UNIVERSITY OF ST. THOMAS WELFARE BENEFIT PLAN

(AS AMENDED AND RESTATE EFFECTIVE JANUARY 1, 2013)
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UNIVERSITY OF ST. THOMAS WELFARE BENEFIT PLAN  
(As Amended and Restated Effective January 1, 2013)

ARTICLE I

INTRODUCTION

Sec. 1.1 Plan; Purpose. The University of St. Thomas Welfare Benefit Plan (the “Plan”) is maintained by the University to provide health and welfare benefits to Qualified Employees. Prior to January 1, 2013, the Plan was known as the University of St. Thomas Flexible Compensation Plan. Effective as of January 1, 2013, the University of St. Thomas Long Term Disability Plan, the University of St. Thomas Life Insurance Plan, and the University of St. Thomas Accidental Death and Dismemberment Plan are merged into this Plan.

Sec. 1.2 Component Benefit Programs. The Plan consists of several Component Benefit Programs, which may include from time to time a group-term life insurance plan under Code § 79, one or more accident or health plans under Code § 105, and/or other plans or arrangements that may provide benefits that have special tax advantages or benefits that do not have special tax advantages under the Code. The Component Benefit Programs that form part of the Plan are included on the List of Component Benefit Programs maintained for the Plan, and each is designated as either an “insured” or “self-funded” Component Benefit Program.

Sec. 1.3 Incorporation by Reference. The documents described under the Benefits provisions and the related Appendix, and the documents related to any Component Benefit Program added to this Plan in the future, as amended from time to time, are hereby incorporated by reference in this Plan in so far as they are applicable to a Participant or eligible family member of a Participant participating in or receiving benefits under that particular Component Benefit Program. The rights and obligations of Participants (and their eligible family members) with respect to a particular Component Benefit Program are governed by the documents applicable to that program, except to the extent expressly provided to the contrary in this Plan. Such rights and obligations include, but are not limited to, eligibility of Participants and their eligible family members, terms and conditions for payment of benefits, rights to continue coverage upon certain events or to convert to an individual policy of coverage, provisions relating to subrogation to claims against third parties, and provisions regarding coordination and subordination of benefit claims.

ARTICLE II

DEFINITIONS AND CONSTRUCTION

Sec. 2.1 Definitions.

(a) “Board” means the board of trustees of the University, and includes any executive committee thereof authorized to act for said board of trustees.

(b) “Claims Administrator” means the entity appointed by the University to administer, or assist in the administration of, claims under any “self-funded” Component Benefit Program.

(c) “Code” means the Internal Revenue Code of 1986, as amended.
(d) “Component Benefit Program” means any one of the benefit programs that forms a part of the Plan, as specified on the List of Component Benefit Programs in the Appendix.

(e) “Employee” means any person employed by the University as a faculty member, an administrative employee, a staff employee, or a service employee (which includes housekeeping, building, grounds, food service workers, security officers, and members of a religious order, as applicable).


(g) “Insurance Carrier” means the entity issuing any insurance policy that governs any “insured” Component Benefit Program, and also includes a health maintenance organization or similar entity that provides benefits under any “group health plan” within the meaning of ERISA § 607.

(h) “Participant” means any Qualified Employee who is eligible to and elects to receive coverage under any Component Benefit Program.

(i) “Qualified Employee” means the following:

   (1) **General Rule.** A Qualified Employee is an Employee who satisfies the following criteria:

   (A) The Employee is one of the following (unless the eligibility requirements of a particular Component Benefit Program provide otherwise):

      i. A full-time regular faculty member, including a Priest of the Archdiocese of St. Paul and Minneapolis (or a member of another religious order, as the case may be), with an appointment as a tenured, tenure track, clinical, distinguished service, limited term, or visiting professor, if s/he is in a position approved to work an authorized .625 FTE or greater;

      ii. An administrative (exempt) Employee, including a Priest of the Archdiocese of St. Paul and Minneapolis (or a member of another religious order, as the case may be), if s/he is regularly employed in a position approved to work an authorized .625 FTE or greater; or

      iii. A staff or service (non-exempt; hourly paid) Employee if s/he is regularly employed in a position approved to work an authorized .625 FTE or greater.

   (B) The Employee is eligible to receive coverage under a Component Benefit Program in accordance with the terms and conditions of eligibility set forth in the policy, document or rules governing the Component Benefit Program.

   (C) The Employee is not excluded under any of the following categories:
i. Any individual who is classified as an independent contractor, or as having any status other than a common-law employee, by the University (regardless of whether such individual is subsequently determined to be a common-law employee or an employee for any other purpose).

ii. Any Employee whose employment by the University is incidental to his/her educational program, such as a student work-study employee or a Priest who is currently a student at the University.

iii. Any individual employed on a temporary or seasonal basis.

iv. An administrative, staff or service person employed in a position approved to work less than .625 FTE.

v. A Priest of the Archdiocese of St. Paul and Minneapolis (or a member of another religious order, as the case may be) who does not meet the requirements described in subsections (1)(A)(i) or (ii) above.

(2) **Collective Bargaining Employees**. An Employee will not be a Qualified Employee during any period that he/she is covered by a bargaining agreement, unless the agreement expressly provides for his/her participation in a Component Benefit Program. Eligibility of employees in a collective bargaining unit is subject to negotiations with the representative of that unit.

(3) **Authorized Leaves of Absence Under FMLA and USERRA**. An employee will continue as a Qualified Employee during any period that he/she is on a leave of absence under the Family and Medical Leave Act of 1993 or the Uniformed Services Employment and Reemployment Rights Act provided he/she was a Qualified Employee immediately prior to such leave or absence, and further provided that he/she would have continued as a Qualified Employee if he/she had not been on the leave of absence.

(j) “Termination of Employment” means resignation, discharge, retirement, death or the happening of any other event or circumstance that results in the severance of the employer-employee relationship with the University.

(k) “University” means the University of St. Thomas, a Minnesota non-profit corporation, with its primary address at 2115 Summit Avenue in St. Paul, Minnesota.

**Sec. 2.2 Choice of Law.** The Plan will be governed by the laws of the State of Minnesota to the extent such laws are not preempted by the laws of the United States. All controversies, disputes, and claims arising hereunder must be submitted to the United States District Court for the District of Minnesota.
ARTICLE III

PARTICIPATION

Sec. 3.1 Participation.

(a) Qualified Employees. A Qualified Employee will receive coverage under a Component Benefit Program for himself/herself and, as applicable, for his/her spouse, and eligible family members, in accordance with the terms and conditions of eligibility set forth in the policy or document governing the Component Benefit Program (or, if such policy or document does not contain terms and conditions of eligibility, in accordance with the eligibility rules established by the University for the Component Benefit Program).

Sec. 3.2 Enrollment Procedures.

(a) General Provisions. A Qualified Employee must complete such enrollment forms, provide such evidence of eligibility or insurability, provide such other documentation, and comply with such procedures and deadlines as may be prescribed by the University, the Claims Administrator, or the Insurance Company as a condition to the receipt of coverage under any Component Benefit Program.

(b) Elections Through Cafeteria Plan. A Participant may be eligible to make his/her election to receive coverage under a Component Benefit Program through the Code Section 125 cafeteria plan sponsored by the University (the “University Cafeteria Plan”). Any such election will be irrevocable to the extent, and subject to such exceptions, set forth in the University Cafeteria Plan.

(c) Family and Medical Leave Act and Uniformed Services Employment and Reemployment Rights Act. If a Participant goes on a leave of absence under the Family and Medical Leave Act of 1993 (“FMLA”), or the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), he/she will be permitted at the start of such leave to revoke his/her election to receive coverage under any “group health plan” within the meaning of the FMLA or USERRA, as applicable. In addition, a Participant who is on a leave of absence under the FMLA or USERRA, as applicable, will have the same rights to revoke or change elections as he/she would have had if he/she had not been on the leave of absence.

Sec. 3.3 Medicaid Eligibility. The fact that an individual is eligible for or receives benefits under Medicaid will not be taken into account in determining whether the individual is eligible for coverage under any Component Benefit Program that is a “group health plan” within the meaning of ERISA § 607 or in making benefit payments under any such Component Benefit Program.

Sec. 3.4 Cessation of Participation. A Participant will remain such throughout the period he/she remains a Qualified Employee and continues to satisfy the terms and conditions of eligibility set forth in the policy, document or rules governing the Component Benefit Program.
ARTICLE IV

BENEFITS

Sec. 4.1 Benefits. The benefits provided hereunder will be determined in accordance with the terms and conditions of the policies or documents governing the Component Benefit Programs that form part of the Plan.

Sec. 4.2 Source of Benefits.

(a) Insured Component Benefit Program. The benefits to which any person is entitled under any “insured” Component Benefit Program will be provided by the Insurance Carrier in accordance with the provisions of the policy governing such Component Benefit Program, and no benefits are provided directly by the University with respect to any such Component Benefit Program. The University has no obligation to pay benefits with respect to any such “insured” Component Benefit Program and is not the source of any “insured” benefit. With respect to an “insured” Component Benefit Program, the University’s sole obligation is to remit its share of the premiums (and the Participant’s share of the premiums, if any) to the Insurance Carrier.

(b) Self-Funded Component Benefit Program. The benefits to which any person is entitled under any “self-funded” Component Benefit Program will be provided from the general assets of the University in accordance with the provisions of the document governing such Component Benefit Program or, in the alternative, from the trust or other funding arrangement established by the University to fund such Component Benefit Program.

Sec. 4.3 Assigning Expenses to Applicable Plan Years. Unless expressly provided otherwise in the document governing the Component Benefit Program, a covered expense under a “self-funded” Component Benefit Program is deemed to have been incurred when the service is provided or product is purchased that gives rise to the expense, and any payment or reimbursement under such a Component Benefit Program relates to the plan year in which the expense is incurred.

Sec. 4.4 Continuation Coverage.

(a) COBRA Coverage. Continuation coverage will be made available with respect to any “group health plan” within the meaning of ERISA § 607 to the extent so required under ERISA § 602.

(b) FMLA Coverage. Continuation coverage will be made available with respect to any “group health plan” within the meaning of the Family and Medical Leave Act of 1993 (“FMLA”) to the extent so required under the FMLA.

Sec. 4.5 Beneficiary Designation.

(a) General Rule. A Participant may designate any person (natural or otherwise, including a trust or estate) as his/her beneficiary to receive a death benefit payable under any Component Benefit Program that provides death benefits (for example, life insurance, death benefits under an accidental death and dismemberment program).

Sec. 4.5(b) will apply unless different rules or procedures are provided in the policies or documents governing a Component Benefit Program.
Method and Form of Designation. A beneficiary designation must be made on such form and in accordance with such rules as may be prescribed for this purpose by the University in the case of a self-funded Component Benefit Program, or by the Insurance Carrier in the case of an “insured” Component Benefit Program. A valid beneficiary designation form will be effective (and will revoke all prior designations) only if it is received by the University or Insurance Carrier prior to the date of death of the Participant; or the postmark of the mailing is prior to the date of death of the Participant and it is received by the University or Insurance Carrier after the death of the Participant.

The University or Insurance Carrier may rely on the latest valid beneficiary designation form on file with it (or may direct that payment be made pursuant to the default provision if an effective designation is not on file) and will not be liable to any person making claim for such payment under a subsequently filed beneficiary designation form or for any other reason.

If a Participant designates a beneficiary by name that is accompanied by a description of a business, legal or family relationship to the Participant (for example, “Spouse” or “creditor”), such beneficiary will be deemed to have predeceased the Participant if such relationship has been dissolved or no longer exists at the death of the Participant. If a Participant designates a beneficiary by name that is accompanied by a description of a personal relationship to the Participant (for example, “friend”), the dissolution of that relationship will not affect the designation. Further, any other information provided about a beneficiary on a beneficiary designation form (for example, address or tax identification numbers) will be deemed to have been provided solely to assist in identifying or locating the beneficiary and, if that information is inaccurate or has changed, it will not affect the designation.

The identity of the beneficiary in each case will be determined by the University in the case of a self-funded Component Benefit Program, or Insurance Carrier in the case of an “insured” Component Benefit Program, and will be conclusive on all persons.

Sec. 4.6 Forfeitures. Forfeitures from any Component Benefit Program shall be used first to reduce the cost of administering the Plan; and second, to provide increased benefits or compensation to Participants in subsequent years in any weighted or uniform fashion that the University deems appropriate, consistent with applicable regulations. In addition, any Component Benefit Program benefit payments that are unclaimed (e.g., uncashed benefit checks) by June 30 following the plan year in which the benefit payment was made available, shall be forfeited and applied as described in this section.

ARTICLE V
CONTRIBUTIONS

Sec. 5.1 Employee Contributions. The University will determine from time to time what portion of the premium charged by the Insurance Carrier for coverage under any “insured” Component Benefit Program, and/or what portion of the cost of coverage under any “self-funded” Component Benefit Program, is to be charged to the Participant as a condition to receiving coverage under such Component Benefit Program. Such premium or other cost of coverage may be withheld from the compensation paid to the Participant by his/her University on an after-tax basis, or on a pre-tax basis to the extent coverage
under such Component Benefit Program is elected through the University Cafeteria Plan, or may be collected from the Participant through such other means as may be determined by the University.

Sec. 5.2 University Contributions. The University will pay the difference between the premium or other cost of coverage under a Component Benefit Program and the portion of such premium or cost that is charged to the Participant. All such contributions for benefits which are provided under an insurance policy or contract relating to the provision of health care shall be paid to the appropriate Insurance Carrier or other entity within such time as may be determined by the University. All other such contributions shall be paid in such other manner as may be directed by the University within such time as may be directed by the University.

Sec. 5.3 Continuation Coverage.

(a) COBRA Coverage. With respect to Component Benefit Programs covered by the federal COBRA continuation coverage law, any individual who elects continuation coverage upon the occurrence of a “qualifying event” under ERISA § 602 will be charged a premium for such coverage in an amount determined by the University, not to exceed 102% of the “applicable premium” within the meaning of ERISA § 604 (or 150% of such “applicable premium” with respect to continuation coverage provided after the 18th month of continuation coverage for a disabled Participant described in the last sentence of ERISA § 602(2)(A) and his or her qualifying eligible family members, if such described Participant elects COBRA coverage).

(b) FMLA Coverage. Any individual who elects continuation coverage during any leave of absence under the Family and Medical Leave Act of 1993 (“FMLA”) will be charged a premium for such coverage equal to the premium being paid by such individual immediately prior to the leave (subject to any adjustment that would have been made in the premium if the individual had not been on leave of absence). If premiums were being paid by payroll deduction prior to the leave of absence, and the leave is a paid leave, premiums will continue to be paid by payroll deduction during the leave. In all other cases, premiums can be paid in accordance with any method permitted under the FMLA that is acceptable to the University (including prepayment of premiums through the University Cafeteria Plan, if so permitted by the University).

(c) USERRA Coverage. Any individual who elects continuation coverage during any leave of absence under the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) will be charged a premium for such coverage equal to the premium being paid by such individual immediately prior to the leave (subject to any adjustment that would have been made in the premium if the individual had not been on leave of absence). If premiums were being paid by payroll deduction prior to the leave of absence, and the leave is a paid leave, premiums will continue to be paid by payroll deduction during the leave. In all other cases, premiums can be paid in accordance with any method permitted under the USERRA that is acceptable to the University (including prepayment of premiums through the University Cafeteria Plan, if so permitted by the University).
ARTICLE VI
ADMINISTRATION OF THE PLAN

Sec. 6.1 Administration by the University.
(a) Administrator. The University is the “administrator” of the Plan and each Component Benefit Program, with authority to control and manage the operation and administration of the Plan and each Component Benefit Program and make all decisions and determinations incident thereto, to the extent that such authority does not rest with the Insurance Carrier under the terms of any “insured” Component Benefit Program. Action on behalf of the University as administrator may be taken by any of the following:

(1) The Board.

(2) The President of the University.

(3) Any individual, committee or entity to whom responsibility for the operation and administration of the Plan is allocated by action of one of the above.

(b) Claims Administrator. The University may from time to time contract with or appoint a Claims Administrator to assist the University in the handling of claims under any “self-funded” Component Benefit Program and to provide advice and assistance in the general administration of any “self-funded” Component Benefit Program. The Claims Administrator will have the authority to direct payments with respect to the Component Benefit Program and will have such other responsibility and authority as is delegated by the University.

Sec. 6.2 Verification of Expenses. The University, Claims Administrator, or Insurance Carrier may require a Participant to verify expenses for which he/she is seeking payment or reimbursement in any manner that the University, Claims Administrator, or Insurance Carrier deems appropriate.

Sec. 6.3 Evidence. Evidence required of anyone under the Plan or a Component Benefit Program may be by certificate, affidavit, document, or other instrument which the person acting in reliance thereon considers to be pertinent and reliable and to be signed, made, or presented to the proper party.

Sec. 6.4 Correction of Errors And Duty to Review Information.
(a) Correction of Errors. Errors may occur in the operation and administration of the Plan or any Component Benefit Program. The University, Claims Administrator, or Insurance Carrier, as appropriate, shall have the right to cause such equitable adjustments to be made to correct for such errors as it considers appropriate, which will be final and binding on the Participant and his/her eligible family members and beneficiaries.

(b) Participant Duty to Review Information. Each Participant, eligible family member and beneficiary has the duty to promptly review any information that is provided or made available to the Participant, eligible family member or beneficiary and that relates in any way to the operation and administration of the Plan or elections made under the Plan (for example, to review payroll stubs to make sure a contribution election is being implemented appropriately, to review benefit statements to make sure elections are being implemented...
appropriately, to review summary plan descriptions, etc.) and to notify the University of any error made in the operation or administration of the Plan that affects the Participant, eligible family member or beneficiary within thirty (30) days of the date such information is provided or made available to the Participant, eligible family member or beneficiary (for example, the date the information is sent by mail or the date the information is provided or made available electronically). If the Participant, eligible family member or beneficiary fails to review any information or fails to notify the University of any error within such period of time, he/she will not be able to bring any claim seeking relief or damages based on the error.

If the University is notified of an alleged error within the thirty (30) day time period, the University will investigate and either correct the error or notify the Participant, eligible family member or beneficiary that it believes that no error occurred. If the Participant, eligible family member or beneficiary is not satisfied with the correction (or the decision that no correction is necessary), he/she will have sixty (60) days from the date of notification of the correction (or notification of the decision that no correction is necessary), to file a formal claim under the claims procedures established for the Plan.

Sec. 6.5 Claims and Limitations on Actions.

(a) Claims Procedures. The University will establish a claims procedure for each “self-funded” Component Benefit Program as a separate written document (which may be a section in the summary plan description) that will be deemed to form a part of the Component Benefit Program and the Plan and is hereby incorporated by reference into the Plan.

In the case of an “insured” Component Benefit Program, all benefits will be paid, and benefit determinations will be made, in accordance with the claims procedure established by the Insurance Carrier.

(b) Limitation on Actions After Exhaustion of Claims Process. A claimant must follow the claims procedure (and comply with all applicable deadlines established as part thereof) as a condition to the receipt of any benefit under the Component Benefit Program, and as a condition to the availability of any other relief under or with respect to the Component Benefit Program or the Plan. The failure of a claimant to follow the claims procedure (including the failure to comply with the deadlines established as part thereof) will extinguish his/her right to file a subsequent claim or to file a lawsuit with respect to the claim. In the case of a “self-funded” Component Benefit Program, if a claimant follows the claims procedure, and his/her final appeal is denied, he/she will have one year to file a lawsuit with respect to that claim, and failure to meet the one-year deadline will extinguish his/her right to file a lawsuit with respect to that claim. In the case of an “insured” Component Benefit Program, any limitation period will be determined by the terms of the insurance policy or applicable law.

Sec. 6.6 Waiver of Notice. Any notice required hereunder may be waived by the person entitled thereto.

Sec. 6.7 Indemnification. The University agrees to indemnify and hold harmless, to the extent permitted by law, each director, officer, and Employee, specifically including the University’s HIPAA privacy officer and the Board, against any and all liabilities, losses, costs, or expenses (including legal fees) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against such
person at any time by reason of such person’s services in connection with the Plan or any Component Benefit Program, but only if such person did not act dishonestly, or in bad faith, or in willful violation of the law or regulations under which such liability, loss, cost, or expense arises.

Sec. 6.8 Exercise of Authority. The University, Claims Administrator, and/or Insurance Carrier, and any other person who has authority with respect to the management or administration of the Plan or any Component Benefit Program, may exercise that authority in its/his/her full discretion, subject only to the duties imposed under ERISA. This discretionary authority includes, but is not limited to, the authority to make any and all factual determinations and interpret all terms and provisions of the Plan or any Component Benefit Program that are relevant to the issue under consideration. The exercise of authority will be binding upon all persons; and it is intended that the exercise of authority will be given deference in all courts of law to the greatest extent allowed under law; and will not be overturned or set aside by any court of law unless found to be arbitrary and capricious.

Sec. 6.9 Telephone or Electronic Notices and Transactions. Any notice that is required to be given under the Plan or any Component Benefit Program to a Participant, eligible family member or beneficiary, and any action that can be taken under the Plan or any Component Benefit Program by a Participant, eligible family member or beneficiary (including enrollments, changes in elections, claims for benefits, consents, etc.), may be made by means of voice response or other electronic system to the extent so authorized by the University and permitted under the Code, ERISA, and any other applicable federal law.

Sec. 6.10 Delivery of Notices. Notwithstanding any provision to the contrary contained in a contract or comparable agreement used to fund benefits under an “insured” Component Benefit Program, the University shall have no obligation to provide any notice or similar communication to Employees or Participants not otherwise required to be provided by the University under ERISA or the Code. Delivery of all notices or other Employee or Participation communication not otherwise required under ERISA or the Code shall be the exclusive responsibility of the Insurance Carrier providing benefits under such “insured” Benefit Component Program.

Sec. 6.11 Coordination of Benefits. If a Component Benefit Program that provides health care benefits (including medical, dental, vision or prescription drug benefits) does not have a policy or procedure regarding coordination of benefits, the Group Coordination of Benefits Model Contract Provisions published by the National Association of Insurance Commissioners (“NAIC”) will be deemed to form a part of, and are hereby incorporated by reference into, such Component Benefit Program.

Notwithstanding the above, a medical spending account under any cafeteria plan (within the meaning of Code § 125) maintained by the University will pay benefits without regard to coordination of benefit concepts. Additionally, if a Participant while covered under a Component Benefit Program is also covered under an HMO (Health Maintenance Organization) provided by another University and receives treatment through the HMO provider, no benefits will be payable for such treatment under the Component Benefit Program.

Sec. 6.12 Reimbursement/Subrogation/Right of Reduction. In the event that a Component Benefit Program that is part of this Plan does not have a policy or procedure regarding reimbursement/subrogation/right of reduction, this Section shall apply to such program. The Plan does not cover any expenses for which another party is responsible as a result of having caused or contributed to an illness, injury, or other loss. However, in such situations, a Component Benefit Program may pay benefits to a covered person, and, if it does, the Plan has a right to recover that payment (whether through a constructive trust or equitable lien, or other equitable remedy) from any available sources (including, but not limited to, any recovery received from a third party and any amount payable under any liability,
auto, or vehicle insurance coverage) to the extent of the claims the Component Benefit Program paid. The Plan may also recover the Component Benefit Program’s payments by other means, including offsetting future benefits paid by the Component Benefit Program.

The Plan has the right to full and complete reimbursement, subrogation, or reduction of all payments the Component Benefit Program makes to or on behalf of a covered person.

(a) This right comes first (prior to any claim by any other party or attorney against the recovery) even if the covered person has not been compensated for all of his/her injuries and even if the recovery is described as being for other than medical expenses (for example, pain and suffering or emotional distress).

(b) This right is not dependent upon the third party admitting responsibility, and is not dependent upon the execution of a separate agreement by the covered person (or that person’s legal representative) granting the right of recovery. By participating in and receiving benefits under the Component Benefit Plan, the covered person grants an equitable lien by agreement against the proceeds of any such recovery to the extent of the claims it has paid. If the injured person is a minor, any settlement or award received by the minor, the minor’s trustee, guardian, parent, or other representative will be subject to this provision regardless of state or federal law and/or whether the minor’s representative has access or control of any recovered funds.

(c) By filing a claim under the Plan, a covered person accepts the terms of this reimbursement/subrogation/right of reduction provision. The covered person (or that person’s legal representative) must immediately give written notice to the University upon pursuing a recovery from a responsible third party. The covered person must fully cooperate and perform all actions necessary to secure the Plan’s right of recovery. The covered person must do nothing to prejudice a right of recovery, such as accepting a settlement that is less than the value of the claim. If a covered person seeks recovery from a third party, the Plan is not responsible for any share of attorney fees or costs incurred in pursuing or obtaining any recovery or settlement unless it enters into a separate written agreement that specifically so provides. The rights of the Plan will not be defeated by the so-called “Fund Doctrine,” or “Common Fund Doctrine,” or “Attorney’s Fund Doctrine.”

(d) A covered person must not assign any rights to a recovery to any other party (including minor children) without the express prior written consent of the University.

(e) If a covered person fails or refuses to honor the obligations under these provisions, the Plan will be entitled to recover from the covered person any costs incurred in enforcing the terms hereof including, but not limited to, attorney’s fees, litigation, court costs, and other expenses.

(f) For purposes of this Section, the term “covered person” includes a Participant, any eligible family members of a Participant, and any person making claims through or on behalf of a Participant or eligible family members of a Participant, including relatives, heirs, assigns and successors.

Sec. 6.13 Provision of Protected Health Information to University.

(a) Permitted Uses and Disclosures. In accordance with the Health Insurance Portability and Accountability Act of 1996 and applicable regulations issued and effective thereunder
(the “HIPAA Privacy Rules”), a Component Benefit Program may disclose Protected Health Information (PHI) (as defined in 45 C.F.R. § 160.103) to the University in order for the University to carry out Plan administration functions that the University performs consistent with the provisions of subsections (b) and (c) below.

A Component Benefit Program may not:

(1) disclose or permit an insurance company, insurance service, insurance organization, or HMO to disclose PHI to the University unless the HIPAA Privacy notice covering the Component Benefit Program contains a statement describing such disclosure; or

(2) disclose PHI to the University for the purpose of employment-related actions or decisions or in connection with any other benefit or employee benefit plan of the University, unless otherwise authorized by the individual who is the subject of the PHI or required by the HIPAA Privacy Rules.

(b) Conditions of Disclosure. A Component Benefit Program may disclose PHI to the University as described in subsection (a) only upon receipt of a certification by the University that the Component Benefit Program has been amended to incorporate the following provisions and only if the University agrees to:

(1) Not use or further disclose the PHI other than as permitted or required by the Component Benefit Program’s controlling documents or as required by law;

(2) Ensure that any agents, including a subcontractor, to whom it provides PHI shall agree to the same restrictions and conditions that apply to the University with respect to such PHI;

(3) Not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the University;

(4) Report to the Component Benefit Program any use or disclosure of the PHI that is inconsistent with the uses or disclosures provided herein, if and when the University becomes aware of such inconsistent use or disclosure;

(5) Authorize the Component Benefit Program to make PHI available to individuals, in accordance with HIPAA Privacy Rules and consistent with the HIPAA Privacy policy applicable to the Component Benefit Program;

(6) Authorize the Component Benefit Program to make PHI available to individuals for amendment and to incorporate into PHI any such amendments, in accordance with the HIPAA Privacy Rules and consistent with the HIPAA Privacy policy applicable to the Component Benefit Program;

(7) Authorize the Component Benefit Program to make available the information required to provide an accounting of disclosures, in accordance with the HIPAA Privacy Rules and consistent with HIPAA Privacy policy applicable to the Component Benefit Program;
(8) Make its internal practices, books, and records relating to the use and disclosure of PHI received from the Component Benefit Program available to the Secretary of Health and Human Services for purposes of determining the Component Benefit Program’s compliance with the HIPAA Privacy Rules;

(9) If feasible, return or destroy all PHI that the University received from the Component Benefit Program and which the University no longer needs for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, the University shall limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible; and

(10) Ensure that the adequate separations described in subpart (c) below are established.

(c) Adequate Separations. The University shall ensure that the following adequate separations are established between the Component Benefit Program and the University:

(1) Only the following persons under the control of the University shall be given access to PHI: employee benefits personnel, employees in the University’s legal department, information technology representatives whose job responsibilities include designing and supporting the computer systems used in administering the Plans, and members of the University’s Board (the “Group”);

(2) Access to and use of PHI by the Group shall be restricted to the Plan administration functions that the University performs for the Component Benefit Program; and

(3) Non-compliance by the Group shall be resolved by applying the disciplinary measures specified in the Component Benefit Program’s HIPAA Privacy sanctions procedures.

(d) Security of Electronic Protected Health Information. In accordance with the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. §§ 160 and 164, the University agrees to reasonably and appropriately safeguard Electronic Protected Health Care Information (“EPHI”) (as defined in 45 C.F.R. § 160.103) created, received, maintained or transmitted to or by the University on behalf of the Component Benefit Program and shall:

(1) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of the Component Benefit Program;

(2) Ensure that the separations described in subsection (c) above are supported by reasonable and appropriate security measures;

(3) Ensure that any agent, including a subcontractor, to whom it provides EPHI agrees to implement reasonable and appropriate security measures to protect EPHI; and
(4) Report to the Component Benefit Program any security incident of which it becomes aware.

(e) For purposes of this Section, Component Benefit Program means only those Component Benefit Programs which are subject to the HIPAA Privacy Rules. For “insured” Component Benefit Programs, HIPAA compliance is the responsibility of the Insurance Carrier and nothing in this Section 6.13 is intended to change that result.

ARTICLE VII

AMENDMENT OR TERMINATION

Sec. 7.1 Amendment. The University expressly reserves the power to amend the Plan at any time and from time to time (including the power to amend any Component Benefit Program and to replace any Claims Administrator or Insurance Carrier). The Plan may be amended:

(a) By resolution of the Board.

(b) By signed writing of the President of the University.

(c) By signed writing of any other person or committee to whom amendment authority has been delegated by the Board of the University to the extent that amendment authority has been delegated by the Board of the University.

No action by any person or body with amendment authority will constitute an amendment to the Plan unless it is expressly designated as an amendment to the Plan.

Sec. 7.2 Termination. The University may terminate the Plan or any Component Benefit Program at any time and for any reason by action of the Board. Notwithstanding the foregoing, however, the List of Component Benefit Programs can be amended by written action of the President of the University or by any other person or committee to whom such authority has been delegated by the Board or the President of the University.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Sec. 8.1 Examinations. The University, Claims Administrator, or Insurance Carrier, at its own expense, will have the right and opportunity to have a physician designated by it to examine any individual who files a claim for benefits under any Component Benefit Program when and as often as it may reasonably require during the pendency of the claim. The University, Claims Administrator, or Insurance Carrier, at its own expense, also will have the right and opportunity to conduct an autopsy on any deceased individual who files a claim, or with respect to whom a claim has been filed, under any Component Benefit Program. These rights are in addition to, not in lieu of, any rights to require an examination or autopsy that is set forth in any policy or document governing the Component Benefit Program.
Sec. 8.2 Non-Alienation of Benefits. A Participant may not assign, pledge, or otherwise dispose of any benefit under any Component Benefit Program prior to actual receipt thereof, whether voluntarily or involuntarily, or directly or indirectly, and benefits under a Component Benefit Program will not be subject to attachment, garnishment, execution or levy of any kind; provided that:

(a) This provision will not prevent assignments or other payments to third parties to the extent that the terms and conditions of any Component Benefit Program expressly allow for such payments.

(b) In the case of any Component Benefit Program that is a “group health plan” within the meaning of ERISA § 607, this provision will not prevent payments to a child or the custodial parent or legal guardian of a child made pursuant to a “qualified medical child support order” within the meaning of ERISA § 609.

(c) In the case of any Component Benefit Program that is a “group health plan” within the meaning of ERISA § 607, this provision will not prevent payments from being made in accordance with any assignment of rights made by on or behalf of an individual that is required under any state law governing Medicaid; and, to the extent that an individual receives benefits under Medicaid under circumstances where the Component Benefit Program has a legal liability to make payments for medical care, such payments will be made in accordance with any state law governing Medicaid that provides that the state has acquired a right to such payments.

In addition, all benefits payable under any Component Benefit Program are subject to set-off for debts owed by the Participant to the University to the extent permitted by law.

Sec. 8.3 Not a Contract of Employment. The Plan is not an employment agreement and does not assure the continued employment of any Employee or Participant for any time or period.

Sec. 8.4 Plan Benefits Are Unsecured. A Participant will not, by virtue of participating in any Component Benefit Program, have any interest in any specific asset or assets of the University.

Sec. 8.5 Liability for Component Benefit Programs.

(a) Insured Component Benefit Program. In the case of an “insured” Component Benefit Program, the sole obligation of the University under such Component Benefit Program is to apply for the coverage and transmit the premiums to the Insurance Carrier. Neither the University, nor any officer, director or Employee, will have any liability to any individual for any losses or damages related to the refusal of the Insurance Carrier to issue a policy or other contract, the cancellation of a contract by the Insurance Carrier, the denial of a claim for benefits by the Insurance Carrier, or the inability of the Insurance Carrier to pay benefits when due.

Neither the University, nor any officer, director or Employee, will have any liability to any individual for any losses or damages related to the refusal or failure of an Insurance Carrier to deliver, distribute or otherwise provide any notice or other Employee or Participant communication not otherwise required to be provided under ERISA or the Code by the University.
(b) **Self-Funded Component Benefit Program.** In the case of a “self-funded” Component Benefit Program, a Participant has only an unsecured contractual right to receive payments in accordance with the terms of the Component Benefit Program.

**Sec. 8.6 Tax Consequences.** The University does not make any representation or guarantee to any Participant or any other individual that any amounts deducted from compensation or benefits paid under the Plan or any Component Benefit Program will be excludable from his/her gross income for federal or state income or other tax purposes, or that any particular federal or state tax treatment will apply with respect thereto. Each Participant or other individual is solely responsible for determining whether payments under the Plan or Component Benefit Program are excludable from his/her gross income for federal and state income tax purposes, and will notify the University if he/she has reason to believe that any such payment is not excludable.

**Sec. 8.7 Effect on Other Benefit Programs.** For purposes of other benefit programs maintained by the University, the compensation of a Participant will be considered the amount payable to the Participant before his/her compensation is either increased or reduced in accordance with the provisions of the Plan or any Component Benefit Program, unless the other benefit program specifically provides a contrary result.

**Sec. 8.8 Severability of Provisions.** If any provision of the Plan or any Component Benefit Program is held illegal or invalid for any reason, such illegality or invalidity will not affect the remaining provisions of the Plan or Component Benefit Program, but the Plan or Component Benefit Program will be construed and enforced as if such illegal or invalid provision had never been inserted herein.

**Sec. 8.9 Terms of Gender And Number.** Whenever used in the Plan or any Component Benefit Program, unless the context otherwise indicates, words in the masculine will be deemed to include the feminine, and the singular will be deemed to include the plural.

**Sec. 8.10 Text to Control.** The headings of sections in the Plan or any Component Benefit Program are included solely for convenience of reference, and if there is any conflict between such headings and the text of the Plan or Component Benefit Program, the text will control.

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### APPENDIX - LIST OF COMPONENT BENEFIT PROGRAMS

The following programs are part of the Plan, as of January 1, 2013:

<table>
<thead>
<tr>
<th>Component Benefit Plan/Program</th>
<th>Self-funded/ Insured</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group health program (including medical and prescription benefits)</td>
<td>Self-funded</td>
</tr>
<tr>
<td>Group dental program</td>
<td>Self-funded</td>
</tr>
<tr>
<td>Group-term life insurance program</td>
<td>Insured</td>
</tr>
<tr>
<td>Voluntary group-term life insurance program</td>
<td>Insured</td>
</tr>
<tr>
<td>Accidental death and dismemberment plan</td>
<td>Insured</td>
</tr>
<tr>
<td>Short-term disability plan</td>
<td>Self-funded</td>
</tr>
<tr>
<td>Long-term disability plan</td>
<td>Insured</td>
</tr>
<tr>
<td>Legal Services plan</td>
<td>Insured</td>
</tr>
<tr>
<td>Vision plan</td>
<td>Insured</td>
</tr>
<tr>
<td>Long-term care plan</td>
<td>Insured</td>
</tr>
<tr>
<td>Flexible spending account plan</td>
<td>Self-funded</td>
</tr>
<tr>
<td>Employee Assistance Program</td>
<td>Self-funded</td>
</tr>
<tr>
<td>Any other welfare benefit program described in a summary plan description issued by the University, as amended from time to time, as being part of this Plan.</td>
<td></td>
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</tbody>
</table>