

**EMORY UNIVERSITY**

**457(b) DEFERRED COMPENSATION PLAN**

As Amended and Restated Effective as of January 1, 2022

## **INTRODUCTION**

The purpose of the Emory University 457(b) Deferred Compensation Plan (the “Plan”) is to provide deferred compensation primarily for a select group of management or highly compensated employees who are eligible for participation and elect to make salary deferrals under the Plan.

This Plan was adopted by Emory University (the “Employer”) effective September 1, 2002. This amendment and restatement of the Plan is effective as of January 1, 2022. The purpose of this amendment and restatement is to incorporate all previously adopted amendments to the Plan and to make other changes as the Employer deems appropriate.

The Plan is intended to constitute a top hat plan under Sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and to constitute an eligible deferred compensation plan within the meaning of Section 457(b) of the Internal Revenue Code of 1986, as amended (the “Code”), the regulations issued thereunder and other applicable law.

Effective as of January 1, 2004, the Emory Children’s Center, Inc. Deferred Compensation Plan (the “ECC Plan”) was merged into the Plan, and all assets and liabilities of the ECC Plan were transferred to and assumed by the Employer in accordance with terms of the Plan. Effective as of the date of such merger, each ECC Plan Participant had his or her rights, including the right to make contributions and receive benefit payments, governed by the Plan, and the Employer became responsible thereafter for all benefit payments and administration of the ECC Plan as merged into the Plan.

## ARTICLE I – DEFINITIONS

- 1.1 **Account** means the separate account maintained for each Participant pursuant to Section 7.2 of the Plan.
- 1.2 **Beneficiary** means the individual, trustee, estate or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death.
- 1.3 **Code** means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code includes not only the section but any comparable section or sections of any future legislation that amends, supplements or supersedes the section.
- 1.4 **Compensation** means the total amount of cash remuneration earned by an Eligible Employee for personal services rendered to the Employer for the calendar year as reported on IRS Form W-2. Compensation shall also include amounts deferred under this Plan and any reductions pursuant to any salary reduction agreement with the Employer with regard to any plan established under Code Section 457(b), 403(b), 401(k), 125 or 132(f). For purposes of determining whether a person is an Eligible Employee, Compensation shall also include Compensation paid by Emory University as the common paymaster for a concurrently employed Eligible Employee of Emory University and Emory-Children's Center, Inc.
- 1.5 **Effective Date** means January 1, 2022, except as specified otherwise. The Plan was originally effective September 1, 2002.
- 1.6 **Elective Deferral** means the amount of Compensation that a Participant elects to defer for the Plan Year pursuant to a properly completed Elective Deferred Compensation Agreement.
- 1.7 **Elective Deferred Compensation Agreement** means the electronic agreement (or, prior to September 1, 2022, paper agreement) between a Participant and the Employer to defer receipt by the Participant of Compensation not yet paid or otherwise made available. Such agreement shall specify the Elective Deferral amount to be withheld from a Participant's Compensation and shall become effective no earlier than the first day of the month following completion of the enrollment process pursuant to Section 2.2. The Elective Deferred Compensation Agreement shall be legally binding and irrevocable with regard to amounts paid or otherwise made available while the agreement is in effect.
- 1.8 **Eligible Deferred Compensation Plan** means a plan that constitutes an eligible plan within the meaning of Code Section 457(b).
- 1.9 **Eligible Employee** means each management or highly compensated employee of the Employer who satisfies the requirements to participate in the Plan set forth in

Section 2.1 as determined by the Employer, or an individual meeting such requirements on the basis of all Compensation who is concurrently employed by Emory University and Emory-Children's Center, Inc. An employee who is an Eligible Employee for a Plan Year shall remain an Eligible Employee for subsequent Plan Years while still employed by the Employer unless the Employer, in its sole discretion, determines otherwise.

- 1.10 **Employer** means Emory University. Employer shall also include Emory-Children's Center, Inc. and Emory + Children's Pediatric Institute solely for the purpose of being adopting employers. In all other cases, Emory University shall be the Employer and shall have the duties, rights and obligations otherwise assigned to the Employer, including, but not limited to, serving as the Plan Administrator.
- 1.11 **Includible Compensation** means the compensation of the Participant from the Employer during the Plan Year as described in Code Section 415(c)(3).
- 1.12 **Investment Options** means (a) the investment options selected by the Plan Administrator and offered by an Investment Sponsor or (b) a Self-Directed (Brokerage) Account, as described in Section 7.3(c), both of which are available for the purpose of measuring investment experience attributable to Accounts.
- 1.13 **Investment Sponsors** means Fidelity Investments and the Teachers Insurance and Annuity Association of America – College Retirement Equities Fund (and, prior to September 1, 2022, The Vanguard Group) and any other insurance or mutual fund company, regulated investment company, or other entity providing Investment Options under the Plan, as selected by the Plan Administrator.
- 1.14 **Normal Retirement Age** means age 65.
- 1.15 **Participant** means an Eligible Employee or former Eligible Employee who shall have become a Participant in the Plan in accordance with Article II hereof. An Eligible Employee shall cease to become a Participant at such time as he or she no longer has any interest in any Account maintained under the Plan.
- 1.16 **Plan** means the Emory University 457(b) Deferred Compensation Plan set forth herein, as amended from time to time.
- 1.17 **Plan Administrator** means the Emory Pension Board or such other committee consisting of at least three persons appointed by the Employer to administer the Plan pursuant to Section 7.1. If the Employer fails to make such appointment, the Employer shall be the Plan Administrator.
- 1.18 **Plan Ceiling** means the maximum aggregate annual amount of Elective Deferrals permitted to be credited to a Participant's Account during the Participant's taxable year pursuant to Code Section 457(b).

- 1.19 **Plan Year** means the calendar year, provided that the initial Plan Year began September 1, 2002 and ended December 31, 2002.
- 1.20 **Severance from Employment** means the termination of a Participant’s employment with the Employer and any other entity with which the Employee is under common control within the meaning of Code Section 414 for any reason including the Participant’s death, disability or retirement.

**ARTICLE II - PARTICIPATION IN THE PLAN**

2.1 **Eligibility and Entry into Plan.**

- (a) Any Eligible Employee who meets the following eligibility requirements as of the Effective Date shall be eligible to participate in the Plan on the Effective Date:
  - (1) Is classified by the Employer as a regular, full-time employee; and
  - (2) Has annualized base salary from the Employer for the Plan Year containing the Effective Date of at least 125% of the minimum amount of compensation used under Code Section 414(q) to determine whether a person is a highly compensated employee of the Employer in such Plan Year under Code Section 414(q) (e.g., \$135,000 for 2022 and \$150,000 for 2023), regardless of the employee’s job title.

The Employer shall be solely responsible for determining whether an employee satisfies the above requirements to participate in the Plan and the date of such eligibility.

- (b) Any other Eligible Employee who is not eligible to participate in the Plan as of the Effective Date pursuant to paragraph (a) above, shall be eligible to participate in the Plan on the first day of the month following the date the Eligible Employee is notified by the Plan Administrator that he has satisfied the eligibility requirements in paragraph (a) above (based on the Eligible Employee’s annualized base salary for the Plan Year in which such determination is made).
- (c) In addition to employees who satisfy the requirements to participate in the Plan in Sections 2.1(a) and 2.1(b), from time to time, senior management of the Employer may recommend other employees for Plan participation to the Emory Pension Board or such other committee of the Board of Trustees of Emory University responsible for approval of eligibility determinations, provided such employee is in the select group of management or highly compensated employees which satisfies the standards for determining inclusion in a top hat plan under Sections 201(2), 301(a)(3) and 401(a)(1)

of ERISA and related guidance. Approval of such proposed Eligible Employees shall be evidenced in the Plan's records, and upon such approval the Plan Administrator shall notify the employee that he is eligible to participate in the Plan.

- 2.2 ***Enrollment in Plan.*** In order to participate in the Plan, each Eligible Employee must complete the enrollment process specified by the Plan Administrator, as it may be revised from time to time. Enrollment shall be effective on or after the first day of the month following the date the enrollment process is properly completed by the Eligible Employee or as soon as administratively practicable thereafter.

### **ARTICLE III - DEFERRAL OF COMPENSATION**

- 3.1 ***Elective Deferrals.*** An Eligible Employee may elect to make Elective Deferrals to the Plan pursuant to an Elective Deferred Compensation Agreement with the Employer, subject to the limitations in Section 3.4, and the Plan Administrator shall credit such Elective Deferral to a Participant's Account. The election to make Elective Deferrals shall automatically terminate for the remainder of the Plan Year when the maximum amount permitted to be deferred for a Plan Year pursuant to Section 3.4 is reached. If permitted by the Plan Administrator and indicated on the Elective Deferred Compensation Agreement, a Participant's election shall continue to apply in future Plan Years as long as the Participant remains an Eligible Employee.

- 3.2 ***Modifications to Amount Deferred.*** A Participant may elect to change his or her Elective Deferral rate with respect to future Compensation by submitting a new properly completed Elective Deferred Compensation Agreement to the Employer or its designee. Such change shall take effect as of the first day of the first month next following the Participant's submission of the new Elective Deferred Compensation Agreement or as soon as administratively practicable thereafter.

- 3.3 ***Termination of Deferral.*** A Participant may terminate his or her election to have Compensation deferred by following the process specified by the Plan Administrator for this purpose, as it may be revised from time to time. Such termination shall take effect as of the first day of the first month next following the Participant's completion of the deferral termination process or as soon as administratively practicable thereafter. Subject to the annual Elective Deferral limit in Section 3.4, a Participant who is an Eligible Employee may resume Elective Deferrals at any time following termination of Elective Deferrals by again completing the enrollment process pursuant to Section 2.2.

- 3.4 ***Maximum Deferral.***

- (a) **Plan Ceiling.** Except as provided in Section 3.4(b), the Plan Ceiling in a Participant's taxable year shall not exceed the lesser of: (1) the applicable

dollar amount, as set forth in Code Section 457(e)(15), or (2) 100% of the Participant's Includible Compensation for the taxable year.

- (b) **General Catch-Up Limitation.** For the last three taxable years ending before a Participant's attainment of Normal Retirement Age, the maximum amount that may be contributed to the Plan on behalf of a Participant shall be the lesser of (a) twice the applicable dollar amount in effect under Code Section 457(b)(2)(A) for such year or (b) the Plan Ceiling for the taxable year, plus the Plan Ceiling for any prior taxable year(s) in which the Participant participated in the Plan, less the amount of Elective Deferrals under the Plan for such prior taxable year(s) (the "General Catch-Up Limitation"). The General Catch-Up Limitation is available to a Participant only once, regardless of whether the limited catch-up deferral is fully utilized in each of the three taxable years ending before the Participant attains Normal Retirement Age, and regardless of whether the Participant continues to participate in the Plan, rejoins the Plan after a Severance from Employment, or participates in another Eligible Deferred Compensation Plan after attaining Normal Retirement Age. Such an election for this General Catch-Up Limitation shall be made in accordance with the method for changing the amount of Elective Deferrals to be deferred under the Plan, as provided in Section 3.1.
- (c) **Coordination With Other Plans.** If a Participant participates in more than one Eligible Deferred Compensation Plan, the maximum amount that the Participant may defer under this Plan and any other Eligible Deferred Compensation Plan shall not exceed the Plan Ceiling. If a Participant participates in an Eligible Deferred Compensation Plan maintained by another employer and the Participant's Deferred Compensation under the Plan does not exceed the limitations in the Plan Ceiling, but the Participant's aggregate annual deferrals under both (or all) plans exceed the limitations in the Plan Ceiling, the Participant may notify the Plan Administrator that she wishes to treat the excess as arising under the Plan. The Participant must provide evidence satisfactory to the Plan Administrator that her total deferrals for the taxable year has exceeded the Plan Ceiling.
- (d) **Excess Contributions.** To the extent that any amount deferred hereunder for any taxable year exceeds the limitations of this Section 3.4, such excess shall be deemed to be a contribution under a plan described in Code Section 457(f). Notwithstanding the preceding sentence, if a Participant's Elective Deferral under the Plan for any year exceeds the Plan Ceiling, then the Plan may distribute the excess (and income allocable thereto) no later than April 15 of the year immediately following the close of the taxable year in which the excess occurred.

3.5 **Vesting.** A Participant shall be fully vested at all times in his or her accrued benefits under this Plan. Such accrued benefits shall be non-forfeitable at all times.

## ARTICLE IV – DISTRIBUTIONS

4.1 ***Eligibility for Payment.*** Distribution of benefits from the Plan shall not be made until the Participant incurs a Severance from Employment. A Participant will be deemed to have incurred a Severance from Employment without regard to whether such Participant continues in the same job for a different employer following a liquidation, merger, consolidation, reorganization, restructuring or other similar transaction.

4.2 ***Commencement of Distributions.***

- (a) Distribution of benefits shall commence ninety (90) days following the Participant's Severance from Employment, unless the Participant makes a one-time additional irrevocable written election during the ninety (90) day period following the Participant's Severance from Employment in accordance with Code Section 457(e)(9)(B) to defer commencement of benefits to a specified later date.
- (b) Notwithstanding the provisions of Section 4.2(a) above, effective January 1, 2020, in no event shall distribution of benefits commence with respect to any Participant later than April 1st of the calendar year following the calendar year in which the Participant attains age 72 (or age 70-1/2 for Participants born prior to July 1, 1949), or if later, April 1st of the calendar year following the calendar year in which the Participant incurs a Severance from Employment.

4.3 ***Distribution Requirements.***

- (a) General Rule. This Section 4.3 is intended to comply with Code Section 457(d) and the regulations issued thereunder. To the extent that there is any conflict between the provisions of Code Section 457(d) and the regulations issued thereunder and any other provision in this Plan, the provisions of Code Section 457(d) and the regulations issued thereunder will control.
- (b) Limits on Distribution Options. Distributions, if not made in a single lump sum, shall be made over a period that does not exceed:
  - (1) the life of the Participant;
  - (2) the lives of the Participant and his or her designated Beneficiary;
  - (3) a period certain not extending beyond the life expectancy of the Participant; or
  - (4) a period certain not extending beyond the life expectancies of the Participant and his or her designated Beneficiary.

(c) Death Distribution Provisions.

- (1) Death after Distributions Begin. If the Participant dies after distribution of his or her interest has commenced, the remaining portion of such interest shall continue to be distributed at least as rapidly as the method of distribution being used prior to the Participant's death.
- (2) Death before Distributions Begin. If the Participant dies before distribution of his or her interest has commenced:
  - (i) if any portion of the Participant's interest is payable to a Designated Beneficiary, distribution of the Participant's entire interest shall be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death, except to the extent that the recipient of such benefits elects to receive distributions in accordance with (A) or (B) below:
    - (A) distributions may be made in substantially equal annual payments over the life of the Designated Beneficiary, or over a period certain not extending beyond the life expectancy of the Designated Beneficiary, and commencing no later than the December 31 of the calendar year immediately following the calendar year in which the Participant died; or
    - (B) effective January 1, 2020, if the Designated Beneficiary is the Participant's surviving spouse, distributions are required to begin by the December 31 of the calendar year immediately following the calendar year in which the Participant died or, if later, the December 31 of the calendar year in which the Participant would have attained age 72 (or age 70½ if the Participant was born prior to July 1, 1949);
  - (ii) if there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death (for example, if the death benefit is payable to a Participant's estate), the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death;
  - (iii) if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of Section

4.3(c)(2) with the exception of paragraph (i)(B) shall be applied as if the surviving spouse were the Participant;

(iv) any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority; and

(v) distribution of a Participant's interest is considered to begin on the Participant's required beginning date (or, if applicable, the date distribution is required to begin to the surviving spouse). If distribution in the form of an annuity irrevocably commences to the Participant before the required beginning date, the date distribution is considered to begin is the date distribution actually commences.

(3) Designated Beneficiary. For purposes of this Section 4.3(c), "Designated Beneficiary" shall mean an individual described under Treas. Reg. § 1.401(a)(9)-4.

(4) Minimum Amounts to be Distributed. All distributions under this Section 4.3 will be determined and made in accordance the requirements specified in Code Section 401(a)(9) and the regulations issued thereunder.

4.4 ***Plan-to-Plan Transfers.*** Notwithstanding any provision of the Plan to the contrary, to the extent permitted by law, if a Participant has a Severance from Employment and accepts employment with another tax-exempt employer which maintains an Eligible Deferred Compensation Plan, the value of the Account of such Participant in the Plan may be transferred to such other Eligible Deferred Compensation Plan in which the former Participant has become a participant, if: (i) the plan receiving such amounts provides for acceptance of such transfers, and (ii) the Participant gives written direction to the Employer or its designee in a satisfactory form to make such transfer prior to the date the Participant would otherwise commence payment of his or her Plan benefits under Section 4.2.

4.5 ***Qualified Domestic Relations Order.*** The Plan Administrator shall determine whether a domestic relations order satisfies the requirements of Code Section 414(p)(1)(A)(i) to be a qualified domestic relations order in accordance with such Code section and the procedures and rules established by the Plan Administrator for such determination. Distribution to the alternate payee named in the qualified domestic relations order shall only be made in the form of a lump sum and shall be paid at the time specified in such qualified domestic relations order. In the absence of a provision in the qualified domestic relations order stating the time payment to the alternate payee is to be made, payment shall be made as soon as administratively possible following the determination by the Plan Administrator that the order

satisfies the requirements of Code Section 414(p). Payment to the alternate payee may be made earlier than the date the Participant to whom the order relates would otherwise be entitled to payment of benefits under the Plan.

## ARTICLE V - FORMS OF PAYMENTS

5.1 ***Election.*** Subject to the rules of each Investment Sponsor, a Participant or Beneficiary may elect the form of distribution of his or her benefits and may revoke that election, with or without a new election, at any time at least thirty days before his or her benefits begin, or such other time as permitted by the Plan Administrator, by notifying the Plan Administrator in writing of his or her election. All distributions of benefits paid pursuant to the terms of this Plan shall be made directly by the applicable Investment Sponsor to the Participant.

5.2 ***Forms of Payments.*** The forms of benefit payments shall include:

- (a) Lump Sum. A single lump sum payment of the entire balance credited to a Participant's Account.
- (b) Single Life Annuity. An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
- (c) Joint Life Annuity. An annuity payable in equal installments for the joint lives of the Participant and his or her Beneficiary.
- (d) Installment Payments. Monthly, quarterly, semi-annual or annual installment payments for a fixed period of not less than five years and not more than thirty years.

All forms of payments shall be subject to the limitations of the applicable Investment Sponsor and shall only be available if offered by such Investment Sponsor.

5.3 ***Failure to Make Election.*** If a Participant or Beneficiary fails to elect a form of payment in a timely manner, the Participant shall be paid as follows:

- (a) if the Participant made an election under Section 4.2(a) to defer commencement of distribution to a later specified date, the value of the Participant's Account as of the most recent date such Account has been credited with investment experience in accordance with Section 7.3 prior to the specified distribution date shall be paid to the Participant in a lump sum distribution as soon as practicable following on such specified distribution date, or
- (b) if the Participant did not make an election under Section 4.2(a) to defer commencement of distribution to a later specified date, the value of the

Participant's Account shall be paid to the Participant in five equal annual installment payments. The first installment payment shall be paid as soon as administratively practicable after the ninety (90) day election period set forth in Section 4.2(a) elapsed and the remaining four installments shall be paid as soon as administratively practicable following the first four (4) anniversaries of the Participant's Severance from Employment. The amount of each annual installment shall be determined by dividing the value of the Participant's Account as of the most recent date such Account has been credited with investment experience in accordance with Section 7.3 prior to the distribution date for each installment, by the number of installments that remain.

#### **ARTICLE VI - BENEFICIARY INFORMATION**

- 6.1 **Designation.** A Participant shall have the right to designate a Beneficiary and amend or revoke such designation at any time prior to commencement of benefits, in writing, in a form approved by the Plan Administrator. Such designation, amendment or revocation shall be effective upon satisfactory receipt by the Plan Administrator.
- 6.2 **Failure to Designate a Beneficiary.** If a Participant dies before commencing payment of the Participant's benefits under the Plan or after commencing benefits in the form of installments, and in either case the Participant has not designated a Beneficiary or no designated Beneficiary survives the Participant, then the Participant's remaining Plan benefits shall be paid to a Participant's surviving spouse, if any; if no surviving spouse, to the participant's surviving children in equal shares, if any; if no surviving children, to the participant's surviving parents, in equal shares, if any; if no surviving parents, to the participant's surviving siblings, in equal shares, if any; and if no surviving siblings, to the participant's estate.

#### **ARTICLE VII - PLAN ADMINISTRATION**

- 7.1 **Plan Administration.** . The Plan Administrator shall have the sole discretionary responsibility for the interpretation of the Plan and for performing other duties required for the operation of the Plan. Any action taken on any matter within the discretion of the Plan Administrator shall be made in its sole and absolute discretion based on this Plan document, and shall be final, conclusive, and binding on all parties. In order to discharge its duties hereunder, the Plan Administrator shall have the power and authority to delegate ministerial duties and to employ such outside professionals as may be required for prudent administration of the Plan. The Plan Administrator shall also have authority to enter into agreements on behalf of the Employer necessary to implement this Plan.

## 7.2

### *Accounts and Expenses.*

- (a) The Plan Administrator shall establish and maintain a separate Account on behalf of each Participant for the purpose of accounting and to facilitate orderly administration of the Plan. Each such Account shall reflect the Elective Deferrals made on behalf of a Participant and shall also reflect the investment experience attributable to each such Account based upon the investment experience described in Section 7.3 below. The Account shall also reflect any reductions due to expense charges applied to, and distributions made from, each such account. Accounts are bookkeeping devices used to track the value of Participant interests in the Plan; no assets shall be reserved or segregated in connection with any Account and no Account shall be insured or otherwise secured.
- (b) The Employer shall determine, in a manner deemed fair and equitable, the administrative cost in making investments or otherwise administering or implementing the Plan. The Employer may withhold or collect or have withheld or collected such costs in such manner as it deems equitable from the Compensation deferred pursuant to the Plan, the income produced from the Elective Deferrals, or the income produced from any investment, whether or not augmented.
- (c) Each Participant shall be furnished a written report of the status of her Account at least annually. All reports to the Participant shall be based on the value of her Account as of the reporting date according to the investment directions of the Participant under Section 7.3. The Employer shall not be responsible for any loss due to the investment or failure of investment of funds and assets credited to Accounts nor shall the Employer be required to replace any loss whatsoever which may result from said investments. The periodic statements of accounts distributed to Participants shall specify any such amounts deducted by the Employer, or by any organization contracting with the Employer in connection with the Plan, from the Deferred Compensation of such Participants or any income therefrom.

## 7.3

### *Investment Experience.*

- (a) Amounts credited to a Participant's Account shall reflect the investment experience of the Investment Options selected by the Participant (or, following the Participant's death, Beneficiary) from the Investment Options offered under the Plan. The Investment Options shall be determined by the Plan Administrator and may be changed from time to time. Unless the Plan Administrator determines otherwise, the Investment Options shall generally be the same as the investment options under the Emory University Retirement Plan as such options may be changed from time to time. The Plan provides only for "phantom investments," and therefore any earnings,

gains, expenses and losses credited and debited (as applicable) from Accounts are hypothetical and not actual.

- (b) The particular Investment Options selected by the Participants to be used to value his Account shall be made at the time of enrollment in the Plan. Once made, an investment selection shall remain in effect for all subsequent Elective Deferrals until changed by the Participant. Election changes may be made with regard to Investment Options by a Participant in accordance with the policy and procedures as determined by the Plan Administrator. A Participant may make changes in his Investment Options elections in accordance with the Plan Administrator's policy and procedures by contacting the Plan Administrator or applicable Investment Sponsor directly in the manner required by the Plan Administrator or Investment Sponsor. Any such changes shall become effective as soon as administratively practicable after the Plan Administrator (or the Investment Sponsor in the case of changes within the Investment Option of the same Investment Sponsor) received a satisfactory written request (or approved other form of communication). Notwithstanding anything herein to the contrary, the Plan Administrator retains the right to allocate amounts hereunder without regard to a Participant's request, provided that the Participant's investment selection shall be the basis to credit his Account with investment gains and/or losses.
- (c) The Self-Directed (Brokerage) Account ("SDA") investment option is provided through the applicable custodian. This option permits Participants to invest all or a portion of their interest in the Plan in additional choices for self-managed investment. Each Participant who participates in the SDA shall have his interest in the Plan reduced by any brokerage commissions and fees (including fees charged on account of one or more investments in a mutual fund) payable on his individual transactions and shall also have his interest in the Plan reduced by an access fee for each calendar quarter (or part thereof) that the Participant participates in SDA. Such access fee will be taken from the Participant's Account in accordance with administrative procedures established by the applicable custodian. To the extent necessary, the applicable custodian is authorized to sell securities or other assets held within a Participant's Account for the purpose of paying the commissions and fees described in this subsection.
- (d) The Plan Administrator shall credit investment experience to each Participant's Account as of the last business day of each calendar quarter or such other dates selected by the Plan Administrator, in its sole and absolute discretion.
- (e) In the event that a participant or beneficiary fails to validly select an Investment Option to be used to value a portion of her Account, the default

Investment Option designated by the Plan Administrator shall be used to value such portion.

- 7.4 ***Claims Procedures.*** Any claim by a Participant or Beneficiary with respect to eligibility, participation, contributions, benefits or other aspects of the operation of the Plan shall be made in writing to the Plan Administrator or the person or committee acting on behalf of the Plan Administrator for this purpose. If the Plan Administrator (or its authorized designee) believes that the claim should be denied, it shall notify the claimant in writing of the denial of the claim within ninety (90) days after receipt thereof (this period may be extended an additional ninety (90) days in special circumstances). Such notice shall (a) set forth the specific reason or reasons for the denial, making reference to the pertinent provisions of the Plan or the Plan documents on which the denial is based, (b) describe any additional material or information necessary to perfect the claim, and explain why such material or information, if any, is necessary, and (c) inform the Participant or Beneficiary making the claim of his right pursuant to this Section 7.4 to request a review of the decision. If notice of denial is not given to a claimant within such period of time, the claim will be deemed denied for purposes of seeking review of the claim. Any such person may appeal the denial of a claim by submitting a written request for review to the Plan Administrator (or its authorized designee) within sixty (60) days after the date on which such denial is received. Such period may be extended for good cause shown. The person making the request for review or his or her duly authorized representative may discuss any issues relevant to the claim, may review pertinent documents and may submit issues and comments in writing. If the Plan Administrator (or its authorized designee) deems it appropriate, it may hold a hearing as to a claim. If a hearing is held, the claimant shall be entitled to be represented by counsel. The Plan Administrator (or its authorized designee) shall decide whether or not to grant the claim within sixty (60) days after receipt of the request for review, but this period may be extended for up to an additional sixty (60) days in special circumstances, in which case the Participant or Beneficiary shall be notified of the delay; in any event such decision shall be rendered not later than one hundred twenty (120) days after receipt of the request for review. The decision shall be in writing, shall include specific reasons for the decision and shall refer to pertinent provisions of the Plan or the Plan documents on which the decision is based. Any claim not decided upon in the required time period shall be deemed denied. All interpretations, determinations and decisions of the Plan Administrator (or the authorized designee) with respect to any claim under the Plan shall be made in its sole and absolute discretion, based on the Plan document, and other related documents and shall be final and conclusive.

## **ARTICLE VIII - AMENDMENT OR TERMINATION OF PLAN**

- 8.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Employer reserves the right at any time to amend, otherwise modify, or terminate the Plan without any liability for such action. No amendment or termination shall deprive any Participant or Beneficiary of any right or benefit

to which such person was entitled immediately prior to the effective date of such amendment or termination. In the event of a termination of the Plan, the Employer shall notify Participants of the termination, and all Elective Deferrals shall cease as of the date determined by the Employer, and distributions of benefits shall begin on the date or dates determined by the Employer in its sole discretion.

#### **ARTICLE IX - UNFUNDED PLAN**

- 9.1 ***Unfunded Status.*** The Plan is intended to constitute an unfunded plan and all amounts held hereunder shall be allocated to the Employer. Any amount due and payable pursuant to the terms of the Plan shall be paid out of the general assets of the Employer. All assets of the Plan shall be subject to the claims of creditors of the Employer. Participants and Beneficiaries shall not have an interest in any specific asset of the Employer or any specific asset held hereunder as a result of participation in this Plan. The Employer shall have no obligation to set aside any funds for the purpose of making any benefit payments under this Plan. Nothing contained herein shall give any Participant any rights that are greater than those of an unsecured creditor of the Employer with respect to any unpaid amount as to which the Participant has a vested interest. No action taken pursuant to the terms of this Plan shall be construed to create a funded arrangement, a plan asset, or fiduciary relationship among the Employer, its designee, any Investment Sponsor, and a Participant or Beneficiary.

#### **ARTICLE X – MISCELLANEOUS**

- 10.1 ***Plan Non-Contractual.*** Nothing contained 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 Employer, and nothing contained in this Plan will be construed as a commitment on the part of the Employer to continue the employment or the rate of compensation of any person for any period, and all Employees of the Employer 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 in no event be construed as giving any Participant or any other person, firm, corporation or other legal entity, any legal or equitable right against the Employer, its officers, employees, directors or trustees, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 ***Assignments.*** No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily, other than as provided under Code Section 401(a)(13). The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined by the Plan Administrator (or its authorized designee) to be a qualified domestic relations order, as defined in Code Section 414(p). A qualified domestic

relations order shall be administered in accordance with Code Section 414(p) and the guidance issued thereunder.

- 10.4 ***Pronouns.*** Whenever used herein, the masculine pronoun is deemed to include the feminine. The singular form, whenever used herein, shall mean or include the plural form where applicable, and vice versa.
- 10.5 ***Representations.*** The Employer does not represent or guarantee that any particular Federal or State income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Employer does not represent or guarantee investment returns with respect to any Investment Options and shall not be required to restore any loss which may result from such investment or lack of investment.
- 10.6 ***Severability.*** If a court of competent jurisdiction holds any provision of this Plan to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.
- 10.7 ***Applicable Law.*** This Plan shall be construed in accordance with applicable Federal law and, to the extent otherwise applicable, the laws of the State of Georgia.

IN WITNESS WHEREOF, the Employer has caused this Plan to be executed by its duly authorized officer, this \_\_\_\_\_ day of December, 2022.

EMORY UNIVERSITY

By:   
Name: Theresa Milazzo  
Title: Vice President  
Human Resources