Baker University
Defined Contribution
Retirement Plan
(2002 Restatement)

(Incorporating Amendments One and Two)
Baker University
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Retirement Plan
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ARTICLE I: History and Purpose of Plan

1.1 History and Purpose of Plan. The Institution established the Plan as of January 1, 1949. The Plan has been amended from time to time since then, and the Institution desires to, and by this amendment hereby does, amend and restate the Plan in its entirety generally effective January 1, 2002.

This Plan is intended to meet the requirements of Section 403(b) of the Code, and other requirements of applicable law, including the applicable provisions of the Economic Growth and Tax Relief Reconciliation Act of 2002.

Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants.

Each Participant’s benefits are based solely on the amounts of Plan Contributions to the Participant’s Accumulation Account(s) and earnings, if any. All benefits under the Plan are fully funded and provided through the Funding Vehicle(s) selected by the Participant. Benefits are not subject to, nor covered by, federal plan termination insurance.
ARTICLE II: Definitions

2.1 *Accumulation Account* means the separate account(s) established for each Participant. The current value of a Participant’s Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.

2.2 *Annual Additions* means the sum of the following amounts credited to a Participant’s Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(1)(2) and 419A(d)(2) of the Code, if any.

2.3 *Beneficiary(ies)* means the individual, institution, trustee, or estate designated by the Participant to receive the Participant’s benefits at his or her death.

2.4 *Board* means the Institution’s Board of Trustees.

2.5 *Break in Service* means a 12-month period measured from an Eligible Employee’s Termination of Employment during which such Eligible Employee does not perform any service as an employee of the Institution.

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

2.7 *Compensation* means the amount paid by the Institution to a Participant that must be reported as wages on the Participant’s Form W-2, plus compensation that is not currently includable in the Participant’s gross income because of the application of the Code Sections 125, 132(f)(4), 402(g)(3), 403(b) and 457.

In addition to other applicable limitations stated in the plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each employee taken into account under the plan shall not exceed the limit of Code Section 401(a)(17) ($200,000 for 2002).

2.8 *Date of Employment or Reemployment* means the effective date of the appointment for a faculty member. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee’s most recent period of service with the Institution.

2.9 *Eligible Employee* means all employees of the Institution except adjunct faculty and part-time temporary employees who are scheduled to work less than twenty (20) hours per week. The Institution’s employment classification of a person shall be binding and conclusive for all purposes of the Plan and shall remain in effect regardless of any contrary classification or reclassification of such person by any other person or entity, including without limitation the Internal Revenue Service, the Department of Labor or a court of competent jurisdiction.

2.10 *Eligible Employer* means any educational organization other than the Institute.
2.11 **Fund Sponsor** means an insurance, variable annuity or investment company that provides Funding Vehicles available to Participants under this Plan.

2.12 **Funding Vehicles** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

2.13 **Institution** means Baker University.

2.14 **Institution Plan Contributions** means contributions made by the Institution under this Plan pursuant to Section 4.1(a) and 4.1(c).

2.14A **IPD** means the Institute for Professional Development, a subsidiary of Apollo Group, Inc.

2.15 **Limitation Year** means a calendar year.

2.16 **Normal Retirement Age** means age 65.

2.17 **Participant** means any Eligible Employee of the Institution participating in this Plan.

2.18 **Participant Plan Contributions** means contributions made pursuant to Section 4.1(b).

2.19 **Plan** means the Institution’s Defined Contribution Retirement Plan as set forth in this document.

2.20 **Plan Contributions** means Institution Plan Contributions and Participant Plan Contributions.

2.21 **Plan Entry Date** means the first day of the month following the date that the employee has met the participation requirements set forth in Article III.

2.22 **Plan Year** means January 1 through December 31.

2.23 **Qualified Election** means a waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity shall not be effective unless: (a) the Participant’s spouse consents in writing to the election; (b) the election designates a specific Beneficiary(ies), including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (unless the spouse expressly permits designations by the Participant without any further spousal consent); (c) the spouse’s consent acknowledges the effect of the election; and (d) the spouse’s consent is witnessed by a Plan representative or notary public. Additionally, a Participant’s waiver of the Qualified Joint and Survivor Annuity shall nor be effective unless the election designates a form of benefit payment that may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative
that there is no spouse or that the spouse cannot be located, a waiver will be determined a Qualified Election.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary(ies), and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A Participant without the consent of the spouse may make a revocation of a prior waiver at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Article VI.

2.24 Qualified Joint and Survivor Annuity means an immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse that is nor less than 50 percent (and not more than 100 percent) of the amount payable during the joint lives of the Participant and the spouse that can be purchased with the Participant’s vested Accumulation Account. The percentage of the survivor annuity under the Plan shall be 50 percent.

2.25 Qualified Pre-retirement Survivor Annuity means an annuity for the life of the surviving spouse of a deceased Participant the actuarial equivalent of which is nor less than 50 percent of the Participant’s Accumulation Account(s) at the date of death.

2.26 Termination of Employment means a person’s severance from employment with the Institution or an Eligible Employer, as applicable, as determined by the Institution or such Eligible Employer, other than pursuant to an authorized leave of absence granted in accordance with a uniform and nondiscriminatory leave of absence policy. Notwithstanding the foregoing, a person will be deemed to have incurred a severance from employment even though he continues to be employed by another entity that is treated as a related employer of the Institute within the meaning of Code Section 414(b) relating to controlled groups of corporations, Code Section 414(c) relating to controlled groups of trades or businesses, Code Section 414(m) relating to affiliated service groups, or Code Section 414(o), if such other entity is not an eligible employer of a Code Section 403(b) tax sheltered annuity (e.g., a person transfers employment from a Code Section 501(c)(3) organization to a for-profit subsidiary of such organization).

2.27 Year of Service means a 12-month period of time that elapses from the date an Eligible Employee first performs duties for the Institute for which such individual is paid or entitled to payment by the Institute and ending on the date such individual incurs a Termination of Employment. The period of service of an individual on an approved leave of absence shall continue until such date the individual incurs a Termination of Employment. Less than whole year periods of service shall be aggregated on the basis that 365 days of service, or 12 months of service, equal one whole Year of Service.
For purposes of the Employer contribution described in Section 4.1(a), an Eligible Employee who (i) was employed by an Eligible Employer or (ii) was employed by IPD and assigned to the Institute’s account, during the period immediately preceding such Eligible Employee’s Date of Employment with the Institute will receive credit for Year(s) of Service with such Eligible Employer or IPD (excluding service with IPD for periods prior to April 1, 1990), subject, however, to the following limitations:

(a) An Eligible Employee who was employed as a graduate assistant by an Eligible Employer during the period immediately preceding an Eligible Employee’s Date of Employment shall receive three months credit for each semester as a graduate assistant for such Eligible Employer; provided, however, no such former graduate assistant shall be credited with a total of more than one Year of Service for any period prior to his Date of Employment.

(b) An Eligible Employee who was employed as a part-time faculty member by an Eligible Employer during the period immediately preceding an Eligible Employee’s Date of Employment shall receive six months credit for each full academic year as a part-time faculty member; provided, however, no such Eligible Employee shall be credited with a total of more than one Year of Service for any period prior to his Date of Employment.

For purposes of the Employer matching contribution described in Section 4.1(c), an Eligible Employee who was employed by IPD and assigned to the Institute’s account during the period immediately preceding such Eligible Employee’s Date of Employment with the Institute will receive credit for Year(s) of Service with IPD (excluding service with IPD for periods prior to April 1, 1990).
ARTICLE III: Eligibility for Participation

3.1 **Eligibility.** An Eligible Employee will begin participation in this Plan as of his Date of Employment or Reemployment.

3.2 **Notification.** An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participants have been applied.

3.3 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.

3.4 **Reemployment.** A former employee who is reemployed by the Institution will be eligible to participate as of his Date of Reemployment.

3.5 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:

- he or she ceases to be an Eligible Employee;
- the Plan is terminated.

Furthermore, if a Participant begins to receive benefits from the Accumulation Account(s) arising from Plan Contributions under this Plan before termination of employment, he or she will cease to be eligible and no further Institution Plan Contributions will be made on his or her behalf.
ARTICLE IV: Plan Contributions

4.1 Plan Contributions.

(a) **Employer Contributions.** The Employer shall make a contribution each Plan Year for each Eligible Employee who has completed at least two (2) consecutive Years of Service without an intervening Termination of Employment and is still employed as of the last day of such Plan Year, in an amount equal to five percent (5%) of the Eligible Employee’s base pay for the Plan Year.

(b) **Participant Contributions.** Participants may elect to make contributions to the Plan pursuant to a salary reduction agreement filed with the Institution. The salary reduction agreement will apply only to Compensation which becomes currently available to the Employee after the effective date of the salary reduction agreement. The Institution will apply a salary reduction election to all Compensation and to changes in such Compensation unless the Employee specifies in his salary reduction agreement to limit the election to certain Compensation. A Participant may modify his salary reduction agreement up to two times per year, either to reduce or to increase the amount of deferral contributions, and may suspend his deferral contributions at any time. The Participant will make this modification by filing a new salary reduction agreement with the Institution.

Each Participant who has attained age 50 or is projected to attain age 50 before the close of the Plan Year shall also be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the Plan provisions implementing the required limitations of Sections 402(g) and 415 of the Code.

A Participant who timely elects to start, stop, increase, decrease or suspend his Participant Plan Contributions shall have thirty (30) days from the date of the first regular payroll check such election was to be effective to advise the Institute in writing that his payroll deduction was not properly implemented. If a Participant fails to inform the Institute within such thirty (30) day period, such Participant shall be deemed to have elected whatever amount (including zero) that has been and is being deducted from his paycheck, until another election is received and a reasonable period of time has been allowed to implement the new election.

(c) **Matching Contributions.** The Institute shall contribute on behalf of each Participant who has at least ten continuous Years of Service an amount equal to 100% of the Participant’s Plan Contributions for the Plan Year to the extent the Participant’s Plan Contributions do not exceed the applicable percentage of the Participant’s Compensation for the Plan Year shown below opposite the Participant’s Years of Service.
Matching Contributions as a Percentage of Compensation

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>By the Institution</th>
<th>By the Participant</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 years but less than 15 years</td>
<td>2.25%</td>
<td>2.25%</td>
</tr>
<tr>
<td>15 years but less than 20 years</td>
<td>3.25%</td>
<td>3.25%</td>
</tr>
<tr>
<td>20 years but less than 25 years</td>
<td>4.25%</td>
<td>4.25%</td>
</tr>
<tr>
<td>25 years or more</td>
<td>5.25%</td>
<td>5.25%</td>
</tr>
</tbody>
</table>

Eligibility for the matching contributions will become effective on January 1 of the year immediately following the required employment anniversary date.

4.2 When Contributions Are Made. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor(s) at least annually. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor(s) as soon as it is administratively feasible for the Institution to segregate contributions, but in any event within the time required by law.

4.3 Allocation of Contributions. A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) at any time.

4.4 Leave of Absence. During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation paid by the Institution during the leave. No Plan Contributions will be made during an unpaid leave of absence.

4.5 Transfer of Funds from Another Plan. The Fund Sponsor shall accept contributions that are transferred directly from any other plan described in section 403(b) of the Code, whether such plans are funded through a trustee management or through an annuity contract if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.

4.6 Acceptance of Rollover Contributions. If a Participant is entitled to receive a distribution from another eligible retirement plan in an eligible rollover distribution under section 402 of the Code, the Fund Sponsor will accept such amount under this Plan provided the rollover to this Plan is made 1) directly from another plan; or 2) by the Participant within 60 days of the receipt of the distribution.

4.7 Uniformed Services. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with § 414(u) of the Code.
4.8 **Maximum Plan Contributions.** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

For the purpose of calculating the limits of Code Section 415, compensation means with respect to each Participant, the Participant’s wages within the meaning of section 3401(a) of the Code and all other payments of compensation to a Participant by the Institution (in the course of the Institution’s trade or business) for which the Institution is required to furnish the Participant a written statement under sections 6041(d), 6051(a)(3), and 6052 of the Code. Compensation under this section shall be determined without regard to any rules under section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed. The term compensation as used in this paragraph shall also include all elective contributions that are made by the Institution on behalf of the Participant that are not includable in gross income under sections 125, 132(f)(4), 402(g)(3), 403(b), and 457(b) of the Code.

To the extent permitted by Code Section 415 and the regulations promulgated thereunder, if the Annual Additions exceed the Section 415 limitations, the excess amounts will be disposed of as follows: (a) any Participant Plan Contributions (plus any gain attributable to the excess), to the extent they would reduce the excess amount, will be returned to the Participant; and, to the extent necessary, (b) if, after the application of (a) an excess still exists, the excess will be held unallocated in a suspense account and will be applied to reduce Institution Plan Contributions in succeeding limitation years.

If the limitations are exceeded because the Participant is also participating in another Plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner so as to maximize the aggregate benefits payable to the Participant from all plans in accordance with Treasury Regulation § 1.415-6. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

The amount of Participant Plan Contributions (other than catch-up contributions) will also be subject to the limitations of Code Section 402(g). The limitations of Code Section 402(g) are hereby incorporated by reference.

4.9 **Employer Matching Contributions and Discrimination Testing**

The Institute shall cause the Plan to satisfy the nondiscrimination test applicable to Employer contributions under Code Section 403(b)(12), including but not limited to the mathematical discrimination test commonly referred to as the ACP test under Code Section 401(m). In applying such test, the Institute shall use the
current year testing method under Code Section 401(m)(2)(A). For purposes of applying such test, the Institute may make any election permitted under applicable provisions of the Code, the regulations thereunder, and Internal Revenue Service rulings or pronouncements and may use any nondiscriminatory definition of “compensation” that conforms to the definition set forth in Code Section 414(s) and the regulations issued thereunder.

The Institute shall monitor the contribution percentages (or appropriate aggregations thereof) referred to in Code Section 401(m) for the highly compensated employees (as defined in Section 414(q) of the Code) and the non-highly compensated employees for each Plan Year. If it appears at any time within a Plan Year that the mathematical nondiscrimination test may not be satisfied, or if the mathematical nondiscrimination test is not satisfied during a Plan Year, then the Institute shall, with respect to the highly compensated employees, have the option to (a) reduce highly compensated employees’ Participant Plan Contributions during the Plan Year with respect to which it appears that the test may not be satisfied, in a manner calculated to reduce or avoid excess aggregate contributions; or (b) direct the Fund Sponsor to distribute (or forfeit to the extent not vested) prior to the end of the following Plan Year the portion of the excess aggregate contributions for such Plan Year that consists of Matching contributions (together with applicable earnings) attributable to Participant Plan Contributions to the affected highly compensated employees (beginning with the individuals with the greatest dollar amount of match and continuing in descending order until all of such excess contributions have been allocated). “Excess aggregate contributions” shall mean the excess(es) of the separate or aggregate (whichever is appropriate under the circumstances) amount of Matching contributions for highly compensated employees, over the maximum amount of such contributions permitted without violation of the mathematical nondiscrimination test (determined by hypothetically reducing contributions made on behalf of such highly compensated employees in order of their actual contribution percentage, beginning with the highest of such percentages).
ARTICLE V: Funding Vehicles

5.1 **Funding Vehicles.** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan.

The Institution’s current selection of Fund Sponsors and Funding Vehicles is not intended to limit future additions or deletions of Fund Sponsors and Funding Vehicles by the Institution at any time, which additions or deletions may be made without amendment to this Plan. Any additional accounts offered by a Fund Sponsor will be made available to Participants without specific approval in each instance by Institution in accordance with the procedures established by the Institution and the Fund Sponsor.

5.2 **Fund Transfers.** Subject to a Funding Vehicle’s rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan’s approved Funding Vehicles to the extent permitted by the Funding Vehicles.

For a Participant who has terminated employment with the Institution, this Plan’s transfer rules will continue to govern vested amounts accumulated under the Plan.

Any transfer of funds between Fund Sponsors will be implemented only upon written request of the Participant and specific written consent of an authorized representative of the Institution.
ARTICLE VI: Vesting

6.1 *Plan Contributions.* Plan Contributions shall be fully vested and nonforfeitable when made.
ARTICLE VII: Benefits

7.1 Retirement Benefits. A Participant may elect to receive retirement benefits under any of the forms of benefits available under the relevant Funding Vehicle. Notwithstanding any other provision in this Plan, distribution of an amount that has at any time been invested in a mutual fund custodial account may be paid only after a Participant attains age 59½, has a severance from employment or dies.

7.2 Forms of Benefit. The forms of benefit are the benefit forms offered by the Funding Vehicles available under this Plan.

7.3 Cash Withdrawals. A Participant may receive a cash withdrawal as permitted by the Funding Vehicle, provided that cash withdrawals other than hardship distributions may not be received while the Participant is employed by the Institution.

7.4 Hardship Distributions. Hardship distributions of the Accumulation Account attributable to Plan Contributions shall be approved only if the Funding Vehicle contract permits such distribution and the Plan Administrator determines that the Participant has an immediate and heavy financial need and the distribution is necessary to satisfy the need. The amount of the need may include any amount necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. In such cases, there shall be paid to such Participant out of his Accumulation Account only such portion of the amount requested as is necessary to prevent or alleviate the hardship. In making its determination hereunder, the Plan Administrator shall follow uniform and nondiscriminatory practices and its determination shall be final and binding.

Income earned on or after January 1, 1989 shall be available for distribution on account of hardship only to the extent permitted by the Code.

The following are deemed to be immediate and heavy financial needs of the Participant: (a) medical expenses described in Code Section 213(d) incurred by the Participant, his spouse or his dependents, or necessary for these persons to obtain such medical care; (b) purchase (excluding mortgage payments) of a principal residence for the Participant; (c) payment of tuition and related educational fees and room and board expenses for the next 12 months of post-secondary education for the Participant, his spouse, his children or his dependents; (d) the payment of amounts necessary to prevent the eviction of the Participant from his principal residence or the foreclosure on the mortgage of his principal residence; or (e) such other circumstances as may be specified in Regulation Section 1.401(k)-1(d)(2)(iii)(B) or subsequent promulgations.

A distribution will be treated as necessary to satisfy a financial need if the employee reasonably represents that the need cannot be relieved: (a) through reimbursement or compensation by insurance or otherwise; (b) by reasonable liquidation of the employee’s assets (or the assets of a spouse or child available to the employee) to the extent the liquidation would not cause hardship; (c) by other distributions or nontaxable loans from
the plans of the Institution or by borrowing from commercial sources on reasonable terms, or (d) by cessation of Participant Plan Contributions.

7.5 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary(ies), subject to the options offered under the Funding Vehicles. Distribution of survivor benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

7.6 **Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary(ies) by the Fund Sponsor.

7.7 **Minimum Distribution Requirements.** Notwithstanding anything to the contrary in this Plan, and notwithstanding any election of the Participant, payment of benefits shall commence no later than the Participant’s required beginning date. Plan provisions reflecting Code section 401(a)(9) shall override any other distribution options that may be inconsistent with such Code section and this Section. Any distribution required under the incidental death benefit requirements of section Code 401(a) shall be treated as a distribution required under section 401(a)(9) and this subsection.

The “required beginning date” of a Participant is the April 1 following the later of (i) the calendar year in which the Participant attains 70½ years of age, or (ii) the calendar year in which he or she retires.

Payment of benefits may not be made over a period longer than the lifetime of the Participant or the joint life and last survivor expectancy of the Participant and his or her designated beneficiary.

If a Participant dies on or after his or her required beginning date after distribution of benefits has commenced but before his or her entire interest has been distributed, the remaining portion of such interest shall be distributed at least as rapidly as the method in effect on the date of death of the Participant.

If a Participant dies before his or her required beginning date, the entire interest payable to a beneficiary shall be distributed within five years of the Participant’s death, unless such interest is payable over a period not to exceed the life expectancy of a designated Beneficiary and payments of such interest commence within one year after the Participant’s death. However, if the Beneficiary is the surviving spouse of the Participant, payments of such interest payable over a period not to exceed the life expectancy of the Beneficiary need not commence before the date on which the Participant would have attained age 70½. If the surviving spouse dies before distribution to such spouse begins, this paragraph shall be applied as if the surviving spouse were the Participant.
7.8 *Commencement of Benefits.* Unless the Participant elects otherwise, distribution of benefits will begin no later than the 60th day after the latest of the close of the Plan Year in which:

i) the Participant attains Normal Retirement Age;

ii) occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan; or,

iii) the Participant terminates service with the Institution.

Notwithstanding the foregoing, the failure of a Participant and spouse to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

A Participant who elects to defer receipt of benefits may not do so to the extent that he or she is creating a death benefit that is more than incidental.

7.9 *Joint and Survivor Annuity Requirements.* The provisions of this section shall apply to any Participant who is credited with one Hour of Service at the Institution on or after August 23, 1984. However, any Participant in this Plan not receiving benefits as of August 23, 1984 may elect to have benefits paid in a manner described herein.

(a) *Pre-retirement Spousal Entitlement.* Unless a Qualified Election is made, if a married Participant dies before the date benefits commence, the Participant’s vested Accumulation Account shall be applied toward the purchase of a Qualified Pre-retirement Survivor Annuity. The surviving spouse may elect to have such annuity distributed within a reasonable period after the Participant’s death.

(b) *Notification of Pre-retirement Spousal Entitlement.* In the case of a Qualified Pre-retirement Survivor Annuity, the Institution shall provide each Participant, within the applicable period for such Participant, a written explanation of the Qualified Pre-retirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements for notification of a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last (a) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (b) a reasonable period after an Eligible Employee becomes a Participant; or (c) a reasonable period ending after this section first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation of service in the case of a Participant who separates from service before attaining age 35.

For applying the preceding paragraph, a reasonable period ending after the enumerated events is the end of the two-year period beginning one year before the date the applicable event occurs, and ending one year after that date. For a Participant who separates from service before the Plan Year in which age 35 is
attained, notice should be provided within the two-year period beginning one year before separation and ending one year after separation. If such a Participant thereafter returns to employment with the Institution, the applicable period for such Participant shall be redetermined.

(c) **Post-retirement Spousal Entitlement.** Unless a Qualified Election is made within the 90-day period ending on the date benefits commence, a married Participant’s vested Accumulation Account will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant’s vested Accumulation Account will be paid in the form of a single life annuity.

(d) **Notification of Post-retirement Spousal Entitlement.** In the case of a Qualified Joint and Survivor Annuity, the Institution shall no less than 30 days and no more than 90 days before the date benefits commence provide each Participant a written explanation of: (a) the terms and conditions of a Qualified Joint and Survivor Annuity; (b) the Participant’s right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (c) the rights of a Participant’s spouse; and (d) the right to waive a Qualified Joint and Survivor Annuity.

If the Participant, after receiving the explanation, elects a form of benefit and the spouse consents to the benefit (if necessary), the Plan will not fail to satisfy the requirements of this paragraph merely because the annuity starting date is less than 30 days after the written explanation is given to the Participation provided (1) the explanation is provided prior to the annuity starting date; (2) the distribution does not commence before the expiration of the 7-day period that begins the day after the explanation is provided to the Participant; and (3) prior to the expiration of the 7-day period, or the annuity starting date, if later, the Participant may revoke the distribution election.

7.10 **Direct Rollovers.**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee’s election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid as a direct rollover directly to an eligible retirement plan specified by the distributee on a form acceptable to the Fund Sponsor and the Institution.

(b) The following definitions shall apply for this Section:

(i) An eligible retirement plan shall mean: (A) an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan; (B) an individual retirement account described in Section 408(a) of the Code; (C) an individual retirement annuity described in Section 408(b) of the Code; (D) an
employees’ trust described in Section 401(a) of the Code that is exempt from tax under Section 501(a) of the Code; or (E) an annuity plan described in Section 403(a) of the Code.

(ii) A distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order as defined in Code Section 414(p), shall be eligible for rollover in the same manner as if the spouse were an Employee.

(iii) A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Sections 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Sections 401(a) or 403(a) of the Code that agrees to separately account for amounts transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

(iv) An eligible rollover distribution shall not include any amount that is distributed on account of hardship and a distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

7.11 Elimination of Alternative Forms of Distribution. Notwithstanding Section 7.9 to the contrary, an annuity form of distribution shall cease to be an available form of payment for periods commencing after the effective date of this Section, except as it may be offered under a Funding Vehicle. This Section is effective as of the earlier of: (i) the later of the effective date or adoption date of this Plan restatement (or in the case of a Participant who first commenced participation in the Plan on or before such date, the 90th day after the date such Participant has been furnished a written summary that reflects the provisions of this Section) or (ii) the first day of the second Plan year following the Plan Year during which the Plan restatement is adopted.
ARTICLE VIII: Administration

8.1 **Plan Administrator.** The Institution, located at 618 8th Street, Baldwin City, KS 66006, is the administrator of this Plan and is responsible for enrolling Participants, sending Plan Contributions for each Participant to the Fund Sponsors, and for performing other duties required for the operation of the Plan.

8.2 **Authority of the Institution.** The Institution has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Institution shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Institution will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Institution may employ attorneys, agents, and accountants, as it finds necessary or advisable to assist it in carrying out its duties. The Institution will be a “named fiduciary” as that term is defined in section 402(a)(2) of the Employee Retirement Income Security Act for determining eligibility and computing and making Plan Contributions. The Institution, by action of its Board, may designate a person or persons other than the Institution to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.

8.3 **Action of the Institution.** Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance with the “Authority of the Institution” section of Article VIII, may be taken by a majority of the members of the board, either by vote at a meeting, or in writing without a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Institution under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member of members as may be designated by an instrument in writing, signed by all members, as having authority to execute the documents on its behalf, or (ii) a person who becomes authorized to act for the Institution in accordance with the provisions of the “Authority of the Institution” section of Article VIII. Any action taken by the Institution that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon all persons who have or who claim an interest under the Plan, and all third parties dealing with the Institution.

8.4 **Indemnification.** The Institution will satisfy any liability actually or reasonably incurred by any members of the Board or any person who is an employee, director or trustee of the Institution and to whom any power, authority or responsibility of the Institution is delegated pursuant to Section 8.2 (“Authority of the Institution”) (other than the Fund Sponsors). These liabilities include expenses, attorney’s fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation,
8.5 **Investment Manager.** To the extent that Participants allocate contributions to the TIAA Real Estate Account, TIAA will be the investment manager (within the meaning of Section 3(38) of ERISA) with respect to the account balance in the TIAA Real Estate Account. TIAA is a fiduciary with respect to such assets.

8.6 **No Reversion.** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made.

8.7 **Statements.** The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution’s payment.

8.8 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.
ARTICLE IX: Amendment and Termination

9.1 Amendment and Termination. While it is expected that this Plan will continue indefinitely, the Institution reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of its Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the institution will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.

9.2 Limitation. Notwithstanding the provisions of the “Amendment and Termination” section of Article IX, the following conditions and limitations apply:

(a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made.

(b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.
ARTICLE X: Miscellaneous

10.1 Plan Non-Contractual. Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.

10.2 Claims of Other Persons. The provisions of the Plan will not be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of the Plan.

10.3 Merger, Consolidation, or Transfers of Plan Assets. In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.

10.4 Finality of Determination. All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.

10.5 Contracts - Incorporation by Reference. The terms of each Funding Vehicle issued to a Participant in accordance with the provisions of Article V are a part of the Plan as if fully set forth in the plan document and the provisions of each are incorporated by reference into the Plan. The terms of the Plan control in any case where there is any inconsistency or ambiguity between the terms of the Plan and the terms of the Funding Vehicle.

10.6 Non-Alienation of Retirement Rights or Benefits. No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant’s benefit under this Plan to the extent that it is a “qualified domestic relations order” under section 414(p) of the Code.

Employer Identification Number: 48-0543766
Plan Number: 01
IN WITNESS WHEREOF, the Institution has caused this Amended Plan to be executed this 1st day of July, 2008.

BAKER UNIVERSITY

By: Jo Adams
Vice President for Financial Services