.

#### **ARTICLE XIV.**

##### **AMENDMENT AND TERMINATION**

**Section 14.01 Amendment and Termination.** While it is expected that the Plan will continue indefinitely, the Board reserves the right to modify or terminate the Plan at any time.

**Section 14.02 Adverse Effects.** Any discontinuance or modification of the Plan cannot adversely affect the benefits accrued by Participants prior to the date of termination or modification.

#### **ARTICLE XV.**

##### **MISCELLANEOUS**

**Section 15.01 Non-Alienation.** Participants' Accounts under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor be subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor be transferable by operation of law. However, the Plan will comply with any judgment, decree or order which establishes the right of another person to all or a portion of a

Participant's benefit under the Plan to the extent that it is a "qualified domestic relations order" under Code Section 414(p).

**Section 15.02 Limitation of Rights.** Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor the purchase of any insurance contract, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) As conferring upon any Participant, Beneficiary, or any other person any right or claim against an Employer or Administrator, except to the extent that such right or claim shall be specifically expressed and provided in the Plan.

(b) As an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of an Employer or any Participant to continue or terminate the employment relationship at any time.

**Section 15.03 Federal and State Taxes.** It is intended that Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants, former Participants or Beneficiaries. However, the Administrator does not guarantee that any particular Federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

**Section 15.04 Entire Agreement.** This Plan, including any properly adopted amendment hereof, shall constitute the entire agreement between the Administrator and any Participant with respect to the Plan. A Participant may not rely upon any oral statement regarding the Plan.

**Section 15.05 Governing Laws.** The laws of the State of Kansas shall apply in determining the construction and validity of this Plan. This Plan shall be construed, enforced, and administered and the validity thereof determined in accordance with the provisions of the Code applicable to a tax-

sheltered annuity plan under Code Section 403(b), and when not inconsistent with the applicable provisions of the Code, the laws of the State of Kansas.

**Section 15.06 Erroneous Payments.** If the Administrator or Investment Provider makes any payment that, according to the terms of the Plan and the benefits provided hereunder, should not have been made, the Administrator or Investment Provider may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Investment Provider, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, or former Participant, the Investment Provider may deduct it when making any future payments directly to that Participant or former Participant.

**Section 15.07 Release.** Any payment to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant being paid thereby and the Administrator, or its designee, may condition such payment on the Participant delivering the duly executed receipt and release in such form as may be determined by the Administrator, or its designee.

**Section 15.08 Liability.** The Administrator shall incur no liability in acting upon any notice, request, signed letter, telegram, or other paper, document, or electronic transmission believed by the Administrator to be genuine, or to be executed, or sent by an authorized person.

**Section 15.09 Necessary Parties.** The Administrator is the only party necessary to any accounting, litigation, or other proceeding relating to the Plan or Benefit Contract. The settlement or judgment in any such case in which the Administrator is duly served shall be binding upon all affected Participants in the Plan, their Beneficiaries, estates, and upon all persons claiming by, through, or under them.

**Section 15.10 Headings.** Any headings or subheadings in the Plan are inserted for convenience of reference only and shall be ignored in the construction of any provisions of the Plan.

Signed this 16<sup>th</sup> day of March, 2006.

**KANSAS BOARD OF REGENTS**

By: Donna L. Shank  
Chair of the Board

By: Reginald L. Robinson  
President and Chief Executive Officer of the Board

I, Reginald L. Robinson, the duly qualified President and CEO of the Board of Regents, State of Kansas, do hereby certify that the Kansas Board of Regents Mandatory Retirement Plan was adopted at the 3-16, 2006 meeting of the Board of Regents, State of Kansas.

In Witness Whereof, I have hereunto set my hand and fixed the seal of the Board of Regents, State of Kansas, this 16<sup>th</sup> day of March 2006.

(SEAL)

Reginald L. Robinson  
Reginald L. Robinson, President and CEO  
Board of Regents, State of Kansas

**EXHIBIT A – LIST OF INVESTMENT PROVIDERS**

Teachers Insurance Annuity Association and College Retirement Equities Fund ("TIAA-CREF")

ING Life Insurance and Annuity Company

The Lincoln National Life Insurance Company

Security Benefit Group of Companies

Dated this 16 day of Mar, 2006.

**KANSAS BOARD OF REGENTS**

By: Donna S. Shank  
Chair of the Board

By: [Signature]  
President and Chief Executive Officer of the Board

I, Reginald L. Robinson, the duly qualified President and CEO of the Board of Regents, State of Kansas, do hereby certify that the Kansas Board of Regents Mandatory Retirement Plan was adopted at the 3-16, 2006 meeting of the Board of Regents, State of Kansas.

In Witness Whereof, I have hereunto set my hand and fixed the seal of the Board of Regents, State of Kansas, this 16<sup>th</sup> day of March, 2006.

(SEAL)

[Signature]  
Reginald L. Robinson, President and CEO  
Board of Regents, State of Kansas