



**RADFORD UNIVERSITY BOARD OF VISITORS  
EXECUTIVE COMMITTEE MEETING  
8:00 A.M.\*\*  
FEBRUARY 17, 2017  
PRESIDENT'S CONFERENCE ROOM  
THIRD FLOOR – MARTIN HALL  
RADFORD, VIRGINIA**

**DRAFT**

**AGENDA**

- **CALL TO ORDER** Mr. Christopher Wade, *Chair*
- **APPROVAL OF AGENDA** Mr. Christopher Wade, *Chair*
- **APPROVAL OF MINUTES** Mr. Christopher Wade, *Chair*  
November 11, 2016
- **PRESIDENT'S REMARKS** Brian O. Hemphill, Ph.D.,  
*President*
- **UPDATES FROM COMMITTEE CHAIRS** Mr. Christopher Wade, *Chair*
- **OTHER BUSINESS** Mr. Christopher Wade, *Chair*
  - Supplemental Defined Benefit Contribution Plan
  - Qualified Governmental Excess Benefit Arrangement
  - Employer 403(b) Plan-2009
- **ACTION ITEM** Mr. Christopher Wade, *Chair*
  - Recommendation to Board for Approval of Resolution for the Amended and Restated Supplemental Defined Contribution Benefit Plan and Qualified Governmental Excess Benefit Arrangement
- **ADJOURNMENT** Mr. Christopher Wade, *Chair*

**\*\*All start times for committees are approximate only. Meetings may begin either before or after the listed approximate start time as committee members are ready to proceed.**

**Executive Committee Membership:  
Christopher Wade, Chair & Rector  
Javaid Siddiqi, Vice Rector**

**Mary Ann Hovis**  
**Susan Whealler Johnston, Ph.D.**  
**Mark S. Lawrence**  
**Randolph “Randy” J. Marcus**  
**Alethea “A.J.” Robinson**  
**President Brian O. Hemphill, Ph.D.**

# RADFORD UNIVERSITY

**RADFORD UNIVERSITY BOARD OF VISITORS  
EXECUTIVE COMMITTEE  
NOVEMBER 11, 2016  
PRESIDENTS' CONFERENCE ROOM  
THIRD FLOOR-MARTIN HALL  
RADFORD VIRGINIA**

## **MINUTES**

**Draft**

### **COMMITTEE MEMBERS PRESENT**

Mr. Christopher Wade, Vice Rector  
Ms. Mary Ann Hovis  
Dr. Susan Whealler Johnston  
Mr. Mark Lawrence  
Mr. Randolph "Randy" J. Marcus

### **OTHERS PRESENT**

President Brian O. Hemphill  
Mr. Allen T. Wilson, Assistant Attorney General, Commonwealth of Virginia  
Ms. Mary Weeks, Secretary to the Board of Visitors/Senior Assistant to the President

### **ABSENT**

Dr. Javaid Siddiqi, Vice Rector  
Ms. Alethea "A.J." Robinson

### **CALL TO ORDER**

Mr. Christopher Wade, Rector, formally called the meeting to order at 8:05 a.m. in the President's Conference Room, Third Floor, Martin Hall, Radford, Virginia.

### **APPROVAL OF AGENDA**

Mr. Wade asked for a motion to approve the November 11, 2016 agenda. Ms. Mary Ann Hovis so moved, and Mr. Mark Lawrence seconded. The agenda was approved unanimously as published.

### **APPROVAL OF MINUTES**

Mr. Wade asked for a motion to approve the September 15, 2016 minutes of the Executive Committee. Mr. Randolph "Randy" Marcus, so moved and Ms. Susan Whealler Johnston seconded. The minutes were unanimously approved as submitted. Available online at:

<https://www.radford.edu/content/bov/home/meetings/minutes.html>

### **REPORTS OF STANDING COMMITTEE CHAIRS**

The following Standing Committee Chairs provided reports:

Ms. Susan Whealler Johnston, Academic Affairs Committee

Mr. Randolph “Randy” J. Marcus, Advancement/Alumni and Communications/Marketing Committee

Ms. Mary Ann Hovis, Business Affairs and Audit Committee

Mr. Mark S. Lawrence, Student Affairs Committee

Mr. Chris Wade, Governance, Administration and Athletics Committee, provided a summary for ad hoc Committee Chair, Ms. Georgia Anne Snyder-Falkinham

Mr. Wade acknowledged the positive change in working relationships, which were evident in reports provided by the various Vice Presidents. He also wanted to note the positive change in producing fundraising proposals as they are now a professional individualized publication.

### **COMMONWEALTH BUDGET STATUS**

The Committee members discussed the pending budget reductions requested by the Commonwealth of Virginia and the impact on Radford University. As a tool for Board members, they requested ‘talking points’ be provided as a resource to tell the Radford Story.

### **ADJOURNMENT**

Mr. Wade thanked the Committee Chairs for their service. With no further business to come before the Board, Mr. Christopher Wade, Rector, adjourned the meeting at 8:55 a.m.

Respectfully submitted,

Ms. Mary Weeks  
Secretary to the Board of Visitors/Senior Assistant to the President

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**RADFORD UNIVERSITY  
SUPPLEMENTAL DEFINED CONTRIBUTION BENEFIT PLAN**

Amended and Restated Effective January 1, 2017

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## PREAMBLE

Radford University established the Radford University Supplemental Defined Contribution Benefit Plan (the "Plan") effective January 1, 2009. The Plan is intended to be a qualified profit-sharing plan under section 401(a) of the Internal Revenue Code (the "Code"), and is a governmental plan as described in Code section 414(d). The Plan was amended on one occasion, effective January 1, 2009. The Plan is now being amended and restated in its entirety effective January 1, 2017, except as otherwise noted. As part of this restatement, the portion of the Plan that is the qualified excess benefit arrangement under Code section 415(m) is being set forth in a separate written document from the Plan.

## SECTION 1 DEFINITIONS

### 1.1. **Accumulation Account**

The account of a Participant or a Former Participant that is credited with Supplemental Employer Contributions pursuant to Section 3.1.

### 1.2. **Administrator**

The University and, to the extent that the University has delegated any of its duties as Administrator pursuant to Section 10, the individual, committee or organization to whom such duty has been delegated.

### 1.3. **Board**

The Board of Visitors of the University.

### 1.4. **Code**

The Internal Revenue Code of 1986, as amended.

### 1.5. **Eligible Employee**

The President of the University, and other key Employees designated by the Board or its delegate and identified on Appendix A, attached hereto.

### 1.6. **Employee**

Any individual on the payroll of the Employer whose wages from the Employer are subject to withholding for the purposes of Federal income taxes and the Federal Insurance Contributions Act. If a person is engaged in an independent contractor or similar capacity and is subsequently reclassified by the Employer, the Internal Revenue Service, or a court as an employee, such person, for purposes this Plan, shall be deemed an Employee from the actual (and not the effective) date of such reclassification, unless expressly provided otherwise by the Employer.

1.7. **Employer**

The University.

1.8. **Fiscal Year**

The twelve (12) month period commencing on each July 1 and ending on June 30.

1.9. **Former Participant**

Any individual who is no longer a Participant but who continues to have an Accumulation Account.

1.10. **Former Vendor**

Any vendor that was approved by the Board to receive Supplemental Employer Contributions under the Plan, but is no longer approved under the Plan to receive Supplemental Employer Contributions, until such time as the vendor no longer continues to hold Plan assets.

1.11. **415 Compensation**

An Employee's total annual compensation from the Employer for the Limitation Year, as defined in the Treasury Regulations issued under Code section 415. 415 Compensation includes an Employee's wages (including any elective deferrals as defined in Code section 402(g)(3)), salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Employer. 415 Compensation paid or made available during such Limitation Year shall also include any amount that is contributed or deferred by the University at the election of the Employee and that is not includible in the gross income of the Employee by reason of Code section 125, 132(f)(4), or 457(b). 415 Compensation shall also include amounts received after a Participant's severance from employment with the University but only to the extent such amounts are received by the later of 2-1/2 months following such severance from employment or the end of the Plan Year that includes the date of the Participant's severance from employment and such amounts do not include severance pay or other amounts that would have not been paid to the Participant absent his severance. 415 Compensation does not include: (a) contributions (other than elective contributions described in Code sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a deferred compensation plan which, without regard to Code section 415, are not includible in the Employee's gross income for the taxable year in which contributed; (b) Employer contributions made on behalf of the Employee to a simplified employee pension plan described in Code section 408(k) or a simplified retirement account described in Code section 408(p) to the extent not includible in gross income for the taxable year in which contributed; (c) distributions from a deferred compensation plan and (d) other items of remuneration similar to (a) through (c).

1.12. **Investment Options**

The investment funds available under the Trust and specifically approved by the Administrator, in its sole and absolute discretion, for use under this Plan in accordance with Section 5.

1.13. **Limitation Year**

The Plan Year.

1.14. **Participant**

Any Employee who has commenced participation in the Plan in accordance with the provisions of Section 2 of the Plan.

1.15. **Plan**

The Radford University Supplemental Defined Contribution Benefit Plan as set forth in this document and as amended from time to time.

1.16. **Plan Year**

The twelve (12) month period commencing on each January 1 and ending on December 31.

1.17. **Supplemental Employer Contributions**

The amount allocated to an Eligible Employee's Accumulation Account pursuant to Section 3.1.

1.18. **Trust**

A trust, a custodial account treated as a qualified trust under Code section 401(f), and/or an annuity contract treated as a qualified trust under Code section 401(f), established under the Plan to hold Plan assets.

1.19. **Trust Fund**

The assets of the Plan held pursuant to the terms of the Plan and Trust.

1.20. **Trustee**

The trustee or any successor trustee designated and appointed by the Employer, and includes the entity or person(s) holding the assets of a custodial account or holding an annuity contract in accordance with Code section 401(f).

1.21. **University**

Radford University.

1.22. **USERRA**

The Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

1.23. **Valuation Date**

The last day of each Plan Year and each other interim date during the Plan Year on which the portion of the assets of a Participant's or Former Participant's Accumulation Account is valued.

1.24. **Vendor**

A service provider that has been approved by the Administrator to serve as third party administrator and/or recordkeeper for the Plan and/or to offer Investment Options to Participants under the Plan. The Vendor(s) is set forth in Appendix B hereto, as amended from time to time. The Administrator, in its sole and absolute discretion, shall select the Vendor(s) and may add or delete Vendor(s).

**SECTION 2  
PARTICIPATION**

2.1. **Participation**

An Employee shall become a Participant in the Plan as of the date he becomes an Eligible Employee, or as soon as practicable thereafter.

2.2. **Obligation of Participant**

When an Employee becomes eligible to participate, and thereafter from time to time, the Administrator may require the Employee to furnish such information and fill out, sign and file such forms and documents as may be reasonably required for the administration of the Plan, including beneficiary designation forms, evidence of age and marital status, etc. If a Participant does not comply with any such reasonable requirements neither the Administrator, nor any other person, shall be obligated to administer the Plan for such Participant until such information is properly furnished, and no such person shall incur liability to such Participant or his beneficiary to the extent that any intended Plan benefit has not been obtained or is not available because of the Participant's or beneficiary's failure to furnish such information and fill out, sign and file such documents.

2.3. **Termination of Participation**

Participation in the Plan continues until a Participant is no longer an Eligible Employee.

2.4. **Reinstatement as an Eligible Employee**

A former Eligible Employee who subsequently becomes an Eligible Employee shall again be a Participant in the Plan.

## SECTION 3 CONTRIBUTIONS

### 3.1. Supplemental Employer Contributions

- (a) The Employer may, in its sole and absolute discretion, make a Supplemental Employer Contribution on behalf of a Participant. The amount of any such Supplemental Employer Contribution shall be determined by the Board, in its sole and absolute discretion, and designated on Appendix A; however, in no event shall the Supplemental Employer Contribution exceed the dollar limitation of Code section 401(a)(17), to the extent applicable. The timing of such Supplemental Employer Contributions shall be determined by the Employer in its sole and absolute discretion; however, such contributions shall be made no later than the end of each Fiscal Year to which the contribution relates.
- (b) In addition to or lieu of the Supplemental Employer Contributions set forth in paragraph (a), Supplemental Employer Contributions may also be made to the Plan on behalf of a Participant to the extent authorized by the Board, in its sole and absolute discretion, and set forth in a written resolution, employment contract, or other document. The timing of such Supplemental Employer Contributions shall be determined by the Employer in its sole and absolute discretion; however, such contributions shall be made no later than as required by law.

### 3.2. Rollover Contributions

The Plan shall accept no rollover contributions of any kind.

### 3.3. Transfer Contributions

The Plan shall accept no transfer contributions of any kind.

### 3.4. Annual Limitation on Contributions

#### (a) Defined Contribution Limit

In no event shall a Participant's Supplemental Employer Contribution under Section 3.1 above for the Limitation Year exceed the lesser of:

- (i) \$54,000 for 2017, as adjusted thereafter under Code section 415(d); or
- (ii) one hundred percent (100%) of the Participant's 415 Compensation.

#### (b) Participation In More Than One Plan

If the Employer maintains one or more qualified defined contribution plans, as defined in Code section 414(i), for Employees, some or all of whom may be Participants in this Plan, then the contributions made on behalf of the Participant in such other plans shall be aggregated with the contributions made on behalf of

the Participant derived from this Plan prior to the end of the Limitation Year for purposes of the limitation in Section 3.4(a) above. In the event that the Participant's aggregate annual additions, as defined in Code section 415(c) and the Treasury Regulations issued thereunder, exceed the contribution limit in Section 3.4(a) for any Limitation Year, the contributions under Section 3.1 of this Plan shall be reduced to the maximum extent necessary prior to the end of the Limitation Year and reallocated in accordance with the terms found in the Radford University Qualified Governmental Excess Benefit Arrangement.

(c) No Exceeding 415 Limit

In no event shall the amount of contributions determined under this Section 3 exceed the maximum contributions permitted under Code section 415.

**3.5. Reemployment of Returning Veterans**

(a) Retroactive Contributions

If a Participant is in qualified military service, as that term is defined under USERRA, and he returns to employment with the Employer within ninety (90) days of the end of his military leave (or such longer period of time as his reemployment rights are protected by law), the Employer shall make the contributions described in Section 3.1 above on behalf of the Participant that he otherwise would have been entitled to but for his absence due to the military leave.

(b) Limitations

Contributions made pursuant to (a) above shall not be counted for purposes of Section 3.4 during the Plan Year (Limitation Year) when they are made. Rather such contributions shall be counted for purposes of Section 3.4 in the Plan Year to which the contributions relate.

(c) Crediting of Earnings

A Participant who is entitled to a contribution pursuant to (a) above shall not be entitled to receive corresponding retroactive earnings attributable to such contribution.

(d) Death Benefits

Effective January 1, 2009, to the extent provided under Code section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then terminated employment the

next day on account of death. Such qualified military service will count for vesting purposes.

(e) Differential Wage Payments

Effective January 1, 2009, a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code section 414(u)(12)(D) from the Employer shall be treated as an Employee of the Employer and the differential wage payment shall be treated as 415 Compensation under Section 1.11 for purposes of applying the limits on annual additions under Code section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**SECTION 4  
VESTING**

A Participant shall be immediately 100% vested in his Supplemental Employer Contributions made pursuant to Section 3.1(a). A Participant shall be vested in his Supplemental Employer Contributions made pursuant to Section 3.1(b) as set forth in the applicable written resolution, employment contract, or other document; provided, however, that if the applicable written resolution, employment contract, or other document does not specify a vesting schedule, the Participant shall also be immediately 100% vested in his Supplemental Employer Contributions made pursuant to Section 3.1(b).

**SECTION 5  
INVESTMENT OPTIONS**

**5.1. Vendors and Investment Options.**

- (a) All Supplemental Employer Contributions made pursuant to Section 3.1 shall be transferred to the Vendor(s) to be held, managed, invested, and distributed in accordance with the provisions of the Plan and the Trust, as applicable. All benefits under the Plan shall be distributed solely from the Trust, and the Employer shall have no liability for any such benefits other than the obligation to make Supplemental Employer Contributions as provided in the Plan.
- (b) Participants' Accumulation Accounts shall be invested in one or more of the Investment Options available to Participants from a Vendor(s) approved under this Plan, as selected by the Administrator and communicated to Participants. The current Vendor(s) are listed in Appendix B. The Administrator's current selection of Vendor(s) and Investment Options is not intended to limit future additions or deletions of Vendor(s) or Investment Options.
- (c) A Participant shall have the right to direct the investment of his Accumulation Accounts by filing the applicable form with the Vendor(s). A Participant may change his investment election as often as determined by the Vendor(s). A Participant may elect to transfer all or any portion of his Accounts invested in any

one Investment Option to another Investment Option, regardless of whether offered by the same or a different Vendor, subject to the limitations of the Trust, by filing a request on the applicable form with the Vendor(s) or by such other means that may be provided for by the Vendor(s). A Participant may also elect to transfer all or any portion of his Accounts invested in an Investment Option with a Former Vendor to an Investment Option with a Vendor, subject to the terms of the Trust.

- (d) An investment change that includes an investment with a Former Vendor or other vendor that is not eligible to receive Supplemental Employer Contributions under the Plan is not permitted.

## **5.2. Default Investments.**

If a Participant does not have a valid and complete investment direction on file with the Vendor on the applicable form, Supplemental Employer Contributions will be invested in a default fund selected by the Administrator in its sole and absolute discretion, until the Participant makes an affirmative election regarding the investment of the Participant's Accumulation Account.

## **SECTION 6 TRUST**

### **6.1. Trust Fund.**

All Supplemental Employer Contributions under the Plan shall be transferred to the Trustee to be held in Trust as part of the Trust Fund in accordance with the provisions of the Plan and the Trust. All assets held in connection with the Plan, including all Supplemental Employer Contributions, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property or rights, shall be held in, managed, invested and distributed in Trust as part of the Trust Fund, in accordance with the provisions of the Plan. All benefits under the Plan shall be distributed solely from the Trust Fund, and the Employer shall have no liability for any such benefits other than the obligation to make Supplemental Employer Contributions as provided in the Plan.

### **6.2. Trust Status.**

The Trust Fund shall be held in Trust for the exclusive benefit of Participants and beneficiaries under the Plan in accordance with Code section 501(a). No part of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their beneficiaries, and for defraying the reasonable expenses of the Plan and Trust. The Trust is exempt from tax pursuant to Code sections 401(a) and 501(a).

## SECTION 7 DISTRIBUTION

### 7.1. Time and Form of Distribution

A Participant shall be entitled to a distribution of the amount allocated to his Accumulation Amount upon his separation from service with the Employer or, if earlier, when he has both (i) been a Plan Participant for a minimum of two years and (ii) has attained age 59½. Subject to the mandatory distribution provisions of Section 7.2, distributions shall be made in accordance with the terms of the Trust.

### 7.2. Minimum Distribution Requirements

The provisions of this Section 7.2 will apply for purposes of determining required minimum distributions under Code section 401(a)(9). The requirements of this Section 7.2 shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be determined and made in accordance with a good faith interpretation of the requirements of Code section 401(a)(9), including the incidental death benefit requirements of Code section 401(a)(9)(G) and the applicable regulations thereunder, including Treasury regulations sections 1.401(a)(9)-1 through -9, as applicable to a governmental plan within the meaning of Code section 414(d).

#### (a) Time and Manner of Distribution

- (i) Required Beginning Date. The Participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date, as defined in subsection 7.2(d)(v).
- (ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:
  - (A) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½ if later.
  - (B) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (C) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's

entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (D) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection 7.2(a)(ii), other than subsection 7.2(a)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of subsections 7.2(a)(ii) and 7.2(c), unless subsection 7.2(a)(ii)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection 7.2(a)(ii)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection 7.2(a)(ii)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection 7.2(a)(ii)(A)), the date distributions are considered to begin is the date distributions actually commence.

- (iii) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions shall be made in accordance with subsections (b) and (c) of this Section 7.2. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code section 401(a)(9) and applicable Treasury Regulations.

(b) Required Minimum Distributions During Participant's Lifetime.

- (i) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
  - (A) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation section 1.401(a)(9)-9 using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
  - (B) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation section 1.401(a)(9)-9, using the Participant's and spouse's attained

ages as of the Participant's and spouse's birthdays in the distribution calendar year.

- (ii) Lifetime Required Minimum Distribution Through Year of Participant's Death. Required minimum distributions will be determined under this subsection 7.2(b) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

(c) Required Minimum Distributions After Participant's Death.

(i) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

- (1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (2) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (3) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death,

the minimum amount that shall be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) Death Before Date Distributions Begin.

- (A) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that shall be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in subsection 7.2(c)(i).
- (B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (C) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection 7.2(a)(ii)(A), this subsection 7.2(c)(ii) shall apply as if the surviving spouse were the Participant.

(d) Definitions.

- (i) Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the Designated Beneficiary under Code section 401(a)(9) and Treasury Regulation section 1.401(a)(9)-1, Q&A-4.
- (ii) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under subsection 7.2(a)(ii). The required minimum distribution for the

Participant's first Distribution Calendar Year shall be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

- (iii) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Treasury Regulation section 1.401(a)(9)-9.
  - (iv) Participant's Account Balance. The Participant's account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Participant's account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Participant's account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
  - (v) Required Beginning Date. The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70½ or if later, April 1 following the calendar year in which the Participant retires.
- (e) Election to Allow Participants, Former Participants or Beneficiaries to Elect 5-Year Rule.

Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in subsections 7.2(a)(ii) and 7.2(c)(ii) applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under subsection 7.2(a)(ii), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with subsections 7.2(a)(ii) and 7.2(c)(ii).

### 7.3. **Direct Rollover**

For purposes of this Section and compliance with Code section 401(a)(31), these provisions apply notwithstanding any contrary provision or law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover

distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (a) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
- (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
  - (ii) any distribution to the extent such distribution is required under Code section 401(a)(9);
  - (iii) the portion of any distribution that is not includible in gross income; provided, however, effective January 1, 2009, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, but such portion may be transferred only:
    - (A) to an individual retirement account or annuity described in Code section 408(a) or (b) or to a qualified defined contribution plan described in Code section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;
    - (B) on or after January 1, 2009, to a qualified defined benefit plan described in Code section 401(a) or to an annuity contract described in Code section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or
    - (C) on or after January 1, 2009, to a Roth IRA described in section Code 408A; and
  - (iv) any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Code section 415 or any distribution that is reasonably expected to total less than \$200 during the year.

Effective January 1, 2009, the definition of eligible rollover distribution also includes 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).

- (b) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:
  - (i) an individual retirement account described in Code section 408(a),
  - (ii) an individual retirement annuity described in Code section 408(b),
  - (iii) an annuity plan described in Code section 403(a),
  - (iv) a qualified trust described in Code section 401(a),
  - (v) effective January 1, 2009, an annuity contract described in Code section 403(b),
  - (vi) effective January 1, 2009, a plan eligible under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Plan, or
  - (vii) effective January 1, 2009, a Roth IRA described in Code section 408A.
- (c) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p). Effective January 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Code section 401(a)(9)(E). However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.
- (d) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.

#### 7.4. **Incompetence of Participant**

If the Administrator receives evidence that a Participant with an Accumulation Amount is physically or mentally incompetent or incompetent by any reason of age to receive a distribution and give valid release therefore, the Administrator shall make such distribution to the Participant's legal representative (such as a guardian) provided the Administrator, in its sole and absolute discretion, determines that such individual has the authority as legal representative to request payment of the amount credited to the

Participant's Accumulation Amount. Any such payment made under this Section 7.4 shall constitute a complete discharge of any liability under this Section 7.

## **SECTION 8 AMENDMENT AND TERMINATION**

### **8.1. Amendment**

The University reserves the right to amend the Plan, through affirmative action by the Board at any time and from time to time, in whole or in part, including, without limitation, retroactive amendments necessary or advisable to qualify the Plan under the provisions of Code sections 401(a) and 403(a). The Board may delegate its authority to amend the Plan to one or more officers of the University. Except as set forth in Section 8.3, no such amendment shall (1) cause any part of the assets of the Plan to revert to or be recoverable by the University or be used for or diverted to purposes other than the exclusive benefit of Participants, Former Participants, and beneficiaries; (2) deprive any Participant, Former Participant, or beneficiary of any benefit already vested; (3) alter, change, or modify the duties, powers, or liabilities of the Administrator without its written consent; or (4) permit any part of the assets of the Plan to be used to pay premiums or contributions of the Employer under any other plan maintained by the University for the benefit of its Employees. No amendment to the vesting schedule shall deprive a Participant of nonforfeitable rights to benefits accrued to the date of the amendment.

### **8.2. Termination, Partial Termination, or Complete Discontinuance of Contributions**

- (a) Although the University has established the Plan with the intention and expectation that it will make contributions indefinitely, nevertheless the University shall not be under any obligation or liability to continue its contributions or to maintain the Plan for any given length of time. The University may in its sole and absolute discretion through an affirmative action by its Board discontinue contributions or terminate the Plan in whole or in part in accordance with its provisions at any time without any liability for the discontinuance or termination.
- (b) If the University completely terminates the Plan, the University shall arrange for suitable distribution of Plan assets, including the possibility of transfer to another 401(a) plan or plans. The Trustee shall not be required to pay out any asset of the Trust Fund to Participants and beneficiaries or a successor plan upon termination of the Trust until the Trustee has received written confirmation from the University (i) that all provisions of the law with respect to such termination have been complied with, and, (ii) after the Trustee has made a determination of the fair market value of the assets of the Plan, that the assets of the Plan are sufficient to discharge when due all obligations of the Plan required by law. The Trustee shall rely conclusively upon such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

### 8.3. **Permissible Reversions**

- (a) Notwithstanding any other provision of the Plan:
  - (i) No Participant or beneficiary shall have any right or claim to any benefit under the Plan before the Internal Revenue Service determines that the Plan qualifies under the provisions of Code section 401(a), or any statute of similar import, other than any vested rights. Upon the distribution to the Participants of any vested amounts and the return of any remaining contributions to the Employer following the denial of initial qualification of the Plan under the provisions of Code section 401(a), the Plan shall be terminated.
  - (ii) To the extent the Employer's contributions are made by reason of a mistake of fact, they may be returned to the Employer within one (1) year from the date of contribution.
- (b) The amounts that may be returned to the Employer under Section 8.3(a)(ii) above shall be the excess of the amounts contributed over the amounts that would have been contributed had there not been a mistake of fact. No earnings on the mistaken contributions may be returned to the Employer and losses sustained after the date of contribution shall proportionately reduce the amount that may be returned to the Employer.

## **SECTION 9 CLAIMS**

A Participant's (or beneficiary's) claim for benefits shall be resolved by the Vendor that holds the Participant's (or beneficiary's) Accumulation Account based on such Vendor's established procedures.

## **SECTION 10 ADMINISTRATION**

### 10.1. **Plan Administrator**

The Administrator shall administer the Plan. The Rector of the University is designated as the agent of the Plan for the service of legal process.

The Administrator's duties shall include, without limitation, powers with respect to the administration of the Plan. The Administrator shall have the power to take all action and to make all decisions that shall be necessary or proper in order to carry out the provisions of the Plan and, without limiting the generality of the foregoing, the Administrator shall have the following powers:

- (a) to make (and enforce by suspension or forfeiture) such rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;

- (b) to interpret or construe the Plan;
- (c) to decide questions concerning the Plan and the eligibility of any Employee to participate therein and the right of any person to receive benefits thereunder;
- (d) to decide any dispute arising under the Plan;
- (e) to compute the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan;
- (f) to prescribe and require the use of such forms as it shall deem necessary or desirable in connection with the administration of the Plan;
- (g) to supply any remedies or corrections to omissions in the Plan;
- (h) to reconcile and correct any errors or inconsistencies in the Plan; and
- (i) to make equitable adjustments for any mistakes or errors made in the administration of the Plan.

The Administrator shall establish rules and regulations and shall take other necessary or proper action to carry out its duties and responsibilities.

#### **10.2. Actions Conclusive**

Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. The decisions of the Administrator on any matter within its authority shall be made in the sole discretion of the Administrator and shall be final and binding on all parties, including without limitation, the Employer, Participants and beneficiaries.

#### **10.3. Appointment of Agents**

The Administrator may employ or engage such accountants, counsel, other experts, and other persons as it deems necessary in connection with the administration of the Plan to the extent permitted by law.

#### **10.4. Reliance on Opinions, Etc.**

The Administrator and each person to whom it may delegate any power or duty in connection with administering the Plan shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by them in good faith reliance upon any valuation, certificate, opinion, or report which shall be furnished to them or any of them by any accountant, counsel, other expert, or other person who shall be employed or engaged by the Administrator.

#### **10.5. Records and Accounts**

The Administrator shall keep or cause to be kept all data, records and documents pertaining to the administration of the Plan, and shall execute all documents necessary to carry out the provisions of the Plan.

#### **10.6. Liability**

The Administrator shall incur no liability for any action taken or not taken in good faith reliance on advice of counsel, who may be counsel for the University or taken or not taken in good faith reliance on a determination as to a matter of fact which has been represented or certified by a person reasonably believed to have knowledge of the fact so represented or certified, or taken or not taken in good faith reliance on a recommendation or opinion expressed by a person reasonably believed to be qualified or expert as to any matter where it is reasonable or customary to seek or rely on such recommendations or opinions. Nor shall any employee of the Administrator be liable for the wrongful or negligent conduct of any other employee or any person having fiduciary responsibilities with respect to the Plan unless the employee (i) knowingly participates in or undertakes to conceal an act or omission of such other person knowing the act or omission is a breach of fiduciary duty, (ii) by failing to act solely in the interests of Participants and beneficiaries or to exercise the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would exercise, has enabled the other fiduciary to commit a breach, or (iii) has knowledge of a breach by the other fiduciary and does not make reasonable efforts under the circumstances to remedy it. The University shall jointly and severally indemnify any employee and hold him or her harmless from loss, liability and expense in respect of the Plan for actions taken within the scope of his duties, including the legal cost of defending claims and amounts paid in satisfaction or settlement thereof provided only that no indemnification is intended that would be void as against public policy or the laws of the Commonwealth of Virginia.

### **SECTION 11 MISCELLANEOUS**

#### **11.1. Limitation of Rights; Employment Relationship**

The establishment of the Plan or any modifications of it or the creation of any fund or account, or the payment of any benefits shall not be construed as modifying or affecting in any way the terms of employment of any Employee.

#### **11.2. Merger; Transfer of Assets**

- (a) If the University merges or consolidates with or into another entity, or if substantially all the assets of the University are transferred to another entity, the Plan shall terminate on the effective date of the merger, consolidation, or transfer. However, if the surviving entity resulting from the merger or consolidation, or the entity to which the assets have been transferred, adopts this Plan, the Plan shall continue and the successor entity shall succeed to all rights, powers, and duties of

the University under the Plan, and the employment of any Employee who is continued in the successor entity's employ shall not be deemed to have been terminated for any purpose under the Plan.

- (b) This Plan shall not be merged or consolidated with any other employee benefit plan, nor shall there be any transfer of assets or liabilities from this Plan to any other plan, unless, immediately after the merger, consolidation, or transfer, each Participant's benefits, if the other plan were then to terminate, are at least equal to the benefits to which the Participant would have been entitled had this Plan been terminated immediately before the merger, consolidation, or transfer.

### **11.3. Prohibition Against Assignment**

- (a) Except as provided below, the benefits provided by this Plan may not be assigned or alienated. The University shall not recognize any transfer, mortgage, pledge, hypothecation, order, or assignment by any Participant or beneficiary of all or part of his interest under the Plan, and the interest shall not be subject in any manner to transfer by operation of law and shall be exempt from the claims of creditors or other claimants from all orders, decrees, levies, garnishments, and/or executions, and other legal or equitable process or proceedings against the Participant or beneficiary to the fullest extent that may be permitted by law.
- (b) This provision shall not apply to an administrative domestic relations order, and those other domestic relations orders permitted to be so treated by the Administrator under the Code. To the extent provided under an administrative domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

### **11.4. Applicable Law; Severability**

This Plan shall be construed, administered, and governed in all respects in accordance with the laws of the Commonwealth of Virginia, provided, however, that if any provision is susceptible to more than one interpretation, it shall be interpreted in a manner consistent with the Plan being a qualified plan within the meaning of Code section 401(a). If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

### **11.5. Gender and Number; Captions or Headings**

Wherever appropriate to the meaning or interpretation of this Plan, the masculine gender shall include the feminine, and the singular number shall include the plural and vice versa. Captions or headings are inserted and intended for organizational format and convenience of reference only; they are not to be given independent substantive meaning or effect.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Plan to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RADFORD UNIVERSITY  
SUPPLEMENTAL DEFINED CONTRIBUTION BENEFIT PLAN**

**APPENDIX A  
ELIGIBLE EMPLOYEES AND CONTRIBUTIONS**

The Supplemental Employer Contributions on behalf of the Eligible Employee are as follows:

<b>Eligible Employee</b>	<b>Supplemental Employer Contribution</b>	<b>Fiscal Years</b>
Dr. Brian O. Hemphill	\$XXX,XXX	Each Fiscal Year beginning with the 2016 Fiscal Year and ending with the 2020 Fiscal Year

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Appendix A to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RADFORD UNIVERSITY  
SUPPLEMENTAL DEFINED CONTRIBUTION BENEFIT PLAN**

**APPENDIX B  
APPROVED VENDORS**

The current selection of Vendor(s) is not intended to limit future additions or deletions of Vendor(s). The Administrator from time to time may add or delete Vendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in a revised Appendix B.

**A. Approved Vendors**

As of January 1, 2017, the Vendor under the Plan is Teachers Insurance and Annuity Association – College Retirement Equities Fund ("TIAA-CREF").

**B. Former Vendors**

As of January 1, 2017, there are no Former Vendors under the Plan.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Appendix B to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**RADFORD UNIVERSITY  
QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT**

Amended and Restated Effective January 1, 2017

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## PREAMBLE

Radford University established the Radford University Qualified Governmental Excess Benefit Arrangement for (the "Plan") effective January 1, 2009, as a portion of the Radford University Supplemental Defined Contribution Benefit Plan (the "Supplemental Plan"). The Plan is intended to be a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code ("Code") and an exempt governmental deferred compensation plan described in Code section 3121(v)(3). Code sections 83, 402(b), 409A, 457(a) and 457(f)(1) do not apply to the Plan.

The terms of the Plan were formerly set forth in the Supplemental Plan document, which was most recently amended and restated effective January 1, 2017. The Plan is now being amended and restated effective January 1, 2017, and as part of that restatement is being set forth in a separate written document from the Supplemental Plan. The sole purpose of the Plan is to provide for contributions that would have been made to the Supplemental Plan absent the limitations of Code section 415(c).

## SECTION 1 DEFINITIONS

### 1.1. **Administrator**

The University or any individual, committee or organization to whom the University has delegated any of its duties as Administrator.

### 1.2. **Board**

The Board of Visitors of the University.

### 1.3. **Code**

The Internal Revenue Code of 1986, as amended.

### 1.4. **Eligible Employee**

An Employee of the Employer who participates in the Supplemental Plan and for whom the amounts contributed on his behalf under the Supplemental Plan would exceed the applicable limitations described in Code section 415 for the Limitation Year, but for a reduction in such contributions.

### 1.5. **Employee**

Any individual on the payroll of the Employer whose wages from the Employer are subject to withholding for the purposes of Federal income taxes and the Federal Insurance Contributions Act. If a person is engaged in an independent contractor or similar capacity and is subsequently reclassified by the Employer, the Internal Revenue Service, or a court as an employee, such person, for purposes this Plan, shall be deemed an Employee from the actual (and not the effective) date of such reclassification, unless expressly provided otherwise by the Employer.

1.6. **Employer**

The University.

1.7. **Excess Benefit Account**

A bookkeeping account established by the Administrator to which a Participant's Excess Benefit Amount is credited. The Excess Benefit Account shall be a bookkeeping device only, and all amounts credited to a Participant's Excess Benefit Account shall be paid from the general assets of the Employer.

1.8. **Excess Benefit Amount**

With respect to a Participant for a Plan Year, the Employer contribution that would have been for the Participant to the Supplemental Plan but could not be made because of the application of Code section 415(c).

1.9. **Investment Fund**

The funds referred to in Section 3.2 hereof for the crediting of a Participant's Excess Benefit Account, sometimes also referred to as "Fund" or "Funds," used to determine the investment return with respect to an Excess Benefit Account.

1.10. **Limitation Year**

The Plan Year.

1.11. **Participant**

An Eligible Employee who has an Excess Benefit Account under the Plan.

1.12. **Plan**

The Radford University Qualified Governmental Excess Benefit Arrangement as set forth in this document and as amended from time to time.

1.13. **Plan Year**

The twelve (12) month period commencing on each January 1 and ending on December 31.

1.14. **Severance from Employment**

A Participant's severance from employment with the Employer and all affiliated employers for any reason. A Participant shall be deemed to have severed from employment with the Employer for purposes of the Plan when, in accordance with the established personnel policies of the Employer, the employment relationship is treated as terminated.

1.15. **Supplemental Plan**

The Radford University Supplemental Defined Contribution Retirement Plan as amended from time to time.

1.16. **University**

Radford University.

**SECTION 2  
PARTICIPATION**

2.1. **Participation**

All Eligible Employees shall automatically participate in the Plan. The Administrator shall determine for each Plan Year which Participants in the Supplemental Plan are covered by this Plan.

2.2. **Termination of Participation**

Participation in the Plan continues until a Participant's Excess Benefit Account is fully distributed; provided however, that a Participant will no longer be eligible to receive credits to the Excess Benefit Account after ceasing to be an Eligible Employee or such other time as determined by the Employer in its discretion.

2.3. **Obligation of Participant**

When an Eligible Employee becomes eligible to participate, and thereafter from time to time, the Administrator may require the Eligible Employee to furnish such information and fill out, sign and file such forms and documents as may be reasonably required for the administration of the Plan, including beneficiary designation forms, evidence of age and marital status, etc. If a Participant does not comply with any such reasonable requirements, neither the Administrator nor any other person shall be obligated to administer the Plan for such Participant until such information is properly furnished, and no such person shall incur liability to such Participant or his beneficiary to the extent that any intended Plan benefit has not been obtained or is not available because of the Participant's or beneficiary's failure to furnish such information and fill out, sign and file such documents.

**SECTION 3  
EXCESS BENEFIT ACCOUNTS**

3.1. **Excess Benefit Amounts**

The Employer shall credit to the Excess Benefit Account an Excess Benefit Amount for each Participant determined to be eligible for the Plan Year pursuant to Section 2.1 equal to the Employer contributions that would have been made for the Participant to the Supplemental Plan but that could not be made because of the application of Code section 415. The Excess Benefit Amount shall be credited no later than December 31 of the Plan

Year to which the Excess Benefit Amount relates. No election is provided at any time to any Participant, directly or indirectly, to defer compensation under this Plan and no employee pre-tax or after-tax contributions may be made to or under this Plan at any time.

### 3.2. **Crediting of Investment Return to the Participant's Excess Benefit Account**

#### (a) Crediting of Investment Return

The Administrator shall credit to each Participant's Excess Benefit Account an investment return (positive or negative) equal to the rate of return on shares of the Investment Fund, or Funds, selected pursuant to Section 3.2(b) below, assuming reinvestment of dividends and distributions from the Fund. For purposes of measuring the investment return, amounts held in a Participant's Excess Benefit Account, shall be treated as though they were invested and reinvested in one or more of the Investment Funds designated by the Participant pursuant to Section 3.2(b) below.

The return shall be credited by the Administrator to the Participant's Excess Benefit Account at the times established by the Administrator, but no less than quarterly.

Notwithstanding the foregoing, if:

- (i) the Participant does not furnish the Administrator with a written designation in a form prescribed by the Administrator;
- (ii) the written designation from the Participant is unclear; or
- (iii) less than all of the Participant's Excess Benefit Account is covered by such written designation,

then the Participant's Excess Benefit Account shall receive no return until such time as the Participant shall provide the Administrator with valid instructions, the validity of which shall be determined by the Administrator.

#### (b) Fund Designation

The Participant shall make a designation of one or more Investment Funds on the form prescribed by the Administrator, which shall remain effective until another valid direction has been made by the Participant as herein provided. The Participant may change his designation of Investment Funds at the time and in the manner set forth by the Administrator. A change to a Participant's designation of Investment Funds shall become effective at the time set forth by the Administrator.

The Administrator in its sole discretion shall designate which Investment Funds will be available for initial designation by the Participants and may change or add to the Investment Funds which may be designated by the Participant under this Section 3.2.

(c) Quarterly Statement

The Administrator shall provide a statement to the Participant quarterly showing such information as is appropriate, including the aggregate amount in the Participant's Excess Benefit Account, as of a reasonably current date.

(d) No Required Investment

Although the investment return on a Participant's Excess Benefit Account is to be measured by the actual gains, earnings, and losses realized by one or more of the Funds selected by the Participant pursuant to this Section 3, the Employer shall not be under any obligation to make the selected investments, and the investment experience shall only be tracked as debits or credits to the Participant's book accounts over the deferral period. To the extent the Employer should elect to make any actual investments, the Employer shall be the sole and exclusive owner of those investments, and no Participant shall have any right, title or interest in or to those investments.

**3.3. No Trust Established**

All amounts credited to Participants' Excess Benefit Accounts shall be payable from the Employer's general assets or through a grantor trust as set forth herein. Under no circumstances shall Excess Benefit Amounts under this Plan be credited to the Supplemental Plan.

The interest of each Participant (and his beneficiary) in any benefits that become payable under the Plan shall be no greater than that of an unsecured creditor of the Employer. The obligation to pay the vested balance of each Participant's Excess Benefit Account hereunder shall at all times be an unfunded and unsecured obligation of the Employer. Except to the extent the Employer may in its sole discretion elect to implement a grantor trust to hold funds for the payment of any benefits which become due and payable hereunder, the Employer shall not have any obligation to establish any trust, escrow arrangement, or other fiduciary relationship for the purpose of segregating funds for the payment of the balances credited to such Excess Benefit Accounts, nor shall the Employer be under any obligation to invest any portion of its general assets in mutual funds, stocks, bonds, securities, or other similar investments in order to accumulate funds for the satisfaction of its respective obligations under the Plan.

**3.4. Vesting of Excess Benefit Amounts**

A Participant shall be vested in the Employer contributions allocated to his Excess Benefit Account under the same terms and to the same extent as if they were Employer contributions that had been made to the Supplemental Plan.

**SECTION 4**  
**DISTRIBUTIONS FROM EXCESS BENEFIT ACCOUNTS**

**4.1. Election of Distribution**

A Participant shall elect the timing and form of distribution of his Excess Benefit Account no later than the last day of the calendar year prior to his date of Severance from Employment. In the event the Participant makes no such election, his Excess Benefit Account shall be distributed in the form of a lump sum. Distribution of the Participant's Excess Benefit Account shall commence on the later of: (i) the first day of the first month following 180 days from the Participant's date of Severance from Employment, or (ii) the date the Participant otherwise elects.

The amount to be distributed to the Participant under this Section 4.1 shall be determined based on the value of the Participant's Excess Benefit Account as determined on the last day of the month in which the Participant has a Severance from Employment with the Employer.

**4.2. Forms of Distribution**

A Participant may elect to receive a distribution of his Excess Benefit Account in one of the following forms:

- (a) lump sum; or
- (b) equal annual installments over a period of years; the period of years elected by the Participant shall be not less than five (5) years and not more than fifteen (15) years.

If a Participant elects option (b), no additional earnings shall be credited to the Participant's Excess Benefit Account pursuant to Section 3.2 during the period over which the Excess Benefit Account is distributed.

**4.3. Incompetence of Participant**

If the Administrator receives evidence that a Participant with an Excess Benefit Account is physically or mentally incompetent or incompetent by any reason of age to receive a distribution and give valid release therefore, the Administrator shall make such distribution to the Participant's legal representative (such as a guardian) provided the Administrator, in its sole and absolute discretion, determines that such individual has the authority as legal representative to request payment of the amount credited to the Participant's Excess Benefit Account. Any such payment made under this Section 4.3 shall constitute a complete discharge of any liability under this Section 4.

**4.4. Location of Participant or Beneficiary Unknown**

In the event that all, or any portion, of the distribution payable to a Participant or his beneficiary under this Section 4.4 remains unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or beneficiary after

sending a registered letter, return receipt required, to the last known address, and further diligent effort, a savings account at a local financial institution shall be established in the person's name and the distribution shall be deposited therein.

**4.5. Distributions upon the Participant's Death**

In the event that the Participant dies before receiving a distribution of the entire amount credited to his Excess Benefit Account, any remaining amount shall be distributed in the form of a lump sum within 180 days of the Participant's death to the person who is the Participant's designated beneficiary under the Supplemental Plan. The amount to be distributed to the Participant's designated beneficiary shall be determined based on the value of the Participant's Excess Benefit Account as determined on the last day of the month in which the Participant died.

**4.6. Distribution upon Termination of Plan**

If the Employer terminates the Plan, each Participant shall receive a distribution of the entire balance of his Excess Benefit Account within 180 days of such termination. The amount to be distributed to the Participant shall be determined based on the value of the Participant's Excess Benefit Account as determined on the last day of the month prior to the effective date of such termination.

**SECTION 5  
AMENDMENT AND TERMINATION**

**5.1. Amendment**

The Employer reserves the right to amend the Plan, through affirmative action by the Board at any time and from time to time, in whole or in part. The Board may delegate its authority to amend the Plan to one or more officers of the University.

**5.2. Termination**

The Employer may in its sole and absolute discretion through an affirmative action by its Board terminate the Plan in whole or in part in accordance with its provisions at any time without any liability for the termination.

**SECTION 6  
ADMINISTRATION**

**6.1. Plan Administrator**

The Administrator shall administer the Plan. The Rector of the University is designated as the agent of the Plan for the service of legal process.

The Administrator's duties shall include, without limitation, powers with respect to the administration of the Plan. The Administrator shall have the power to take all action and to make all decisions that shall be necessary or proper in order to carry out the provisions

of the Plan and, without limiting the generality of the foregoing, the Administrator shall have the following powers:

- (a) to make (and enforce by suspension or forfeiture) such rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;
- (b) to interpret or construe the Plan;
- (c) to decide questions concerning the Plan and the eligibility of any Employee to participate therein and the right of any person to receive benefits thereunder;
- (d) to decide any dispute arising under the Plan;
- (e) to compute the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan;
- (f) to prescribe and require the use of such forms as it shall deem necessary or desirable in connection with the administration of the Plan;
- (g) to supply any remedies or corrections to omissions in the Plan;
- (h) to reconcile and correct any errors or inconsistencies in the Plan; and
- (i) to make equitable adjustments for any mistakes or errors made in the administration of the Plan.

The Administrator shall establish rules and regulations and shall take other necessary or proper action to carry out its duties and responsibilities.

#### **6.2. Actions Conclusive**

Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. The decisions of the Administrator on any matter within its authority shall be made in the sole discretion of the Administrator and shall be final and binding on all parties, including without limitation, the Employer, Participants, and beneficiaries.

#### **6.3. Appointment of Agents**

The Administrator may employ or engage such accountants, counsel, other experts, and other persons as it deems necessary in connection with the administration of the Plan to the extent permitted by law.

#### **6.4. Reliance on Opinions, Etc.**

The Administrator and each person to whom it may delegate any power or duty in connection with administering the Plan shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by them in good faith reliance upon any valuation, certificate, opinion, or report which shall be furnished to them or any of them

by any accountant, counsel, other expert, or other person who shall be employed or engaged by the Administrator.

**6.5. Records and Accounts**

The Administrator shall keep or cause to be kept all data, records and documents pertaining to the administration of the Plan, and shall execute all documents necessary to carry out the provisions of the Plan.

**6.6. Liability**

The Administrator shall incur no liability for any action taken or not taken in good faith reliance on advice of counsel, who may be counsel for the University or taken or not taken in good faith reliance on a determination as to a matter of fact which has been represented or certified by a person reasonably believed to have knowledge of the fact so represented or certified, or taken or not taken in good faith reliance on a recommendation or opinion expressed by a person reasonably believed to be qualified or expert as to any matter where it is reasonable or customary to seek or rely on such recommendations or opinions. Nor shall any employee of the Administrator be liable for the wrongful or negligent conduct of any other employee or any person having fiduciary responsibilities with respect to the Plan unless the employee (i) knowingly participates in or undertakes to conceal an act or omission of such other person knowing the act or omission is a breach of fiduciary duty, (ii) by failing to act solely in the interests of Participants and beneficiaries or to exercise the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would exercise, has enabled the other fiduciary to commit a breach, or (iii) has knowledge of a breach by the other fiduciary and does not make reasonable efforts under the circumstances to remedy it. The University shall jointly and severally indemnify any employee and hold him or her harmless from loss, liability and expense in respect of the Plan for actions taken within the scope of his duties, including the legal cost of defending claims and amounts paid in satisfaction or settlement thereof provided only that no indemnification is intended that would be void as against public policy or the laws of the Commonwealth of Virginia.

**SECTION 7  
MISCELLANEOUS**

**7.1. Limitation of Rights; Employment Relationship**

The establishment of the Plan or any modifications of it or the creation of any fund or account, or the payment of any benefits shall not be construed as modifying or affecting in any way the terms of employment of any Employee.

**7.2. Prohibition Against Assignment**

The benefits provided by this Plan may not be assigned or alienated. The University shall not recognize any transfer, mortgage, pledge, hypothecation, order, or assignment by any Participant or beneficiary of all or part of his interest under the Plan, and the interest shall not be subject in any manner to transfer by operation of law and shall be exempt from the

claims of creditors or other claimants from all orders, decrees, levies, garnishments, and/or executions, and other legal or equitable process or proceedings against the Participant or beneficiary to the fullest extent that may be permitted by law.

**7.3. Applicable Law; Severability**

This Plan shall be construed, administered, and governed in all respects in accordance with the laws of the Commonwealth of Virginia; provided, however, that if any provision is susceptible to more than one interpretation, it shall be interpreted in a manner consistent with the Plan being a qualified excess benefit arrangement within the meaning of Code section 415(m). If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

**7.4. Gender and Number; Captions or Headings**

Wherever appropriate to the meaning or interpretation of this Plan, the masculine gender shall include the feminine, and the singular number shall include the plural and vice versa. Captions or headings are inserted and intended for organizational format and convenience of reference only; they are not to be given independent substantive meaning or effect.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Plan to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**FIRST AMENDMENT  
TO THE  
RADFORD UNIVERSITY EMPLOYER 403(b) PLAN  
(As Effective January 1, 2009)**

**WITNESSETH**

**WHEREAS**, the Radford University Employer 403(b) Plan (the "Plan") was established effective January 1, 2007, and was amended and restated effective January 1, 2009; and

**WHEREAS**, Section 8.1 of the Plan permits the University to amend the Plan at anytime.

**NOW, THEREFORE**, in accordance with the foregoing, the Plan is hereby amended as follows effective as of the dates below:

1. The following paragraphs shall be added to Section 5.3 to read as follows:

For 2009, unless otherwise provided in the Individual Agreements, the minimum required distribution requirements set forth in this Section 5.3 shall be satisfied as provided in either subsection (1) or (2) below, as determined by the Vendor responsible for the Participant's required minimum distribution and in accordance with the Individual Agreements:

A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for Code section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least ten (10) years ("extended 2009 RMDs") will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

A Participant or Beneficiary who would have been required to receive 2009 RMDs, and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) Extended 2009 RMDs, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

Further, subject to the Individual Agreements, the 2009 RMDs and Extended 2009 RMDS will be treated as eligible rollover distributions in 2009.

2. Section 5.4 shall be amended to read as follows:

**5.4 Rollover Distributions.**

For purposes of this Section and compliance with Code section 401(a)(31), this Section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (a) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
  - (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
  - (ii) any distribution to the extent such distribution is required under Code section 401(a)(9);
  - (iii) the portion of any distribution that is not includible in gross income; provided, however, effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, but such portion may be transferred only:
    - (A) to an individual retirement account or annuity described in Code section 408(a) or (b) or to a qualified defined contribution plan described in Code section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;
    - (B) on or after January 1, 2007, to a qualified defined benefit plan described in Code section 401(a) or to an annuity contract described in Code section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon),

including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

- (C) on or after January 1, 2008, to a Roth IRA described in section Code 408A; and
- (iv) any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Code section 415 or any distribution that is reasonably expected to total less than \$200 during the year.

Effective January 1, 2002, the definition of eligible rollover distribution also includes 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).

- (b) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:
  - (i) an individual retirement account described in Code section 408(a),
  - (ii) an individual retirement annuity described in Code section 408(b),
  - (iii) an annuity plan described in Code section 403(a),
  - (iv) a qualified trust described in Code section 401(a),
  - (v) effective January 1, 2002, an annuity contract described in Code section 403(b),
  - (vi) effective January 1, 2002, a plan eligible under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Plan, or
  - (vii) effective January 1, 2008, a Roth IRA described in Code section 408A.
- (c) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and

the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p). Effective January 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Code section 401(a)(9)(E). However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

- (d) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.
- (e) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

3. A new Section 10.9 shall be added to read as follows:

**10.9 Military Service.**

- (a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time ("HEART"), Code section 414(u), and Code section 401(a)(37). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.
- (b) If a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service under Code Section 414(u), timely resumes employment with the Employer in accordance with USERRA as an Employee, the Employer shall make the Employer Contributions that would have been made if the Participant had remained employed during the Participant's qualified military service. Employer Contributions must be made no later than ninety (90) days after the date of reemployment or when the Employer Contributions are normally due for the year in which the qualified military service was performed, if later.

- (c) Effective January 1, 2007, to the extent provided under Code section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.
- (d) Effective January 1, 2009, differential wage payments within the meaning of Code section 414(u)(12)(D) shall be treated as Compensation and Includible Compensation under the Plan.

**IN WITNESS WHEREOF**, the undersigned, being an authorized officer of the University, has caused this Amendment to be executed on behalf of the University this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**Resolution**  
**Approval of Amended and Restated Supplemental Defined Contribution Benefit Plan and  
Qualified Governmental Excess Benefit Arrangement**

**WHEREAS**, the Board adopted and executed, effective January 1, 2009, the Radford University Employer Contribution 403(b) Plan (the “Employer 403(b) Plan”), an existing Internal Revenue Code (“Code”) section 403(b) plan that is exclusively funded by employer contributions, and the Radford University Supplemental Defined Contribution Plan (the “Supplemental Plan”), a defined contribution plan qualified under Code section 401(a), which included a Code section 415(m) excess benefit arrangement; and

**WHEREAS**, the Supplemental Plan required legal review to modify and amend language and provisions to be more general in order to accommodate the current employment arrangement with the President and any future participants authorized by the Board; and

**WHEREAS**, the Supplemental Plan also required amendment to be consistent and compliant with the Internal Revenue Code and the Code of Virginia; and

**WHEREAS**, legal counsel recommended the Code section 415(m) excess benefit arrangement included in the Supplemental Plan be documented in a separate plan document, thereby resulting in the amended and restated Supplemental Defined Contribution Benefit Plan (the “amended Supplemental Plan”) and the amended and restated Qualified Governmental Excess Benefit Arrangement (the “QEBA”); and

**WHEREAS**, the Rector of the University (the “Rector”) was authorized to amend and supplement the Employer 403(b) and Supplemental Plans as necessary to comply with changes in applicable federal and state laws not involving policy discretion; and

**WHEREAS**, the Board now desires to delegate authority to the Associate Vice President for Finance and University Controller to make non-substantive amendments not involving policy discretion to the Employer 403(b) Plan, amended Supplemental Plan, and QEBA on behalf of the University in order to maintain the plans in compliance with applicable federal and state laws.

**THEREFORE, BE IT RESOLVED** that the Board hereby approve the amended Supplemental Plan and QEBA, effective January 1, 2017;

**RESOLVED FURTHER**, that the Rector is hereby authorized and directed to take all such action as may be necessary and appropriate to implement the foregoing resolution;

**RESOLVED FURTHER**, that the Associate Vice President for Finance and University Controller is hereby authorized to make non-substantive amendments not involving policy discretion to the Employer 403(b) Plan, amended Supplemental Plan, QEBA as necessary to comply with changes in applicable state and federal laws;

**RESOLVED FURTHER**, that any changes to the Employer 403(b) Plan, amended Supplemental Plan, and QEBA made by the Associate Vice President for Finance and University Controller shall be reported to the Board on an annual basis when changes are made.

(A copy of the First Amendment to the Radford University Employer 403(b) Plan, Radford University Supplemental Defined Contribution Benefit Plan and Qualified Governmental Excess Benefit Arrangement, as amended and restated are attached hereto as Attachment A, B and C respectively, and made a part hereof).

**FIRST AMENDMENT  
TO THE  
RADFORD UNIVERSITY EMPLOYER 403(b) PLAN  
(As Effective January 1, 2009)**

**WITNESSETH**

**WHEREAS**, the Radford University Employer 403(b) Plan (the "Plan") was established effective January 1, 2007, and was amended and restated effective January 1, 2009; and

**WHEREAS**, Section 8.1 of the Plan permits the University to amend the Plan at anytime.

**NOW, THEREFORE**, in accordance with the foregoing, the Plan is hereby amended as follows effective as of the dates below:

1. The following paragraphs shall be added to Section 5.3 to read as follows:

For 2009, unless otherwise provided in the Individual Agreements, the minimum required distribution requirements set forth in this Section 5.3 shall be satisfied as provided in either subsection (1) or (2) below, as determined by the Vendor responsible for the Participant's required minimum distribution and in accordance with the Individual Agreements:

A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for Code section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least ten (10) years ("extended 2009 RMDs") will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

A Participant or Beneficiary who would have been required to receive 2009 RMDs, and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) Extended 2009 RMDs, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

Further, subject to the Individual Agreements, the 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

2. Section 5.4 shall be amended to read as follows:

**5.4 Rollover Distributions.**

For purposes of this Section and compliance with Code section 401(a)(31), this Section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (a) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
  - (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
  - (ii) any distribution to the extent such distribution is required under Code section 401(a)(9);
  - (iii) the portion of any distribution that is not includible in gross income; provided, however, effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, but such portion may be transferred only:
    - (A) to an individual retirement account or annuity described in Code section 408(a) or (b) or to a qualified defined contribution plan described in Code section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;
    - (B) on or after January 1, 2007, to a qualified defined benefit plan described in Code section 401(a) or to an annuity contract described in Code section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon),

including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

- (C) on or after January 1, 2008, to a Roth IRA described in section Code 408A; and
- (iv) any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Code section 415 or any distribution that is reasonably expected to total less than \$200 during the year.

Effective January 1, 2002, the definition of eligible rollover distribution also includes 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).

- (b) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:
  - (i) an individual retirement account described in Code section 408(a),
  - (ii) an individual retirement annuity described in Code section 408(b),
  - (iii) an annuity plan described in Code section 403(a),
  - (iv) a qualified trust described in Code section 401(a),
  - (v) effective January 1, 2002, an annuity contract described in Code section 403(b),
  - (vi) effective January 1, 2002, a plan eligible under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Plan, or
  - (vii) effective January 1, 2008, a Roth IRA described in Code section 408A.
- (c) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and

the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p). Effective January 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Code section 401(a)(9)(E). However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.

- (d) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.
- (e) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

3. A new Section 10.9 shall be added to read as follows:

**10.9 Military Service.**

- (a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time ("HEART"), Code section 414(u), and Code section 401(a)(37). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.
- (b) If a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service under Code Section 414(u), timely resumes employment with the Employer in accordance with USERRA as an Employee, the Employer shall make the Employer Contributions that would have been made if the Participant had remained employed during the Participant's qualified military service. Employer Contributions must be made no later than ninety (90) days after the date of reemployment or when the Employer Contributions are normally due for the year in which the qualified military service was performed, if later.

- (c) Effective January 1, 2007, to the extent provided under Code section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.
- (d) Effective January 1, 2009, differential wage payments within the meaning of Code section 414(u)(12)(D) shall be treated as Compensation and Includible Compensation under the Plan.

**IN WITNESS WHEREOF**, the undersigned, being an authorized officer of the University, has caused this Amendment to be executed on behalf of the University this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment B

**RADFORD UNIVERSITY  
SUPPLEMENTAL DEFINED CONTRIBUTION BENEFIT PLAN**

Amended and Restated Effective January 1, 2017

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## PREAMBLE

Radford University established the Radford University Supplemental Defined Contribution Benefit Plan (the "Plan") effective January 1, 2009. The Plan is intended to be a qualified profit-sharing plan under section 401(a) of the Internal Revenue Code (the "Code"), and is a governmental plan as described in Code section 414(d). The Plan was amended on one occasion, effective January 1, 2009. The Plan is now being amended and restated in its entirety effective January 1, 2017, except as otherwise noted. As part of this restatement, the portion of the Plan that is the qualified excess benefit arrangement under Code section 415(m) is being set forth in a separate written document from the Plan.

## SECTION 1 DEFINITIONS

### 1.1. **Accumulation Account**

The account of a Participant or a Former Participant that is credited with Supplemental Employer Contributions pursuant to Section 3.1.

### 1.2. **Administrator**

The University and, to the extent that the University has delegated any of its duties as Administrator pursuant to Section 10, the individual, committee or organization to whom such duty has been delegated.

### 1.3. **Board**

The Board of Visitors of the University.

### 1.4. **Code**

The Internal Revenue Code of 1986, as amended.

### 1.5. **Eligible Employee**

The President of the University, and other key Employees designated by the Board or its delegate and identified on Appendix A, attached hereto.

### 1.6. **Employee**

Any individual on the payroll of the Employer whose wages from the Employer are subject to withholding for the purposes of Federal income taxes and the Federal Insurance Contributions Act. If a person is engaged in an independent contractor or similar capacity and is subsequently reclassified by the Employer, the Internal Revenue Service, or a court as an employee, such person, for purposes this Plan, shall be deemed an Employee from the actual (and not the effective) date of such reclassification, unless expressly provided otherwise by the Employer.

1.7. **Employer**

The University.

1.8. **Fiscal Year**

The twelve (12) month period commencing on each July 1 and ending on June 30.

1.9. **Former Participant**

Any individual who is no longer a Participant but who continues to have an Accumulation Account.

1.10. **Former Vendor**

Any vendor that was approved by the Board to receive Supplemental Employer Contributions under the Plan, but is no longer approved under the Plan to receive Supplemental Employer Contributions, until such time as the vendor no longer continues to hold Plan assets.

1.11. **415 Compensation**

An Employee's total annual compensation from the Employer for the Limitation Year, as defined in the Treasury Regulations issued under Code section 415. 415 Compensation includes an Employee's wages (including any elective deferrals as defined in Code section 402(g)(3)), salaries, fees for professional services and other amounts received for personal services actually rendered in the course of employment with the Employer. 415 Compensation paid or made available during such Limitation Year shall also include any amount that is contributed or deferred by the University at the election of the Employee and that is not includible in the gross income of the Employee by reason of Code section 125, 132(f)(4), or 457(b). 415 Compensation shall also include amounts received after a Participant's severance from employment with the University but only to the extent such amounts are received by the later of 2-1/2 months following such severance from employment or the end of the Plan Year that includes the date of the Participant's severance from employment and such amounts do not include severance pay or other amounts that would have not been paid to the Participant absent his severance. 415 Compensation does not include: (a) contributions (other than elective contributions described in Code sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a deferred compensation plan which, without regard to Code section 415, are not includible in the Employee's gross income for the taxable year in which contributed; (b) Employer contributions made on behalf of the Employee to a simplified employee pension plan described in Code section 408(k) or a simplified retirement account described in Code section 408(p) to the extent not includible in gross income for the taxable year in which contributed; (c) distributions from a deferred compensation plan and (d) other items of remuneration similar to (a) through (c).

1.12. **Investment Options**

The investment funds available under the Trust and specifically approved by the Administrator, in its sole and absolute discretion, for use under this Plan in accordance with Section 5.

1.13. **Limitation Year**

The Plan Year.

1.14. **Participant**

Any Employee who has commenced participation in the Plan in accordance with the provisions of Section 2 of the Plan.

1.15. **Plan**

The Radford University Supplemental Defined Contribution Benefit Plan as set forth in this document and as amended from time to time.

1.16. **Plan Year**

The twelve (12) month period commencing on each January 1 and ending on December 31.

1.17. **Supplemental Employer Contributions**

The amount allocated to an Eligible Employee's Accumulation Account pursuant to Section 3.1.

1.18. **Trust**

A trust, a custodial account treated as a qualified trust under Code section 401(f), and/or an annuity contract treated as a qualified trust under Code section 401(f), established under the Plan to hold Plan assets.

1.19. **Trust Fund**

The assets of the Plan held pursuant to the terms of the Plan and Trust.

1.20. **Trustee**

The trustee or any successor trustee designated and appointed by the Employer, and includes the entity or person(s) holding the assets of a custodial account or holding an annuity contract in accordance with Code section 401(f).

1.21. **University**

Radford University.

1.22. **USERRA**

The Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

1.23. **Valuation Date**

The last day of each Plan Year and each other interim date during the Plan Year on which the portion of the assets of a Participant's or Former Participant's Accumulation Account is valued.

1.24. **Vendor**

A service provider that has been approved by the Administrator to serve as third party administrator and/or recordkeeper for the Plan and/or to offer Investment Options to Participants under the Plan. The Vendor(s) is set forth in Appendix B hereto, as amended from time to time. The Administrator, in its sole and absolute discretion, shall select the Vendor(s) and may add or delete Vendor(s).

**SECTION 2  
PARTICIPATION**

2.1. **Participation**

An Employee shall become a Participant in the Plan as of the date he becomes an Eligible Employee, or as soon as practicable thereafter.

2.2. **Obligation of Participant**

When an Employee becomes eligible to participate, and thereafter from time to time, the Administrator may require the Employee to furnish such information and fill out, sign and file such forms and documents as may be reasonably required for the administration of the Plan, including beneficiary designation forms, evidence of age and marital status, etc. If a Participant does not comply with any such reasonable requirements neither the Administrator, nor any other person, shall be obligated to administer the Plan for such Participant until such information is properly furnished, and no such person shall incur liability to such Participant or his beneficiary to the extent that any intended Plan benefit has not been obtained or is not available because of the Participant's or beneficiary's failure to furnish such information and fill out, sign and file such documents.

2.3. **Termination of Participation**

Participation in the Plan continues until a Participant is no longer an Eligible Employee.

2.4. **Reinstatement as an Eligible Employee**

A former Eligible Employee who subsequently becomes an Eligible Employee shall again be a Participant in the Plan.

## SECTION 3 CONTRIBUTIONS

### 3.1. Supplemental Employer Contributions

- (a) The Employer may, in its sole and absolute discretion, make a Supplemental Employer Contribution on behalf of a Participant. The amount of any such Supplemental Employer Contribution shall be determined by the Board, in its sole and absolute discretion, and designated on Appendix A; however, in no event shall the Supplemental Employer Contribution exceed the dollar limitation of Code section 401(a)(17), to the extent applicable. The timing of such Supplemental Employer Contributions shall be determined by the Employer in its sole and absolute discretion; however, such contributions shall be made no later than the end of each Fiscal Year to which the contribution relates.
- (b) In addition to or lieu of the Supplemental Employer Contributions set forth in paragraph (a), Supplemental Employer Contributions may also be made to the Plan on behalf of a Participant to the extent authorized by the Board, in its sole and absolute discretion, and set forth in a written resolution, employment contract, or other document. The timing of such Supplemental Employer Contributions shall be determined by the Employer in its sole and absolute discretion; however, such contributions shall be made no later than as required by law.

### 3.2. Rollover Contributions

The Plan shall accept no rollover contributions of any kind.

### 3.3. Transfer Contributions

The Plan shall accept no transfer contributions of any kind.

### 3.4. Annual Limitation on Contributions

#### (a) Defined Contribution Limit

In no event shall a Participant's Supplemental Employer Contribution under Section 3.1 above for the Limitation Year exceed the lesser of:

- (i) \$54,000 for 2017, as adjusted thereafter under Code section 415(d); or
- (ii) one hundred percent (100%) of the Participant's 415 Compensation.

#### (b) Participation In More Than One Plan

If the Employer maintains one or more qualified defined contribution plans, as defined in Code section 414(i), for Employees, some or all of whom may be Participants in this Plan, then the contributions made on behalf of the Participant in such other plans shall be aggregated with the contributions made on behalf of

the Participant derived from this Plan prior to the end of the Limitation Year for purposes of the limitation in Section 3.4(a) above. In the event that the Participant's aggregate annual additions, as defined in Code section 415(c) and the Treasury Regulations issued thereunder, exceed the contribution limit in Section 3.4(a) for any Limitation Year, the contributions under Section 3.1 of this Plan shall be reduced to the maximum extent necessary prior to the end of the Limitation Year and reallocated in accordance with the terms found in the Radford University Qualified Governmental Excess Benefit Arrangement.

(c) No Exceeding 415 Limit

In no event shall the amount of contributions determined under this Section 3 exceed the maximum contributions permitted under Code section 415.

**3.5. Reemployment of Returning Veterans**

(a) Retroactive Contributions

If a Participant is in qualified military service, as that term is defined under USERRA, and he returns to employment with the Employer within ninety (90) days of the end of his military leave (or such longer period of time as his reemployment rights are protected by law), the Employer shall make the contributions described in Section 3.1 above on behalf of the Participant that he otherwise would have been entitled to but for his absence due to the military leave.

(b) Limitations

Contributions made pursuant to (a) above shall not be counted for purposes of Section 3.4 during the Plan Year (Limitation Year) when they are made. Rather such contributions shall be counted for purposes of Section 3.4 in the Plan Year to which the contributions relate.

(c) Crediting of Earnings

A Participant who is entitled to a contribution pursuant to (a) above shall not be entitled to receive corresponding retroactive earnings attributable to such contribution.

(d) Death Benefits

Effective January 1, 2009, to the extent provided under Code section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then terminated employment the

next day on account of death. Such qualified military service will count for vesting purposes.

(e) Differential Wage Payments

Effective January 1, 2009, a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code section 414(u)(12)(D) from the Employer shall be treated as an Employee of the Employer and the differential wage payment shall be treated as 415 Compensation under Section 1.11 for purposes of applying the limits on annual additions under Code section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**SECTION 4  
VESTING**

A Participant shall be immediately 100% vested in his Supplemental Employer Contributions made pursuant to Section 3.1(a). A Participant shall be vested in his Supplemental Employer Contributions made pursuant to Section 3.1(b) as set forth in the applicable written resolution, employment contract, or other document; provided, however, that if the applicable written resolution, employment contract, or other document does not specify a vesting schedule, the Participant shall also be immediately 100% vested in his Supplemental Employer Contributions made pursuant to Section 3.1(b).

**SECTION 5  
INVESTMENT OPTIONS**

**5.1. Vendors and Investment Options.**

- (a) All Supplemental Employer Contributions made pursuant to Section 3.1 shall be transferred to the Vendor(s) to be held, managed, invested, and distributed in accordance with the provisions of the Plan and the Trust, as applicable. All benefits under the Plan shall be distributed solely from the Trust, and the Employer shall have no liability for any such benefits other than the obligation to make Supplemental Employer Contributions as provided in the Plan.
- (b) Participants' Accumulation Accounts shall be invested in one or more of the Investment Options available to Participants from a Vendor(s) approved under this Plan, as selected by the Administrator and communicated to Participants. The current Vendor(s) are listed in Appendix B. The Administrator's current selection of Vendor(s) and Investment Options is not intended to limit future additions or deletions of Vendor(s) or Investment Options.
- (c) A Participant shall have the right to direct the investment of his Accumulation Accounts by filing the applicable form with the Vendor(s). A Participant may change his investment election as often as determined by the Vendor(s). A Participant may elect to transfer all or any portion of his Accounts invested in any

one Investment Option to another Investment Option, regardless of whether offered by the same or a different Vendor, subject to the limitations of the Trust, by filing a request on the applicable form with the Vendor(s) or by such other means that may be provided for by the Vendor(s). A Participant may also elect to transfer all or any portion of his Accounts invested in an Investment Option with a Former Vendor to an Investment Option with a Vendor, subject to the terms of the Trust.

- (d) An investment change that includes an investment with a Former Vendor or other vendor that is not eligible to receive Supplemental Employer Contributions under the Plan is not permitted.

## **5.2. Default Investments.**

If a Participant does not have a valid and complete investment direction on file with the Vendor on the applicable form, Supplemental Employer Contributions will be invested in a default fund selected by the Administrator in its sole and absolute discretion, until the Participant makes an affirmative election regarding the investment of the Participant's Accumulation Account.

## **SECTION 6 TRUST**

### **6.1. Trust Fund.**

All Supplemental Employer Contributions under the Plan shall be transferred to the Trustee to be held in Trust as part of the Trust Fund in accordance with the provisions of the Plan and the Trust. All assets held in connection with the Plan, including all Supplemental Employer Contributions, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property or rights, shall be held in, managed, invested and distributed in Trust as part of the Trust Fund, in accordance with the provisions of the Plan. All benefits under the Plan shall be distributed solely from the Trust Fund, and the Employer shall have no liability for any such benefits other than the obligation to make Supplemental Employer Contributions as provided in the Plan.

### **6.2. Trust Status.**

The Trust Fund shall be held in Trust for the exclusive benefit of Participants and beneficiaries under the Plan in accordance with Code section 501(a). No part of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their beneficiaries, and for defraying the reasonable expenses of the Plan and Trust. The Trust is exempt from tax pursuant to Code sections 401(a) and 501(a).

## SECTION 7 DISTRIBUTION

### 7.1. Time and Form of Distribution

A Participant shall be entitled to a distribution of the amount allocated to his Accumulation Amount upon his separation from service with the Employer or, if earlier, when he has both (i) been a Plan Participant for a minimum of two years and (ii) has attained age 59½. Subject to the mandatory distribution provisions of Section 7.2, distributions shall be made in accordance with the terms of the Trust.

### 7.2. Minimum Distribution Requirements

The provisions of this Section 7.2 will apply for purposes of determining required minimum distributions under Code section 401(a)(9). The requirements of this Section 7.2 shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be determined and made in accordance with a good faith interpretation of the requirements of Code section 401(a)(9), including the incidental death benefit requirements of Code section 401(a)(9)(G) and the applicable regulations thereunder, including Treasury regulations sections 1.401(a)(9)-1 through -9, as applicable to a governmental plan within the meaning of Code section 414(d).

#### (a) Time and Manner of Distribution

- (i) Required Beginning Date. The Participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date, as defined in subsection 7.2(d)(v).
- (ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:
  - (A) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½ if later.
  - (B) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (C) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's

entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (D) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection 7.2(a)(ii), other than subsection 7.2(a)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of subsections 7.2(a)(ii) and 7.2(c), unless subsection 7.2(a)(ii)(D) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection 7.2(a)(ii)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection 7.2(a)(ii)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection 7.2(a)(ii)(A)), the date distributions are considered to begin is the date distributions actually commence.

- (iii) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions shall be made in accordance with subsections (b) and (c) of this Section 7.2. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code section 401(a)(9) and applicable Treasury Regulations.

(b) Required Minimum Distributions During Participant's Lifetime.

- (i) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
  - (A) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation section 1.401(a)(9)-9 using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
  - (B) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation section 1.401(a)(9)-9, using the Participant's and spouse's attained

ages as of the Participant's and spouse's birthdays in the distribution calendar year.

- (ii) Lifetime Required Minimum Distribution Through Year of Participant's Death. Required minimum distributions will be determined under this subsection 7.2(b) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

(c) Required Minimum Distributions After Participant's Death.

(i) Death On or After Date Distributions Begin.

- (A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

- (1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (2) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

- (3) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

- (B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death,

the minimum amount that shall be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) Death Before Date Distributions Begin.

- (A) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that shall be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in subsection 7.2(c)(i).
- (B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (C) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection 7.2(a)(ii)(A), this subsection 7.2(c)(ii) shall apply as if the surviving spouse were the Participant.

(d) Definitions.

- (i) Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the Designated Beneficiary under Code section 401(a)(9) and Treasury Regulation section 1.401(a)(9)-1, Q&A-4.
- (ii) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under subsection 7.2(a)(ii). The required minimum distribution for the

Participant's first Distribution Calendar Year shall be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

- (iii) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Treasury Regulation section 1.401(a)(9)-9.
  - (iv) Participant's Account Balance. The Participant's account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Participant's account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Participant's account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
  - (v) Required Beginning Date. The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70½ or if later, April 1 following the calendar year in which the Participant retires.
- (e) Election to Allow Participants, Former Participants or Beneficiaries to Elect 5-Year Rule.

Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in subsections 7.2(a)(ii) and 7.2(c)(ii) applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under subsection 7.2(a)(ii), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with subsections 7.2(a)(ii) and 7.2(c)(ii).

### 7.3. **Direct Rollover**

For purposes of this Section and compliance with Code section 401(a)(31), these provisions apply notwithstanding any contrary provision or law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover

distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (a) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:
- (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;
  - (ii) any distribution to the extent such distribution is required under Code section 401(a)(9);
  - (iii) the portion of any distribution that is not includible in gross income; provided, however, effective January 1, 2009, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, but such portion may be transferred only:
    - (A) to an individual retirement account or annuity described in Code section 408(a) or (b) or to a qualified defined contribution plan described in Code section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;
    - (B) on or after January 1, 2009, to a qualified defined benefit plan described in Code section 401(a) or to an annuity contract described in Code section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or
    - (C) on or after January 1, 2009, to a Roth IRA described in section Code 408A; and
  - (iv) any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Code section 415 or any distribution that is reasonably expected to total less than \$200 during the year.

Effective January 1, 2009, the definition of eligible rollover distribution also includes 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).

- (b) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:
  - (i) an individual retirement account described in Code section 408(a),
  - (ii) an individual retirement annuity described in Code section 408(b),
  - (iii) an annuity plan described in Code section 403(a),
  - (iv) a qualified trust described in Code section 401(a),
  - (v) effective January 1, 2009, an annuity contract described in Code section 403(b),
  - (vi) effective January 1, 2009, a plan eligible under Code section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the Plan, or
  - (vii) effective January 1, 2009, a Roth IRA described in Code section 408A.
- (c) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p). Effective January 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Code section 401(a)(9)(E). However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity shall be treated as an "inherited" individual retirement account or annuity.
- (d) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.

#### **7.4. Incompetence of Participant**

If the Administrator receives evidence that a Participant with an Accumulation Amount is physically or mentally incompetent or incompetent by any reason of age to receive a distribution and give valid release therefore, the Administrator shall make such distribution to the Participant's legal representative (such as a guardian) provided the Administrator, in its sole and absolute discretion, determines that such individual has the authority as legal representative to request payment of the amount credited to the

Participant's Accumulation Amount. Any such payment made under this Section 7.4 shall constitute a complete discharge of any liability under this Section 7.

## **SECTION 8 AMENDMENT AND TERMINATION**

### **8.1. Amendment**

The University reserves the right to amend the Plan, through affirmative action by the Board at any time and from time to time, in whole or in part, including, without limitation, retroactive amendments necessary or advisable to qualify the Plan under the provisions of Code sections 401(a) and 403(a). The Board may delegate its authority to amend the Plan to one or more officers of the University. Except as set forth in Section 8.3, no such amendment shall (1) cause any part of the assets of the Plan to revert to or be recoverable by the University or be used for or diverted to purposes other than the exclusive benefit of Participants, Former Participants, and beneficiaries; (2) deprive any Participant, Former Participant, or beneficiary of any benefit already vested; (3) alter, change, or modify the duties, powers, or liabilities of the Administrator without its written consent; or (4) permit any part of the assets of the Plan to be used to pay premiums or contributions of the Employer under any other plan maintained by the University for the benefit of its Employees. No amendment to the vesting schedule shall deprive a Participant of nonforfeitable rights to benefits accrued to the date of the amendment.

### **8.2. Termination, Partial Termination, or Complete Discontinuance of Contributions**

- (a) Although the University has established the Plan with the intention and expectation that it will make contributions indefinitely, nevertheless the University shall not be under any obligation or liability to continue its contributions or to maintain the Plan for any given length of time. The University may in its sole and absolute discretion through an affirmative action by its Board discontinue contributions or terminate the Plan in whole or in part in accordance with its provisions at any time without any liability for the discontinuance or termination.
- (b) If the University completely terminates the Plan, the University shall arrange for suitable distribution of Plan assets, including the possibility of transfer to another 401(a) plan or plans. The Trustee shall not be required to pay out any asset of the Trust Fund to Participants and beneficiaries or a successor plan upon termination of the Trust until the Trustee has received written confirmation from the University (i) that all provisions of the law with respect to such termination have been complied with, and, (ii) after the Trustee has made a determination of the fair market value of the assets of the Plan, that the assets of the Plan are sufficient to discharge when due all obligations of the Plan required by law. The Trustee shall rely conclusively upon such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

### 8.3. **Permissible Reversions**

- (a) Notwithstanding any other provision of the Plan:
  - (i) No Participant or beneficiary shall have any right or claim to any benefit under the Plan before the Internal Revenue Service determines that the Plan qualifies under the provisions of Code section 401(a), or any statute of similar import, other than any vested rights. Upon the distribution to the Participants of any vested amounts and the return of any remaining contributions to the Employer following the denial of initial qualification of the Plan under the provisions of Code section 401(a), the Plan shall be terminated.
  - (ii) To the extent the Employer's contributions are made by reason of a mistake of fact, they may be returned to the Employer within one (1) year from the date of contribution.
- (b) The amounts that may be returned to the Employer under Section 8.3(a)(ii) above shall be the excess of the amounts contributed over the amounts that would have been contributed had there not been a mistake of fact. No earnings on the mistaken contributions may be returned to the Employer and losses sustained after the date of contribution shall proportionately reduce the amount that may be returned to the Employer.

## **SECTION 9 CLAIMS**

A Participant's (or beneficiary's) claim for benefits shall be resolved by the Vendor that holds the Participant's (or beneficiary's) Accumulation Account based on such Vendor's established procedures.

## **SECTION 10 ADMINISTRATION**

### 10.1. **Plan Administrator**

The Administrator shall administer the Plan. The Rector of the University is designated as the agent of the Plan for the service of legal process.

The Administrator's duties shall include, without limitation, powers with respect to the administration of the Plan. The Administrator shall have the power to take all action and to make all decisions that shall be necessary or proper in order to carry out the provisions of the Plan and, without limiting the generality of the foregoing, the Administrator shall have the following powers:

- (a) to make (and enforce by suspension or forfeiture) such rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;

- (b) to interpret or construe the Plan;
- (c) to decide questions concerning the Plan and the eligibility of any Employee to participate therein and the right of any person to receive benefits thereunder;
- (d) to decide any dispute arising under the Plan;
- (e) to compute the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan;
- (f) to prescribe and require the use of such forms as it shall deem necessary or desirable in connection with the administration of the Plan;
- (g) to supply any remedies or corrections to omissions in the Plan;
- (h) to reconcile and correct any errors or inconsistencies in the Plan; and
- (i) to make equitable adjustments for any mistakes or errors made in the administration of the Plan.

The Administrator shall establish rules and regulations and shall take other necessary or proper action to carry out its duties and responsibilities.

#### **10.2. Actions Conclusive**

Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. The decisions of the Administrator on any matter within its authority shall be made in the sole discretion of the Administrator and shall be final and binding on all parties, including without limitation, the Employer, Participants and beneficiaries.

#### **10.3. Appointment of Agents**

The Administrator may employ or engage such accountants, counsel, other experts, and other persons as it deems necessary in connection with the administration of the Plan to the extent permitted by law.

#### **10.4. Reliance on Opinions, Etc.**

The Administrator and each person to whom it may delegate any power or duty in connection with administering the Plan shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by them in good faith reliance upon any valuation, certificate, opinion, or report which shall be furnished to them or any of them by any accountant, counsel, other expert, or other person who shall be employed or engaged by the Administrator.

#### **10.5. Records and Accounts**

The Administrator shall keep or cause to be kept all data, records and documents pertaining to the administration of the Plan, and shall execute all documents necessary to carry out the provisions of the Plan.

#### **10.6. Liability**

The Administrator shall incur no liability for any action taken or not taken in good faith reliance on advice of counsel, who may be counsel for the University or taken or not taken in good faith reliance on a determination as to a matter of fact which has been represented or certified by a person reasonably believed to have knowledge of the fact so represented or certified, or taken or not taken in good faith reliance on a recommendation or opinion expressed by a person reasonably believed to be qualified or expert as to any matter where it is reasonable or customary to seek or rely on such recommendations or opinions. Nor shall any employee of the Administrator be liable for the wrongful or negligent conduct of any other employee or any person having fiduciary responsibilities with respect to the Plan unless the employee (i) knowingly participates in or undertakes to conceal an act or omission of such other person knowing the act or omission is a breach of fiduciary duty, (ii) by failing to act solely in the interests of Participants and beneficiaries or to exercise the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would exercise, has enabled the other fiduciary to commit a breach, or (iii) has knowledge of a breach by the other fiduciary and does not make reasonable efforts under the circumstances to remedy it. The University shall jointly and severally indemnify any employee and hold him or her harmless from loss, liability and expense in respect of the Plan for actions taken within the scope of his duties, including the legal cost of defending claims and amounts paid in satisfaction or settlement thereof provided only that no indemnification is intended that would be void as against public policy or the laws of the Commonwealth of Virginia.

### **SECTION 11 MISCELLANEOUS**

#### **11.1. Limitation of Rights; Employment Relationship**

The establishment of the Plan or any modifications of it or the creation of any fund or account, or the payment of any benefits shall not be construed as modifying or affecting in any way the terms of employment of any Employee.

#### **11.2. Merger; Transfer of Assets**

- (a) If the University merges or consolidates with or into another entity, or if substantially all the assets of the University are transferred to another entity, the Plan shall terminate on the effective date of the merger, consolidation, or transfer. However, if the surviving entity resulting from the merger or consolidation, or the entity to which the assets have been transferred, adopts this Plan, the Plan shall continue and the successor entity shall succeed to all rights, powers, and duties of

the University under the Plan, and the employment of any Employee who is continued in the successor entity's employ shall not be deemed to have been terminated for any purpose under the Plan.

- (b) This Plan shall not be merged or consolidated with any other employee benefit plan, nor shall there be any transfer of assets or liabilities from this Plan to any other plan, unless, immediately after the merger, consolidation, or transfer, each Participant's benefits, if the other plan were then to terminate, are at least equal to the benefits to which the Participant would have been entitled had this Plan been terminated immediately before the merger, consolidation, or transfer.

### **11.3. Prohibition Against Assignment**

- (a) Except as provided below, the benefits provided by this Plan may not be assigned or alienated. The University shall not recognize any transfer, mortgage, pledge, hypothecation, order, or assignment by any Participant or beneficiary of all or part of his interest under the Plan, and the interest shall not be subject in any manner to transfer by operation of law and shall be exempt from the claims of creditors or other claimants from all orders, decrees, levies, garnishments, and/or executions, and other legal or equitable process or proceedings against the Participant or beneficiary to the fullest extent that may be permitted by law.
- (b) This provision shall not apply to an administrative domestic relations order, and those other domestic relations orders permitted to be so treated by the Administrator under the Code. To the extent provided under an administrative domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

### **11.4. Applicable Law; Severability**

This Plan shall be construed, administered, and governed in all respects in accordance with the laws of the Commonwealth of Virginia, provided, however, that if any provision is susceptible to more than one interpretation, it shall be interpreted in a manner consistent with the Plan being a qualified plan within the meaning of Code section 401(a). If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

### **11.5. Gender and Number; Captions or Headings**

Wherever appropriate to the meaning or interpretation of this Plan, the masculine gender shall include the feminine, and the singular number shall include the plural and vice versa. Captions or headings are inserted and intended for organizational format and convenience of reference only; they are not to be given independent substantive meaning or effect.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Plan to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RADFORD UNIVERSITY  
SUPPLEMENTAL DEFINED CONTRIBUTION BENEFIT PLAN**

**APPENDIX A  
ELIGIBLE EMPLOYEES AND CONTRIBUTIONS**

The Supplemental Employer Contributions on behalf of the Eligible Employee are as follows:

<b>Eligible Employee</b>	<b>Supplemental Employer Contribution</b>	<b>Fiscal Years</b>
Dr. Brian O. Hemphill	\$XXX,XXX	Each Fiscal Year beginning with the 2016 Fiscal Year and ending with the 2020 Fiscal Year

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Appendix A to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RADFORD UNIVERSITY  
SUPPLEMENTAL DEFINED CONTRIBUTION BENEFIT PLAN**

**APPENDIX B  
APPROVED VENDORS**

The current selection of Vendor(s) is not intended to limit future additions or deletions of Vendor(s). The Administrator from time to time may add or delete Vendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in a revised Appendix B.

**A. Approved Vendors**

As of January 1, 2017, the Vendor under the Plan is Teachers Insurance and Annuity Association – College Retirement Equities Fund ("TIAA-CREF").

**B. Former Vendors**

As of January 1, 2017, there are no Former Vendors under the Plan.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Appendix B to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment C

**RADFORD UNIVERSITY  
QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT**

Amended and Restated Effective January 1, 2017

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## PREAMBLE

Radford University established the Radford University Qualified Governmental Excess Benefit Arrangement for (the "Plan") effective January 1, 2009, as a portion of the Radford University Supplemental Defined Contribution Benefit Plan (the "Supplemental Plan"). The Plan is intended to be a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code ("Code") and an exempt governmental deferred compensation plan described in Code section 3121(v)(3). Code sections 83, 402(b), 409A, 457(a) and 457(f)(1) do not apply to the Plan.

The terms of the Plan were formerly set forth in the Supplemental Plan document, which was most recently amended and restated effective January 1, 2017. The Plan is now being amended and restated effective January 1, 2017, and as part of that restatement is being set forth in a separate written document from the Supplemental Plan. The sole purpose of the Plan is to provide for contributions that would have been made to the Supplemental Plan absent the limitations of Code section 415(c).

## SECTION 1 DEFINITIONS

### 1.1. **Administrator**

The University or any individual, committee or organization to whom the University has delegated any of its duties as Administrator.

### 1.2. **Board**

The Board of Visitors of the University.

### 1.3. **Code**

The Internal Revenue Code of 1986, as amended.

### 1.4. **Eligible Employee**

An Employee of the Employer who participates in the Supplemental Plan and for whom the amounts contributed on his behalf under the Supplemental Plan would exceed the applicable limitations described in Code section 415 for the Limitation Year, but for a reduction in such contributions.

### 1.5. **Employee**

Any individual on the payroll of the Employer whose wages from the Employer are subject to withholding for the purposes of Federal income taxes and the Federal Insurance Contributions Act. If a person is engaged in an independent contractor or similar capacity and is subsequently reclassified by the Employer, the Internal Revenue Service, or a court as an employee, such person, for purposes this Plan, shall be deemed an Employee from the actual (and not the effective) date of such reclassification, unless expressly provided otherwise by the Employer.

1.6. **Employer**

The University.

1.7. **Excess Benefit Account**

A bookkeeping account established by the Administrator to which a Participant's Excess Benefit Amount is credited. The Excess Benefit Account shall be a bookkeeping device only, and all amounts credited to a Participant's Excess Benefit Account shall be paid from the general assets of the Employer.

1.8. **Excess Benefit Amount**

With respect to a Participant for a Plan Year, the Employer contribution that would have been for the Participant to the Supplemental Plan but could not be made because of the application of Code section 415(c).

1.9. **Investment Fund**

The funds referred to in Section 3.2 hereof for the crediting of a Participant's Excess Benefit Account, sometimes also referred to as "Fund" or "Funds," used to determine the investment return with respect to an Excess Benefit Account.

1.10. **Limitation Year**

The Plan Year.

1.11. **Participant**

An Eligible Employee who has an Excess Benefit Account under the Plan.

1.12. **Plan**

The Radford University Qualified Governmental Excess Benefit Arrangement as set forth in this document and as amended from time to time.

1.13. **Plan Year**

The twelve (12) month period commencing on each January 1 and ending on December 31.

1.14. **Severance from Employment**

A Participant's severance from employment with the Employer and all affiliated employers for any reason. A Participant shall be deemed to have severed from employment with the Employer for purposes of the Plan when, in accordance with the established personnel policies of the Employer, the employment relationship is treated as terminated.

1.15. **Supplemental Plan**

The Radford University Supplemental Defined Contribution Retirement Plan as amended from time to time.

1.16. **University**

Radford University.

**SECTION 2  
PARTICIPATION**

2.1. **Participation**

All Eligible Employees shall automatically participate in the Plan. The Administrator shall determine for each Plan Year which Participants in the Supplemental Plan are covered by this Plan.

2.2. **Termination of Participation**

Participation in the Plan continues until a Participant's Excess Benefit Account is fully distributed; provided however, that a Participant will no longer be eligible to receive credits to the Excess Benefit Account after ceasing to be an Eligible Employee or such other time as determined by the Employer in its discretion.

2.3. **Obligation of Participant**

When an Eligible Employee becomes eligible to participate, and thereafter from time to time, the Administrator may require the Eligible Employee to furnish such information and fill out, sign and file such forms and documents as may be reasonably required for the administration of the Plan, including beneficiary designation forms, evidence of age and marital status, etc. If a Participant does not comply with any such reasonable requirements, neither the Administrator nor any other person shall be obligated to administer the Plan for such Participant until such information is properly furnished, and no such person shall incur liability to such Participant or his beneficiary to the extent that any intended Plan benefit has not been obtained or is not available because of the Participant's or beneficiary's failure to furnish such information and fill out, sign and file such documents.

**SECTION 3  
EXCESS BENEFIT ACCOUNTS**

3.1. **Excess Benefit Amounts**

The Employer shall credit to the Excess Benefit Account an Excess Benefit Amount for each Participant determined to be eligible for the Plan Year pursuant to Section 2.1 equal to the Employer contributions that would have been made for the Participant to the Supplemental Plan but that could not be made because of the application of Code section 415. The Excess Benefit Amount shall be credited no later than December 31 of the Plan

Year to which the Excess Benefit Amount relates. No election is provided at any time to any Participant, directly or indirectly, to defer compensation under this Plan and no employee pre-tax or after-tax contributions may be made to or under this Plan at any time.

### 3.2. **Crediting of Investment Return to the Participant's Excess Benefit Account**

#### (a) Crediting of Investment Return

The Administrator shall credit to each Participant's Excess Benefit Account an investment return (positive or negative) equal to the rate of return on shares of the Investment Fund, or Funds, selected pursuant to Section 3.2(b) below, assuming reinvestment of dividends and distributions from the Fund. For purposes of measuring the investment return, amounts held in a Participant's Excess Benefit Account, shall be treated as though they were invested and reinvested in one or more of the Investment Funds designated by the Participant pursuant to Section 3.2(b) below.

The return shall be credited by the Administrator to the Participant's Excess Benefit Account at the times established by the Administrator, but no less than quarterly.

Notwithstanding the foregoing, if:

- (i) the Participant does not furnish the Administrator with a written designation in a form prescribed by the Administrator;
- (ii) the written designation from the Participant is unclear; or
- (iii) less than all of the Participant's Excess Benefit Account is covered by such written designation,

then the Participant's Excess Benefit Account shall receive no return until such time as the Participant shall provide the Administrator with valid instructions, the validity of which shall be determined by the Administrator.

#### (b) Fund Designation

The Participant shall make a designation of one or more Investment Funds on the form prescribed by the Administrator, which shall remain effective until another valid direction has been made by the Participant as herein provided. The Participant may change his designation of Investment Funds at the time and in the manner set forth by the Administrator. A change to a Participant's designation of Investment Funds shall become effective at the time set forth by the Administrator.

The Administrator in its sole discretion shall designate which Investment Funds will be available for initial designation by the Participants and may change or add to the Investment Funds which may be designated by the Participant under this Section 3.2.

(c) Quarterly Statement

The Administrator shall provide a statement to the Participant quarterly showing such information as is appropriate, including the aggregate amount in the Participant's Excess Benefit Account, as of a reasonably current date.

(d) No Required Investment

Although the investment return on a Participant's Excess Benefit Account is to be measured by the actual gains, earnings, and losses realized by one or more of the Funds selected by the Participant pursuant to this Section 3, the Employer shall not be under any obligation to make the selected investments, and the investment experience shall only be tracked as debits or credits to the Participant's book accounts over the deferral period. To the extent the Employer should elect to make any actual investments, the Employer shall be the sole and exclusive owner of those investments, and no Participant shall have any right, title or interest in or to those investments.

**3.3. No Trust Established**

All amounts credited to Participants' Excess Benefit Accounts shall be payable from the Employer's general assets or through a grantor trust as set forth herein. Under no circumstances shall Excess Benefit Amounts under this Plan be credited to the Supplemental Plan.

The interest of each Participant (and his beneficiary) in any benefits that become payable under the Plan shall be no greater than that of an unsecured creditor of the Employer. The obligation to pay the vested balance of each Participant's Excess Benefit Account hereunder shall at all times be an unfunded and unsecured obligation of the Employer. Except to the extent the Employer may in its sole discretion elect to implement a grantor trust to hold funds for the payment of any benefits which become due and payable hereunder, the Employer shall not have any obligation to establish any trust, escrow arrangement, or other fiduciary relationship for the purpose of segregating funds for the payment of the balances credited to such Excess Benefit Accounts, nor shall the Employer be under any obligation to invest any portion of its general assets in mutual funds, stocks, bonds, securities, or other similar investments in order to accumulate funds for the satisfaction of its respective obligations under the Plan.

**3.4. Vesting of Excess Benefit Amounts**

A Participant shall be vested in the Employer contributions allocated to his Excess Benefit Account under the same terms and to the same extent as if they were Employer contributions that had been made to the Supplemental Plan.

**SECTION 4**  
**DISTRIBUTIONS FROM EXCESS BENEFIT ACCOUNTS**

**4.1. Election of Distribution**

A Participant shall elect the timing and form of distribution of his Excess Benefit Account no later than the last day of the calendar year prior to his date of Severance from Employment. In the event the Participant makes no such election, his Excess Benefit Account shall be distributed in the form of a lump sum. Distribution of the Participant's Excess Benefit Account shall commence on the later of: (i) the first day of the first month following 180 days from the Participant's date of Severance from Employment, or (ii) the date the Participant otherwise elects.

The amount to be distributed to the Participant under this Section 4.1 shall be determined based on the value of the Participant's Excess Benefit Account as determined on the last day of the month in which the Participant has a Severance from Employment with the Employer.

**4.2. Forms of Distribution**

A Participant may elect to receive a distribution of his Excess Benefit Account in one of the following forms:

- (a) lump sum; or
- (b) equal annual installments over a period of years; the period of years elected by the Participant shall be not less than five (5) years and not more than fifteen (15) years.

If a Participant elects option (b), no additional earnings shall be credited to the Participant's Excess Benefit Account pursuant to Section 3.2 during the period over which the Excess Benefit Account is distributed.

**4.3. Incompetence of Participant**

If the Administrator receives evidence that a Participant with an Excess Benefit Account is physically or mentally incompetent or incompetent by any reason of age to receive a distribution and give valid release therefore, the Administrator shall make such distribution to the Participant's legal representative (such as a guardian) provided the Administrator, in its sole and absolute discretion, determines that such individual has the authority as legal representative to request payment of the amount credited to the Participant's Excess Benefit Account. Any such payment made under this Section 4.3 shall constitute a complete discharge of any liability under this Section 4.

**4.4. Location of Participant or Beneficiary Unknown**

In the event that all, or any portion, of the distribution payable to a Participant or his beneficiary under this Section 4.4 remains unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or beneficiary after

sending a registered letter, return receipt required, to the last known address, and further diligent effort, a savings account at a local financial institution shall be established in the person's name and the distribution shall be deposited therein.

**4.5. Distributions upon the Participant's Death**

In the event that the Participant dies before receiving a distribution of the entire amount credited to his Excess Benefit Account, any remaining amount shall be distributed in the form of a lump sum within 180 days of the Participant's death to the person who is the Participant's designated beneficiary under the Supplemental Plan. The amount to be distributed to the Participant's designated beneficiary shall be determined based on the value of the Participant's Excess Benefit Account as determined on the last day of the month in which the Participant died.

**4.6. Distribution upon Termination of Plan**

If the Employer terminates the Plan, each Participant shall receive a distribution of the entire balance of his Excess Benefit Account within 180 days of such termination. The amount to be distributed to the Participant shall be determined based on the value of the Participant's Excess Benefit Account as determined on the last day of the month prior to the effective date of such termination.

**SECTION 5  
AMENDMENT AND TERMINATION**

**5.1. Amendment**

The Employer reserves the right to amend the Plan, through affirmative action by the Board at any time and from time to time, in whole or in part. The Board may delegate its authority to amend the Plan to one or more officers of the University.

**5.2. Termination**

The Employer may in its sole and absolute discretion through an affirmative action by its Board terminate the Plan in whole or in part in accordance with its provisions at any time without any liability for the termination.

**SECTION 6  
ADMINISTRATION**

**6.1. Plan Administrator**

The Administrator shall administer the Plan. The Rector of the University is designated as the agent of the Plan for the service of legal process.

The Administrator's duties shall include, without limitation, powers with respect to the administration of the Plan. The Administrator shall have the power to take all action and to make all decisions that shall be necessary or proper in order to carry out the provisions

of the Plan and, without limiting the generality of the foregoing, the Administrator shall have the following powers:

- (a) to make (and enforce by suspension or forfeiture) such rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;
- (b) to interpret or construe the Plan;
- (c) to decide questions concerning the Plan and the eligibility of any Employee to participate therein and the right of any person to receive benefits thereunder;
- (d) to decide any dispute arising under the Plan;
- (e) to compute the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan;
- (f) to prescribe and require the use of such forms as it shall deem necessary or desirable in connection with the administration of the Plan;
- (g) to supply any remedies or corrections to omissions in the Plan;
- (h) to reconcile and correct any errors or inconsistencies in the Plan; and
- (i) to make equitable adjustments for any mistakes or errors made in the administration of the Plan.

The Administrator shall establish rules and regulations and shall take other necessary or proper action to carry out its duties and responsibilities.

## 6.2. **Actions Conclusive**

Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. The decisions of the Administrator on any matter within its authority shall be made in the sole discretion of the Administrator and shall be final and binding on all parties, including without limitation, the Employer, Participants, and beneficiaries.

## 6.3. **Appointment of Agents**

The Administrator may employ or engage such accountants, counsel, other experts, and other persons as it deems necessary in connection with the administration of the Plan to the extent permitted by law.

## 6.4. **Reliance on Opinions, Etc.**

The Administrator and each person to whom it may delegate any power or duty in connection with administering the Plan shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by them in good faith reliance upon any valuation, certificate, opinion, or report which shall be furnished to them or any of them

by any accountant, counsel, other expert, or other person who shall be employed or engaged by the Administrator.

**6.5. Records and Accounts**

The Administrator shall keep or cause to be kept all data, records and documents pertaining to the administration of the Plan, and shall execute all documents necessary to carry out the provisions of the Plan.

**6.6. Liability**

The Administrator shall incur no liability for any action taken or not taken in good faith reliance on advice of counsel, who may be counsel for the University or taken or not taken in good faith reliance on a determination as to a matter of fact which has been represented or certified by a person reasonably believed to have knowledge of the fact so represented or certified, or taken or not taken in good faith reliance on a recommendation or opinion expressed by a person reasonably believed to be qualified or expert as to any matter where it is reasonable or customary to seek or rely on such recommendations or opinions. Nor shall any employee of the Administrator be liable for the wrongful or negligent conduct of any other employee or any person having fiduciary responsibilities with respect to the Plan unless the employee (i) knowingly participates in or undertakes to conceal an act or omission of such other person knowing the act or omission is a breach of fiduciary duty, (ii) by failing to act solely in the interests of Participants and beneficiaries or to exercise the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would exercise, has enabled the other fiduciary to commit a breach, or (iii) has knowledge of a breach by the other fiduciary and does not make reasonable efforts under the circumstances to remedy it. The University shall jointly and severally indemnify any employee and hold him or her harmless from loss, liability and expense in respect of the Plan for actions taken within the scope of his duties, including the legal cost of defending claims and amounts paid in satisfaction or settlement thereof provided only that no indemnification is intended that would be void as against public policy or the laws of the Commonwealth of Virginia.

**SECTION 7  
MISCELLANEOUS**

**7.1. Limitation of Rights; Employment Relationship**

The establishment of the Plan or any modifications of it or the creation of any fund or account, or the payment of any benefits shall not be construed as modifying or affecting in any way the terms of employment of any Employee.

**7.2. Prohibition Against Assignment**

The benefits provided by this Plan may not be assigned or alienated. The University shall not recognize any transfer, mortgage, pledge, hypothecation, order, or assignment by any Participant or beneficiary of all or part of his interest under the Plan, and the interest shall not be subject in any manner to transfer by operation of law and shall be exempt from the

claims of creditors or other claimants from all orders, decrees, levies, garnishments, and/or executions, and other legal or equitable process or proceedings against the Participant or beneficiary to the fullest extent that may be permitted by law.

**7.3. Applicable Law; Severability**

This Plan shall be construed, administered, and governed in all respects in accordance with the laws of the Commonwealth of Virginia; provided, however, that if any provision is susceptible to more than one interpretation, it shall be interpreted in a manner consistent with the Plan being a qualified excess benefit arrangement within the meaning of Code section 415(m). If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

**7.4. Gender and Number; Captions or Headings**

Wherever appropriate to the meaning or interpretation of this Plan, the masculine gender shall include the feminine, and the singular number shall include the plural and vice versa. Captions or headings are inserted and intended for organizational format and convenience of reference only; they are not to be given independent substantive meaning or effect.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Plan to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**RADFORD UNIVERSITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_