

**THE PENNSYLVANIA STATE UNIVERSITY
BOARD OF TRUSTEES**

**COMMITTEE ON COMPENSATION
MINUTES OF MEETING
VOLUME COMP 27**

June 19, 2019

A meeting of the Committee on Compensation was held, telephonically, on June 19, 2019 for the sole purpose of considering a personnel matter.

The following Committee members, constituting a quorum, were present: Keith Masser, Kathleen Casey, Ira Lubert, Mary Lee Schneider and Matthew Schuyler. Also present on the call were Eric Barron, Lorraine Goffe, and Frank Guadagnino.

The meeting was called to order by Committee Chair Masser at 2:00 p.m.

Chair Masser noted that the Committee met earlier in the day in Executive Session.

Consistent with the Compensation Committee Guidelines, the Committee was asked to consider establishing a deferred compensation plan that is intended to be qualified under Section 401(a) of the Internal Revenue Code and an excess benefit plan that is described in Section 415(m) of the Internal Revenue Code.

Frank Guadagnino read the resolution into the record. A motion was put forward and seconded and Chair Masser asked to proceed with a roll call vote. By unanimous vote, the motion carried.

The meeting was adjourned at 2:05 p.m.

Respectfully submitted,

Thomas J. Penkala
Associate Director
Board of Trustees

**THE PENNSYLVANIA STATE UNIVERSITY
COMMITTEE ON COMPENSATION**

**Resolutions of the Compensation Committee of the Board of Trustees to Adopt a
Retirement Savings Arrangement**

WHEREAS, The Pennsylvania State University (the "University") wishes to adopt a new retirement savings arrangement (the "Arrangement") for certain employees of the University;

WHEREAS, The Arrangement will consist of a deferred compensation plan that is intended to be qualified under Section 401(a) of the Internal Revenue Code and an "excess" benefit plan that is described in Section 415(m) of the Internal Revenue Code (collectively, the "Plans");

WHEREAS, The Board of Trustees has authorized the Committee on Compensation to approve executive compensation and benefit programs and policies, including, among others, deferred compensation;

NOW, THEREFORE, BE IT RESOLVED, That the Plans are adopted and approved in substantially the form as set forth in the attachments hereto.

FURTHER RESOLVED, That the University's Senior Vice President for Finance and Business/Treasurer of the University is authorized to execute the Plan documents and such other documents and instruments as may be necessary and appropriate, and to make such changes to such documents and instruments as he determines are necessary and appropriate to implement these resolutions.

ATTACHMENTS

[The Pennsylvania State University Section 401(a) Defined Contribution Plan and
The Pennsylvania State University Section 415(m) Excess Benefit Plan]

**The Pennsylvania State University
Section 401(a) Defined Contribution Plan**

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Introduction

The Pennsylvania State University established this Pennsylvania State University Section 401(a) Defined Contribution Plan (the “Plan”), effective as of July 1, 2018, to provide retirement benefits to certain Eligible Employees of the Employer. The Plan is intended to be qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (the “Code”) and to be a governmental plan under Code Section 414(d) and a profit-sharing plan under Code Section 401(a)(27). The Plan is coordinated with The Pennsylvania State University Section 415(m) Excess Benefit Plan, which provides that part of the benefit (contributions and earnings) prescribed by this Plan that exceeds the limitations imposed by Code Section 415.

Article I – Definitions

The following terms shall have the meaning described herein.

- 1.1. **Account** means a Participant's individual account under the Plan, which reflects contributions for the benefit of the Participant, as adjusted for investment gains and losses, expenses, and appreciation or depreciation, pursuant to Section 5.5 (Valuations), and distributions. A Participant’s Account may include such subaccounts as the Plan Administrator or its designee determines to be appropriate.
- 1.2. **Account Balance** means the balance of a Participant’s Account under the Plan.
- 1.3. **Beneficiary** means, with respect to a Participant, an individual, trust, or estate designated by the Participant, in accordance with the Plan Administrator’s procedures and on a form acceptable to the Plan, to receive all or part of the Participant’s remaining Account Balance, if any, after the Participant’s death. Subject to the requirements of the Plan, a Participant may change his or her designated Beneficiary or Beneficiaries without the consent of any previously designated Beneficiary or Beneficiaries. For a married Participant, the Beneficiary shall be the Participant’s surviving Spouse (if any), unless such Spouse consents in writing to the designation of another Beneficiary; the Spouse’s consent must acknowledge the effect of such election and must be witnessed by a Plan representative or a notary public. If no Beneficiary has been validly designated, or if no designated Beneficiary is living, the Participant’s Beneficiary shall be the Participant’s surviving Spouse, if any, and if there is no surviving Spouse, the Participant’s estate. To be effective, a designation (or change to designation) of Beneficiary (and, if applicable, Spousal consent) must be received by the Plan before the Participant’s death.
- 1.4. **Code** means the Internal Revenue Code of 1986, as amended.
- 1.5. **Compensation** means, for a Participant, the Participant’s “compensation” as defined in Treasury Regulation § 1.415(c)-2(d)(4), which means compensation reported in Box 1 of IRS Form W-2, plus amounts that would be included in Box 1 wages but for an election under Code Section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). Compensation shall include amounts paid by the later of 2½ months after the Participant’s Severance from Employment or the end of the limitation year that includes the Participant’s Severance from Employment if the payment is regular compensation for services during or outside the Participant’s working hours, commissions, bonuses or other

similar payments, and, absent a severance of employment, the payment would have been made to the Participant while the Participant continued in the employ of the Employer.

Compensation for a determination period shall include only that compensation which is actually paid to the Participant during such determination period.

The annual Compensation of each Participant taken into account for purposes of determining all benefits provided under the Plan for any Plan Year shall not exceed \$200,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. To the extent required by Code Section 401(a)(17), if a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

- 1.6. ***Custodial Account*** means a group or individual custodial account or accounts established by the Employer to hold assets of the Plan, which is treated as a qualified trust under Code Section 401(f).
- 1.7. ***Eligible Employee*** means a common law employee of the Employer who is designated as eligible in Exhibit A hereto. The term Eligible Employee shall not include any individual who is classified by the Employer as an independent contractor, self-employed, or a Leased Employee. For purposes of the Plan, if an individual is classified as an independent contractor, self-employed, or a Leased Employee and is later reclassified as a common law employee, whether by government order, judgment, or for some other reason, such reclassification shall apply prospectively only and shall not give rise to an entitlement to benefits with respect to any period before the individual is both reclassified and designated as eligible in Exhibit A.
- 1.8. ***Employer*** means The Pennsylvania State University, which is an instrumentality of the Commonwealth of Pennsylvania.
- 1.9. ***Employer Contribution*** means a profit-sharing contribution in an amount prescribed by Exhibit A hereto, reduced by forfeitures (if any) that are applied toward such amount.
- 1.10. ***Fund Sponsor*** means the insurance, investment company, or other company maintaining the Funding Vehicles.
- 1.11. ***Funding Vehicles*** means the Custodial Accounts (if any) and trust (if any, including group trusts) holding the Plan's assets. The Funding Vehicles constitute part of the Plan.
- 1.12. ***Leased Employee*** means a person (other than an employee of the Employer (the "recipient employer")) who, pursuant to an agreement between the recipient employer and any other person ("leasing organization"), has performed services for the recipient employer (or for the recipient employer and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one

year, and such services are performed under primary direction or control by the recipient employer. Contributions or benefits provided to a Leased Employee by the leasing organization that are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A Leased Employee shall not be considered an employee of the recipient employer if:

- (a) Such employee is covered by a money purchase pension plan (maintained by the leasing organization) providing:
 - (i) a non-integrated employer contribution rate of at least 10 percent of compensation (as defined in Code Section 415(c)(3)), but including amounts contributed pursuant to a salary reduction agreement which are excludible from the employee's gross income under Code Sections 125, 402(e)(3), 402(h)(1)(B), 403(b));
 - (ii) for immediate participation; and
 - (iii) full and immediate vesting; and
- (b) Leased Employees do not constitute more than 20 percent of the recipient employer's non-highly compensated workforce.

- 1.13. **Participant** means a current or former Eligible Employee who has become a Participant in the Plan in accordance with Section 2.1 and whose Account Balance has not been distributed.
- 1.14. **Period of Service** means, for a Participant, the period from the Participant's first hour of active employment as an employee or Leased Employee of the Employer or a Related Employer until his or her Severance From Employment. If a Participant has a Severance From Employment and is later rehired, all Periods of Service shall be added together; provided, however, that forfeited Account Balances shall not be reinstated unless otherwise expressly required by the Plan. For the avoidance of doubt, a Leased Employee shall not receive service credit for any period during which the Leased Employee is covered by a money purchase pension plan that provides for immediate participation, full and immediate vesting, and a non-integrated employer contribution rate of at least 10 percent of compensation, and leased employees constitute 20 percent or less of the Employer's non-highly-compensated work force.
- 1.15. **Plan** means the Pennsylvania State University Section 401(a) Defined Contribution Plan, as set forth herein and amended from time to time.
- 1.16. **Plan Administrator** means the individual, committee, or entity appointed by the Employer. If no Plan Administrator is so appointed, the Plan Administrator shall be the Employer.
- 1.17. **Plan Entry Date** means the date on which an Eligible Employee enters the Plan (*i.e.*, becomes a Participant), as set forth in Exhibit A hereto.

- 1.18. **Plan Year** means each 12-month period beginning on July 1 and ending on June 30.
- 1.19. **Related Employer** means each other entity which is under common control with the Employer under Code Section 414(b), (c), or (m); provided that, for purposes of Section 4.1 (Code Section 415 Limit), the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” wherever it appears in Code Section 1563(a)(1) and the regulations under Code Section 414(c) (except for purposes of determining whether two or more organizations are a brother-sister group of trades or businesses under common control under the rules of Treasury Regulation § 1.414(c)-2(c)).
- 1.20. **Severance from Employment** means the date the Participant ceases to be employed by the Employer and all Related Employers.
- 1.21. **Spouse** means, for a Participant as of any date, the individual to whom the Participant is married on such date, determined in accordance with IRS Revenue Ruling 2013-17 or any successor thereto.
- 1.22. **Valuation Date** means each business day.

Article II – Eligibility for Participation

- 2.1. **Participation.** Each Eligible Employee shall begin participation in this Plan as of his or her Plan Entry Date, provided that he or she is still an Eligible Employee as of such Plan Entry Date. As a condition of participation in the Plan, each Participant is bound by all of the terms, provisions, and conditions of the Plan, and must furnish to the Plan Administrator or the Employer such instruments as the Plan Administrator or Employer may require.
- 2.2. **Continued Participation.** Once a person has become a Participant, he or she shall continue to be a Participant until his or her Account Balance has been forfeited or distributed in full. Once the Account Balance has been distributed in full (or forfeited), the person shall cease to be a Participant.
- 2.3. **Reemployment.** If a Participant ceases to be an Eligible Employee (whether by reason of terminating employment, transferring, an amendment to the Plan, or otherwise), he or she shall cease to be eligible for contributions or allocations under the Plan. If he or she subsequently continues in or returns to employment with the Employer, he or she shall not again become an Eligible Employee unless provided in Exhibit A hereto.

Article III – Plan Contributions

- 3.1. **Employer Profit Sharing Contributions.** Subject to the conditions and limitations of the Plan (as interpreted by the Plan Administrator), the Employer shall make non-elective (“profit sharing”) contributions in the amount(s) required by Exhibit A hereto (as in effect and amended from time to time), net of forfeitures that are available to be allocated to Participant Accounts. In accordance with Code Section 401(a)(27), and recognizing that the Employer does not have profits, such contributions shall be made without regard to current or accumulated earnings or profits. A Participant’s right to receive an

allocation for a month or other period specified in Exhibit A hereto (not to exceed a Plan Year) is conditioned on being employed by the Employer on the last day of such month or other period. Participants shall not be entitled to any earnings from contributions until the Employer actually makes such contributions to the Plan and such contributions are allocated to Participants' Accounts.

- 3.2. ***Rollover Contributions.*** The Plan shall not accept rollover contributions.
- 3.3. ***Military Service Credit.*** A Participant whose employment is interrupted or who is on a leave of absence due to qualified military service under Code Section 414(u) shall receive contributions and service credit with respect to such qualified military service to the extent (and only to the extent) required by Code Section 414(u). Unless expressly stated in the Plan, the Plan shall not provide special benefits pursuant to any optional provision of Code Section 414(u), the Uniformed Services Employment and Reemployment Rights Act of 1994, the Heroes Earnings Assistance and Relief Tax Act of 2008, or any other law related to military service.
- 3.4. ***Allocation of Contributions.*** Contributions shall be forwarded to the Fund Sponsors for the investments selected by the Participant (or deemed selected), in accordance with the procedures established by the Employer and the Fund Sponsors.
- 3.5. ***Remittance.*** The Employer will determine the total amount of contributions to be made for each Participant from time to time on the basis of its books and records and in accordance with the provisions of the Plan. Determination by the Employer, which is evidenced by delivery to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries, and all other persons claiming an interest in or derived from the contributions payment.

Article IV – Limitation On Contributions

4.1. Code Section 415 Limit

- (a) The Annual Additions allocated to a Participant's Account for any Limitation Year shall not exceed the lesser of:
 - (i) \$40,000 (as adjusted under Code Section 415(d)); or
 - (ii) 100% of the Participant's Compensation for the limitation year.
- (b) If a Participant receives Annual Additions under this Plan and another defined contribution plan (as defined in Code Section 415(k)(1)) that is maintained by the Employer or a Related Employer, the limit on Annual Additions under this Plan shall be reduced by the Annual Additions credited (or treated as credited) to the Participant's account(s) under the other plan(s) in the same limitation year. In accordance with Treasury Regulation § 1.415(f)-1(f), annuity contracts described in Code Section 403(b) shall not be treated as maintained by the Employer or a Related Employer; accordingly, additions under such annuity contracts shall not count toward the limit on Annual Additions under this Plan.

- (c) If a Participant's profit sharing allocation prescribed by the Plan exceeds the limit under this Section 4.1, the amount allocated to the Participant's Account shall not exceed the limit and the excess shall be credited to an account maintained under The Pennsylvania State University Section 415(m) Excess Benefit Plan (a copy of which is attached hereto as Exhibit B).

4.2. **Definitions.** The following definitions apply for purposes of Section 4.1:

- (a) **Annual Additions** means the sum of the following amounts credited to a Participant's Account for the Limitation Year under this Plan or another defined contribution plan (as defined in Code Section 415(k)(1)) that is required to be aggregated with the Plan:
 - (i) Employer Contributions;
 - (ii) Employee contributions;
 - (iii) Forfeitures;
 - (iv) Mandatory employee contributions to a defined benefit plan that are not picked up by the employer pursuant to Code Section 414(h)(2);
 - (v) Amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan;
 - (vi) Amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund (as defined in Code Section 419(e)), are treated as annual additions to a defined contribution plan; and
 - (vii) Allocations under a simplified employee pension described in Code Section 408(k).
- (b) **Limitation Year** means the calendar year.

Article V – Investment of Contributions and Funding Vehicles

- 5.1. **Manner of Investment.** All amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more investments held in trust (including a group trust) or in one or more Custodial Accounts.
- 5.2. **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among one or more investment alternatives that the Employer makes available to Participants. Participants and Beneficiaries may revise their investment directions at any time, subject to procedures established by the Plan

Administrator and any restrictions imposed by the Funding Vehicles or underlying investments. Such changes shall take effect at least as frequently as once per month.

- (a) If a Participant has not affirmatively made an investment election, the Participant shall be deemed to have elected to allocate his or her contributions to a default investment option established by the Plan Administrator.
- (b) Unless and until a Beneficiary makes an investment election, the Beneficiary's Account Balance shall remain invested in the same way as it was invested immediately before the Participant's death.

For the avoidance of doubt, earnings (and losses) shall not be credited with respect to contributions for any period before such contributions are made to the Plan and allocated to the Participant's Account.

- 5.3. ***Exclusive Benefit Rule.*** No portion of the corpus or income of the Plan shall be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.
- 5.4. ***Trust.*** As required by Code Section 401(a), all Funding Vehicles, other than Custodial Accounts, shall be held in a trust that meets the requirements of applicable law and created under and subject to a trust agreement in which all of the Plan's assets, and the income thereon, are held and from which the Plan benefits are distributed. Dividends and credits, if any, earned on Funding Vehicles shall be allocated to the Accounts derived from the contribution for whose benefit the amounts are held. For this purpose, amounts held under a Custodial Account shall qualify as a trust, and the person holding the assets of such Custodial Account shall be treated as the trustee.
- 5.5. ***Valuations.*** The assets of the Plan shall be valued at fair market value as of each Valuation Date, and the method of allocating trust gains, expenses, losses, appreciation, or depreciation, shall be the method(s) described in the Custodial Accounts or by other applicable documents issued under the Funding Vehicles. Records for each Participant or Beneficiary shall be maintained on the basis of the Plan Year.

Article VI – Vesting

- 6.1. ***Employer Contributions.*** A Participant shall be vested in his or her Account upon completing the Period of Service required by Exhibit A hereto.
 - (a) ***Permitted Vesting Schedules.*** The vesting schedule for each Participant's Account shall be no less favorable to the Participant than one of the following schedules:
 - (i) Cliff: 100% vesting upon completing a Period of Service of three years; or
 - (ii) Graded:

Period of Service	Vested Percentage
Less than two years	0%

Period of Service	Vested Percentage
At least 2 years but less than 3 years	20%
At least 3 years but less than 4 years	40%
At least 4 years but less than 5 years	60%
At least 5 years but less than 6 years	80%
Six or more years	100%

- (b) ***Accelerated Vesting.*** Notwithstanding the vesting schedule, a Participant shall be fully vested upon: (1) termination of the Plan or partial Plan termination (for affected Participants), (2) complete discontinuance of contributions under the Plan, or (3) attainment of age 65, if he or she is still employed by the Employer or a Related Employer at that time.
- 6.2. ***Severance from Employment.*** For purposes of this Article, if the value of a Participant's vested Account Balance is zero upon Severance from Employment, the Participant shall be deemed to have received a distribution of such vested Account Balance.
- 6.3. ***Forfeiture.*** If a Participant has a Severance From Employment before becoming fully vested in his or her Account, the unvested portion shall be forfeited upon the earlier of (a) the date the Participant receives or is deemed to receive a distribution or (b) completion of 60 consecutive full calendar months after the Participant's Severance From Employment (a "Five-Year Break"). If the Participant receives only part of the vested portion of his or her Account, the forfeited amount shall be the non-vested portion of the Account times a fraction, the numerator of which is the amount of the distribution and the denominator of which is the total value of the vested Account.
- 6.4. ***Rehire.*** If a Participant receives distribution and later resumes employment with the Employer, the rehired Participant's Account shall be restored to the amount on the date of distribution only if the Participant repays to the Plan the full amount of the distribution before the earlier of (a) the fifth anniversary of the Participant's date of reemployment or (b) the date the Participant incurs a Five-Year Break following the date of distribution. If a Participant receives a deemed distribution (by reason of having a vested Account Balance of zero), his or her Account shall be restored to the amount of the date of the deemed distribution only if he or she is rehired before incurring a Five-Year Break following his or her Severance From Employment.
- 6.5. ***Application of Forfeitures.*** Forfeitures arising hereunder shall be applied, at the Employer's discretion, first to the payment of expenses (as described in Section 8.7) and then to reduce Employer Contributions.

Article VII – Distribution of Accounts

- 7.1. ***Distribution Events.*** A Participant may request a distribution of his or her vested Account Balance only after the Participant has a Severance From Employment or the Participant dies. Subject to Section 7.5 (Deadline to Receive Payment), payment shall commence only when the request is submitted in good order, and payment shall be

subject to this Article VII and the rules of the applicable Funding Vehicle(s) holding the Participant's Account.

- 7.2. ***Form of Payment.*** The only form of payment permitted under the Plan shall be a lump sum equal to 100% of the Participant's Account Balance.
- 7.3. ***Death Benefits.*** If a Participant dies before distribution of his or her Account, the vested balance shall be paid to his or her Beneficiary (or Beneficiaries).
- 7.4. ***Required Notice.*** Prior to making any distribution that is not required by Code Section 401(a)(9), the Plan Administrator shall provide to the Participant or Beneficiary, as applicable, a notice with the information required by Code Section 402(f) (to the extent applicable).
- 7.5. ***Deadline to Receive Payment.***

- (a) Unless the Participant elects otherwise, distribution of the Participant's Account shall begin no later than the 60th day after the close of the Plan Year in which the latest of the following occurs:

- (i) The Participant attains age 65;
- (ii) The 10th anniversary of the year in which the Participant commenced participation in the Plan; or
- (iii) The Participant has a Severance from Employment.

Subject to Section 7.6 (Automatic Cashout of Small Account Balances), a Participant may elect to defer distributions under the Plan to a date that is no later than the start date required by subsection (b), below. For purposes of this Section 7.5(a), the failure of a Participant to request or consent to a distribution shall be deemed to be an election to defer commencement.

- (b) Notwithstanding any other provision of the Plan, distributions shall be made not later than the date prescribed by subparagraph (i) or (ii), below, whichever applies, and shall be made in accordance with the requirements of Code Section 401(a)(9) and the regulations thereunder, including the incidental death benefit requirement in Code Section 401(a)(9)(G).
- (i) The date described in this subparagraph (i) is April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or has a Severance From Employment, whichever is later; provided that distributions to a Participant who is a five-percent owner (within the meaning of Code Section 401(a)(9)) shall commence not later than April 1 following the calendar year in which the Participant attains age 70½.
 - (ii) If the Participant dies before the date described in subparagraph (i) above, the entire Account shall be distributed by the end of the calendar year that

contains the fifth anniversary of the Participant's death; provided that (A) if the Plan allows distribution in any form other than a lump sum, minimum distributions must commence by the end of the calendar year that contains the first anniversary of the Participant's death and (B) if the sole Beneficiary is the Participant's surviving Spouse, such surviving Spouse may defer commencement until the end of the calendar year in which the Participant would have attained age 70½.

- (iii) 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.
 - (iv) 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 Section, other than subparagraph (i), above, shall apply as if the surviving Spouse were the Participant.
- (c) In applying the requirements of section 401(a)(9) of the Code and the regulations thereunder, the final Treasury regulations issued April 16, 2002, shall be applied for determining required minimum distributions and shall override any inconsistent provisions of the Plan.

7.6. ***Automatic Cashout of Small Account Balances.*** If, as of a Participant's Severance From Employment, his or her Account Balance is \$5,000 or less, such balance shall automatically be distributed in a lump sum; provided that if the Account Balance is greater than \$1,000, the Account shall be distributed in a Direct Rollover to an IRA designated by the Plan Administrator (for the benefit of the Participant) unless the Participant affirmatively elects to receive a direct payment or to roll over to another Eligible Retirement Plan (as defined below).

7.7. ***Direct Rollover of Eligible Rollover Distributions.*** Notwithstanding any provision of the Plan that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, and subject to the terms and restrictions of the applicable Funding Vehicles, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee. A Distributee may not make the election described in the preceding sentence to roll over only a portion of the Eligible Rollover Distribution.

For the purposes of this Section and Section 7.6, the following definitions apply:

- (a) ***Eligible Rollover Distribution.*** An Eligible Rollover Distribution is 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 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 period of 10 years or more;

- (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9);
- (iii) any hardship distribution; or
- (iv) any distribution(s) that is reasonably expected to total less than \$200 during a year.

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

- (b) ***Eligible Retirement Plan.*** An Eligible Retirement Plan which agrees to accept a Distributee's Eligible Rollover Distribution is a qualified plan described in Code Section 401(a), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an eligible plan under Code Section 457(b) which is maintained by a governmental employer which agrees to separately account for amounts transferred into such plan from this Plan, or a Roth IRA as described in Code Section 408A. In the case of a distribution to a non-Spouse Beneficiary, an Eligible Retirement Plan is limited to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Code Section 408(d)(3)(C)). The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a domestic relations order as defined in Code Section 414(p).
- (c) ***Distributee.*** A Distributee includes an Eligible Employee or former Eligible Employee. In addition, the Eligible Employee's or former Eligible Employee's surviving Spouse, and the Eligible Employee's or former Eligible Employee's Spouse or former Spouse who is the alternate payee under a domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the Spouse or former Spouse. A Distributee also includes a non-spouse Beneficiary; provided that, in the case of a non-Spouse Beneficiary, the Direct Rollover may be made only to an individual retirement account or annuity

described in Code Sections 408(a) or 408(b) (“IRA”) that is established on behalf of the Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 & 18, 2007 I.R.B. 395, and any successor IRS regulation or guidance of general applicability.

- (d) ***Direct Rollover.*** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

7.8. ***Transfers to Another Qualified Plan.*** Direct transfers for a Participant to another plan qualified under Code Section 401(a) shall be permitted pursuant to the terms and restrictions of the Funding Vehicles.

Article VIII – Administration

8.1. ***Plan Administration.*** This Plan is intended to satisfy Code Section 401(a) as applicable to a governmental employer as defined in Code Section 414(d) and any ambiguity shall be interpreted consistently with such intent (as determined by the Plan Administrator).

8.2. ***Administrative Duties.*** Subject to the express provisions of the Plan, the Plan Administrator shall have full discretionary authority and responsibility to:

- (a) Determine whether an individual is eligible to participate in the Plan;
- (b) Determine whether contributions comply with the applicable limitations;
- (c) Determine the Funding Vehicles and investments under the Plan;
- (d) Interpret the Plan, including to resolve ambiguities, disputes, and questions related to administration of the Plan or benefits thereunder;
- (e) Establish rules and regulations as it deems necessary or desirable for the proper and effective administration of the Plan;
- (f) Prescribe forms and documents to be used in connection with the operation of the Plan;
- (g) Settle and determine controversies and disputes as to the rights and benefits under the Plan and decide questions of fact arising in connection with administration of the Plan; and
- (h) Take such other actions as it believes, in its discretion, to be advisable to operate the Plan, comply with applicable law, and maintain the Plan’s purpose.

Any determination made by the Plan Administrator shall be binding and conclusive upon all persons. If subject to judicial or other external review, the Plan Administrator’s

determination shall be given deference and shall be overturned only if it is arbitrary or capricious. In exercising its powers and authority, the Plan Administrator shall at all times exercise good faith, apply rules objectively and consistently under the circumstances, and refrain from arbitrary action.

- 8.3. ***Attorneys and Advisers.*** In carrying out its duties, the Plan Administrator may employ attorneys, agents, and accountants as it finds necessary or advisable to assist it. To the extent that the Employer, the Plan Administrator, or any of their designees consults with legal counsel, whether in a fiduciary capacity or otherwise, the attorney-client relationship shall be exclusively between such counsel and the Employer, Plan Administrator, or other designee. No employee, former employee, Participant, Beneficiary, or other individual shall be a party to such attorney-client relationship. Unless otherwise determined by the Employer's General Counsel, the Employer and the Plan Administrator (including their employees, officers, trustees, affiliates, and representatives) shall preserve all rights to maintain the confidentiality of their communications with advisers, including the attorney-client privilege, to the full extent permitted by law.
- 8.4. ***Action of the Plan Administrator or Employer.*** Any act authorized, permitted, or required to be taken by the Plan Administrator or Employer under the Plan may be taken by the Plan Administrator's or Employer's authorized representative or designee determined in accordance with the Plan Administrator's or Employer's (as applicable) charter or other governance procedures. Unless otherwise expressly provided by resolution or the Employer's governance procedures, the Employer's Vice President for Human Resources is authorized to act on behalf of the Employer. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Plan Administrator or Employer under the Plan shall be made in a manner consistent with the applicable charter or other governance procedures.
- 8.5. ***No Reversion.*** Except as permitted by this Section 8.5, under no circumstances shall any contributions of the Employer revert to, be paid to or inure to the benefit of, directly or indirectly the Employer.
- (a) ***Initial Qualification.*** All contributions to the Plan are conditioned on the Plan (including the underlying Funding Vehicles) constituting a qualified plan under Code Section 401(a). If a request for the determination of the Plan's initial qualification is timely filed with the Internal Revenue Service and the Internal Revenue Service determines that the Plan does not so qualify, or refuses to issue a favorable determination due to a defect that cannot reasonably be corrected, contributions made in contemplation of qualification may be returned to the Employer within one year after the denial of qualification (or, if applicable, closing of the determination request without issuance of a favorable determination).
- (b) ***Mistaken Contributions.*** Any contribution (or any portion of a contribution) that is made to the Plan by a good faith mistake of fact may be returned to the Employer within one year after payment of the contribution.

In each case, return of contributions to the Employer is conditioned on timely receipt in good order of a proper request approved by the Funding Vehicle, and the amount returned shall be adjusted for income or loss in value, if any, allocable thereto.

- 8.6. ***Choice of Law.*** Subject to satisfying the requirements of Code Section 401(a) that apply to government plans under Code Section 414(d), the Plan shall be administered, interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to any conflict or choice of law principles that might otherwise point to the law of a different jurisdiction.
- 8.7. ***Expenses.*** All expenses of the Plan shall be paid by the Plan unless paid by the Employer in its sole discretion. The Plan Administrator shall have discretionary authority to allocate administrative expenses within the Plan using any reasonable method, which includes the discretionary authority to allocate expenses among the individual Accounts of Participants and Beneficiaries or a group of Participants and/or Beneficiaries on a *per capita* or *pro rata* basis.

Article IX – Termination and Amendment

- 9.1. ***Amendment or Termination.*** The Employer reserves the right to amend or terminate the Plan, or to discontinue further contributions or payments under the Plan, at any time and for any reason, retroactively or prospectively, and without advance notice, in each case except as otherwise specified in the Plan. In the event of a termination of the Plan or a complete discontinuance of Plan contributions, the Employer will notify all Participants of the termination. At the date of complete or partial termination, all Accounts of affected Participants will become nonforfeitable to the extent funded.
- 9.2. ***Distribution Upon Termination.*** Upon termination of the Plan and subject to any restrictions contained in agreements for Funding Vehicles, the shares in the Custodial Account shall be redeemed or otherwise distributed pursuant to the terms of the Custodial Account agreement, and the investment options held in trust shall be liquidated, redeemed, or otherwise distributed pursuant to the instructions of the trustee consistent with the terms of the Funding Vehicles.
- 9.3. ***Limitation on Amendment.***
- (a) No amendment shall operate to recapture for the Employer any contributions previously made under this Plan except reversions as permitted under Section 8.5 (No Reversion).
 - (b) No amendment shall reduce the vested balance of any Participant's or Beneficiary's Account, unless the Employer determines the amendment is necessary or appropriate to comply with applicable law. For the avoidance of doubt, reduction of an Account Balance to correct an error or to comply with an applicable limitation shall not be treated as a prohibited amendment.

Article X – Miscellaneous

- 10.1. ***Plan Non-Contractual.*** Nothing contained in this Plan shall be construed as a commitment or agreement on the part of any person to continue his or her employment with the Employer, and nothing contained in this Plan shall be construed as a commitment on the part of the Employer to continue the employment or the rate of compensation of any person for any period. All employees of the Employer shall remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2. ***Claims of Other Persons.*** The provisions of the Plan shall in no event be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Employer, its officers, employees, or directors, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3. ***Non-Alienation of Retirement Rights or Benefits.*** Except as provided below in subsections (a) and (b), below, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interests are expressly declared to be non-assignable and non-transferable.
- (a) ***Qualified Domestic Relation Orders.*** If a judgment, decree or order is made pursuant to a qualified domestic relations order within the meaning of Code Section 414(p)(1)(A), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the qualified domestic relations order. An alternate payee under a qualified domestic relations order shall be treated as a Participant or Beneficiary, as applicable. Payment to an alternate payee pursuant to a qualified domestic relations order shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan.
- (b) ***IRS Levy.*** The Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment, or any assessment that the law treats as comparable to a tax assessment, against the Participant or Beneficiary.
- 10.4. ***Plan Mergers.*** In the event of a merger or consolidation with, or transfer of assets or liabilities to any other plan, each Participant will receive a benefit immediately after such merger, etc. (if the Plan then terminated) which is at least equal to the benefit the Participant was entitled to immediately before such merger, etc. (if the Plan had terminated), determined in accordance with Code Section 414(l).

- 10.5. ***Tax Withholding.*** The Plan Administrator or Employer may withhold (or cause to be withheld) taxes from contributions to the Plan and distributions from the Plan to the extent that it determines to be required under applicable local, state or federal law. Each payee shall provide such information as is needed to satisfy such tax withholding obligations. Regardless of the amount withheld, the payee shall be solely responsible for all income and employment taxes due with respect to contributions and distributions, except the Employer's share of employment taxes.
- 10.6. ***Payments to Minors and Incompetents.*** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Plan Administrator or Funding Vehicle, benefits will be paid to such person as the Plan Administrator or Funding Vehicle may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of all liability for such payments under the Plan.
- 10.7. ***Missing Participants and Uncashed Benefit Checks.*** Each Participant and Beneficiary shall keep the Plan Administrator advised of his or her address.
- (a) Subject to applicable state law, if an Account becomes distributable under the Plan and, after reasonable efforts, the Plan Administrator and Funding Vehicle are not able to locate the Participant or Beneficiary to whom the Account is distributable, the Account shall be closed. The Account Balance may be transferred to the state pursuant to state law such as escheat, or reallocated to other Participant Accounts, as a credit against employer contributions or to pay Plan expenses. If, however, such Participant or Beneficiary subsequently makes proper claim to the Plan Administrator or Funding Vehicle for the Account, such claim is made before the Plan is terminated, and the Account has not been transferred out of the Plan pursuant to state law such as escheat, the Account shall be reestablished, without interest, and shall be distributed in accordance with the terms of the Plan. An Account that has been transferred out of the Plan pursuant to a state law such as escheat shall not be reinstated.
 - (b) If a Funding Vehicle or the Plan Administrator sends a benefit payment to a Participant or Beneficiary as provided under the Plan, the benefit payment is not returned as being undeliverable, and the Participant or Beneficiary fails to present the check on which the benefit payment is made for payment before such check expires, then the amount of the benefit check shall be subject to the same rules as apply for Accounts of missing participants.
 - (c) Before forfeiting any portion of a vested Account Balance, the Plan Administrator and/or Funding Vehicle shall make reasonable attempts to find the Participant or Beneficiary (or, if applicable, to cause the Participant or Beneficiary to cash the check). For this purpose, reasonableness shall be determined under the circumstances, taking into account the amount of the Account Balance or check and the cost of additional efforts. At a minimum, reasonableness shall require

(i) mailing by First Class mail of a notice to the last known address(es) shown on the Employer's and the Plan Administrator's records; (ii) on-line searches and use of a commercial locator service; and (iii) use of a missing participant program that is made available by Pension Benefit Guaranty Corporation, Social Security Administration, or another governmental agency, except in each case where the cost of additional effort is unreasonably high relative to the potential benefit.

- 10.8. **Overpayments.** If an overpayment is made under the Plan, the recipient of the overpayment shall be required to return the overpaid amount plus reasonable interest. To the extent that the Plan Administrator is unable to recover the overpayment, the Plan Administrator may offset the overpayment against future benefit payments, if any. The foregoing remedy is not intended to be exclusive.
- 10.9. **Rules of Construction.** For purposes of the Plan, unless the contrary is clearly indicated by the context:
- (a) The use of the masculine gender shall also include within its meaning the feminine and vice versa;
 - (b) The use of the singular shall also include within its meaning the plural and vice versa;
 - (c) The word "include" shall mean to include, but not to be limited to;
 - (d) Any reference to a statute or section of a statute shall further be a reference to any successor or amended statute or section, and any regulations or other guidance of general applicability issued thereunder. Any reference to a regulation or section of a regulation shall further be a reference to any successor or amended regulation or section;
 - (e) The headings of Articles and Sections are included solely for convenience of reference. If there is any conflict between any such heading and the text of the Plan, the text shall control; and
- 10.10. **Complete Statement of the Plan.** This document is a complete statement of the terms of the Plan and may be amended, modified, suspended, revoked, or terminated only as provided in Article IX. An individual's right to any benefit under the Plan shall be determined in accordance with the terms of this document; provided, however, that this document shall be applied and interpreted without regard to any scrivener's error (as described in the next following sentence) in this document or any other document of the Plan. The determination of whether a scrivener's error has occurred shall be made by the Employer's Vice President for Human Resources in the exercise of his or her best judgment and sole discretion, based on his understanding of the Employer's intent as settlor of the Plan, and taking into account such evidence, written or oral, as he or she deems appropriate or helpful. The Employer's Vice President for Human Resources is authorized to correct any scrivener's error that he or she discovers in this document or any other document of the Plan.

IN WITNESS WHEREOF, as authorized by resolution of the Board of Trustees of the Employer, the Plan is hereby adopted effective as of July 1, 2018.

THE PENNSYLVANIA STATE UNIVERSITY

By: _____

Date: _____

Name:

Title:

EXHIBIT A

Eligible Employees, Plan Entry Dates, Employer Contributions, and Vesting Schedules

The following table lists the Eligible Employees under the Plan and, for each Eligible Employee, the Plan Entry Date, allocation of Employer Contributions, and vesting schedule:

Eligible Employee	Plan Entry Date	Employer Contributions	Vesting Schedule
Vice President for Intercollegiate Athletics	July 1, 2018	Lesser of 100% of Compensation or \$20,000 per month; <u>provided</u> that the contributions for the first Plan Year shall be made in a single payment at a time determined by the Employer that is not before the Plan is adopted or more than 60 days after the end of such first Plan Year.	Immediate (100%)

EXHIBIT B

(To attach 415(m) Plan)

**The Pennsylvania State University
Section 415(m) Excess Benefit Plan**

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Introduction

The Pennsylvania State University established this Pennsylvania State University Section 415(m) Excess Benefit Plan (the “Plan”), effective July 1, 2018, to provide benefits to Participants in The Pennsylvania State University Section 401(a) Defined Contribution Plan (the “401(a) Plan”) that cannot be provided under the 401(a) Plan by reason of the limitations under Section 415 of the Internal Revenue Code of 1986, as amended (the “Code”). The Plan is intended to be a qualified governmental excess benefit arrangement under Code Section 415(m).

Article I – Definitions

The following terms shall have the meaning described herein.

- 1.1. **401(a) Plan** means The Pennsylvania State University Section 401(a) Defined Contribution Plan, as in effect and amended from time to time.
- 1.2. **Account** means a Participant’s individual book-entry account under the Plan, which reflects credits for the benefit of the Participant, as adjusted for deemed investment gains and losses, expenses, and appreciation or depreciation, and payments of benefits under the Plan.
- 1.3. **Account Balance** means the balance of a Participant’s Account under the Plan.
- 1.4. **Beneficiary** means, with respect to a Participant, the Participant’s Beneficiary (or Beneficiaries) under the 401(a) Plan.
- 1.5. **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6. **Compensation** has the same meaning as under the 401(a) Plan.
- 1.7. **Eligible Employee** has the same meaning as under the 401(a) Plan.
- 1.8. **Employer** means The Pennsylvania State University, which is an instrumentality of the Commonwealth of Pennsylvania.
- 1.9. **Participant** means a current or former Eligible Employee who has become a Participant in the Plan in accordance with Section 2.1 (Participation) and whose Account Balance has not been paid.
- 1.10. **Plan** means The Pennsylvania State University Section 415(m) Excess Benefit Plan, as amended.
- 1.11. **Plan Administrator** means the plan administrator of the 401(a) Plan.
- 1.12. **Plan Year** means each 12-month period beginning on July 1 and ending on June 30.
- 1.13. **Severance from Employment** has the same meaning as under the 401(a) Plan.

Article II – Eligibility for Participation

- 2.1. **Participation.** Each Eligible Employee shall become a Participant in the Plan as of the Plan Entry Date prescribed by the 401(a) Plan; provided that no amount shall be credited to a Participant's Account unless and until a credit is required by Article III (Plan Credits).
- 2.2. **Continued Participation.** Once a person has become a Participant, he or she shall continue to be a Participant until his or her Account Balance has been forfeited or paid in full. Once the Account Balance has been paid in full (or forfeited), the person shall cease to be a Participant.

Article III – Plan Credits

- 3.1. **Employer Credits.** For each Plan Year, the Employer shall credit to each Participant's Account an amount equal to the excess, if any, of the contribution allocation prescribed by the 401(a) Plan for such Plan Year over the principal amount actually allocated to the Participant's account under the 401(a) Plan for such Plan Year. The credit for each Plan Year, if any, shall be added to the Participant's account at a time or times determined by the Employer, no later than the last day of the first quarter of the next following Plan Year.
- 3.2. **No Employee Elections.** No Participant may elect, directly or indirectly, to defer compensation under this Plan.

Article IV – Vesting

- 4.1. **Vesting.** A Participant's Account under the Plan shall be subject to the same vesting and forfeiture rules as apply under the 401(a) Plan; provided, however, that, to the extent permitted by applicable law, all or part of the Participant's Account may be forfeited if the Participant's employment is terminated for cause (as determined by the Employer in its sole discretion). If a Participant has a Severance From Employment before his or her Account is fully vested, the unvested portion shall be forfeited in accordance with the rules prescribed by the 401(a) Plan.
- 4.2. **Rehire.** If a Participant forfeits part of his or her Account and is later rehired, the Account shall be eligible for reinstatement in accordance with the same rules as apply under the 401(a) Plan.

Article V– Investments

- 5.1. **Manner of Investment.** Each Account under the Plan shall be adjusted for deemed investment gains and losses (net of expenses) as if it were invested in investment vehicles made available by the Employer. For the avoidance of doubt, earnings (and losses) shall not be credited with respect to any amount for any period before such amount is credited to the Participant's Account.

- 5.2. **Unfunded Status.** Although Accounts are credited with investment gains and losses, each Account is a book-entry account and the Plan is unfunded. Neither the calculation of investment gains and losses nor the crediting thereof to Accounts shall be construed in any manner as an actual investment in the underlying funds.
- 5.3. **Records.** Records for each Participant or Beneficiary shall be maintained on the basis of the Plan Year.

Article VI– Payment of Benefits

- 6.1. **Time and Form of Payment.** The Employer shall pay or cause to be paid to each Participant the vested balance of his or her Account (if any) in a lump sum as of the first day of the first calendar month that starts after the Participant's Severance From Employment.
- 6.2. **Death.** If a Participant dies before his or her vested Account Balance has been paid in full, the Employer shall pay (or cause to be paid) the vested balance to the Participant's Beneficiary as soon as reasonably practicable after the Participant's death.
- 6.3. **Funding and Obligation to Pay.** All benefits under the Plan shall be paid by the Employer. Such benefits (*i.e.*, the Account Balances) are unfunded obligations of the Employer. Nothing contained in the Plan shall require the Employer to segregate monies from its general funds, to create any trust, to make any special deposits, or to purchase any policies of insurance with respect to such obligations. If the Employer chooses to establish a trust (which trust must be a grantor trust whose assets are subject to the claims of creditors of the Employer in the event of its bankruptcy or insolvency) or to purchase insurance policies or make other investments in relation to its obligations under the Plan, the assets of such trust, the insurance policies, and all other investments shall remain the sole property of the Employer and no Participant or Beneficiary shall have any ownership rights in respect of such insurance or other assets.

Article VII– Administration

- 7.1. **Plan Administration.** This Plan is intended to be a qualified governmental excess benefit arrangement under Code Section 415(m) and shall be construed consistently with such intent.
- 7.2. **Administrative Duties.** The Plan Administrator shall have the same discretionary authority and responsibility as under the 401(a) Plan.
- 7.3. **Attorneys and Advisers.** In carrying out its duties, the Plan Administrator may employ attorneys, agents, and accountants as it finds necessary or advisable to assist it. To the extent that the Employer, the Plan Administrator, or any of their designees consults with legal counsel, whether in a fiduciary capacity or otherwise, the attorney-client relationship shall be exclusively between such counsel and the Employer, Plan Administrator, or other designee. No employee, former employee, Participant, Beneficiary, or other individual shall be a party to such attorney-client relationship.

Unless otherwise determined by the Employer's General Counsel, the Employer and the Plan Administrator (including their employees, officers, trustees, affiliates, and representatives) shall preserve all rights to maintain the confidentiality of their communications with advisers, including the attorney-client privilege, to the full extent permitted by law.

- 7.4. ***Action of the Plan Administrator or Employer.*** Any act authorized, permitted, or required to be taken by the Plan Administrator or Employer under the Plan may be taken by the Plan Administrator's or Employer's authorized representative or designee determined in accordance with the Plan Administrator's or Employer's (as applicable) charter or other governance procedures. Unless otherwise expressly provided by resolution or the Employer's governance procedures, the Employer's Vice President for Human Resources is authorized to act on behalf of the Employer. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Plan Administrator or Employer under the Plan shall be made in a manner consistent with the applicable charter or other governance procedures. Unless otherwise expressly provided, all delegations of authority under the 401(a) Plan shall also apply with respect to this Plan.
- 7.5. ***Choice of Law.*** Subject to satisfying the requirements of Code Section 415, the Plan shall be administered, interpreted, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to any conflict or choice of law principles that might otherwise point to the law of a different jurisdiction.
- 7.6. ***Expenses.*** All expenses of the Plan shall be paid by the Employer; provided that the Employer may subtract allocable Plan expenses from Participants' Account balances in a manner consistent with the allocation of expenses under the 401(a) Plan.

Article VIII – Termination and Amendment

- 8.1. ***Amendment or Termination.*** The Employer reserves the right to amend or terminate the Plan at any time and for any reason, retroactively or prospectively, and without advance notice, in each case except as otherwise specified in the Plan. At the date of complete or partial termination, all Accounts of affected Participants will become nonforfeitable.
- 8.2. ***Limitation on Amendment.*** No amendment shall reduce the vested balance of any Participant's or Beneficiary's Account, unless the Employer determines the amendment is necessary or appropriate to comply with applicable law. For the avoidance of doubt, reduction of an Account Balance to correct an error or to comply with an applicable limitation shall not be treated as a prohibited amendment.

Article IX – Miscellaneous

- 9.1. ***Plan Non-Contractual.*** Nothing contained in this Plan shall be construed as a commitment or agreement on the part of any person to continue his or her employment with the Employer, and nothing contained in this Plan shall be construed as a commitment on the part of the Employer to continue the employment or the rate of

compensation of any person for any period. All employees of the Employer shall remain subject to discharge to the same extent as if the Plan had never been put into effect.

- 9.2. ***Claims of Other Persons.*** The provisions of the Plan shall in no event be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against the Employer, its officers, employees, or directors, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 9.3. ***Non-Alienation of Benefits.*** The rights of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which rights and interests are expressly declared to be non-assignable and non-transferable.
- 9.4. ***Tax Withholding.*** The Plan Administrator or Employer may withhold (or cause to be withheld) taxes with respect to credits under the Plan and distributions from the Plan to the extent that it determines to be required under applicable local, state or federal law. Each payee shall provide such information as is needed to satisfy such tax withholding obligations. Regardless of the amount withheld, the payee shall be solely responsible for all income and employment taxes due with respect to contributions and distributions, except the Employer's share of employment taxes, if any.
- 9.5. ***Payments to Minors and Incompetents.*** If a Participant or Beneficiary entitled to receive any payment hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such payment, or is deemed so by the Plan Administrator or Funding Vehicle, payment will be made to such person as the Plan Administrator or Funding Vehicle may designate for the benefit of such Participant or Beneficiary. Such payment shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of all liability for such payment under the Plan.
- 9.6. ***Missing Participants and Uncashed Checks.*** Each Participant and Beneficiary shall keep the Plan Administrator advised of his or her address.
- (a) If, after reasonable efforts, the Plan Administrator is not able to locate a Participant or Beneficiary who is entitled to payment under the Plan, the applicable Account may be forfeited. If, however, such Participant or Beneficiary subsequently makes proper claim to the Plan Administrator, such claim is made before the Plan is terminated, and the Account Balance has not been paid pursuant to a state law such as escheat, the Account shall be reestablished, without interest, and the balance shall be paid in accordance with the terms of the Plan. If the Account Balance has been paid pursuant to state law such as escheat, the Account shall not be reinstated.
- (b) If a payment under the Plan is made by check that is not returned as being undeliverable, and the Participant or Beneficiary fails to present the check before

such check expires, then the amount of the benefit check shall be subject to the same rules as apply for Accounts of missing Participants.

- 9.7. **Overpayments.** If an overpayment is made under the Plan, the recipient of the overpayment shall be required to return the overpaid amount plus reasonable interest. To the extent that the Employer is unable to recover the overpayment, the Employer may offset the overpayment against future obligations to the recipient to the full extent permitted by law. The foregoing remedy is not intended to be exclusive.
- 9.8. **Rules of Construction.** For purposes of the Plan, unless the contrary is clearly indicated by the context:
- (a) The use of the masculine gender shall also include within its meaning the feminine and vice versa;
 - (b) The use of the singular shall also include within its meaning the plural and vice versa;
 - (c) The word “include” shall mean to include, but not to be limited to;
 - (d) Any reference to a statute or section of a statute shall further be a reference to any successor or amended statute or section, and any regulations or other guidance of general applicability issued thereunder. Any reference to a regulation or section of a regulation shall further be a reference to any successor or amended regulation or section;
 - (e) The headings of Articles and Sections are included solely for convenience of reference. If there is any conflict between any such heading and the text of the Plan, the text shall control; and
 - (f) Any reference to a written document or delivery of a communication in writing shall include delivery by electronic means (e.g., by email or posting on an applicable website).
- 9.9. **Complete Statement of the Plan.** This document is a complete statement of the terms of the Plan and may be amended, modified, suspended, revoked, or terminated only as provided in Article VIII. An individual’s right to any benefit under the Plan shall be determined in accordance with the terms of this document; provided, however, that this document shall be applied and interpreted without regard to any scrivener’s error (as described in the next following sentence) in this document or any other document of the Plan. The determination of whether a scrivener’s error has occurred shall be made by the Employer’s Vice President for Human Resources in the exercise of his or her best judgment and sole discretion, based on his understanding of the Employer’s intent as settlor of the Plan, and taking into account such evidence, written or oral, as he or she deems appropriate or helpful. The Employer’s Vice President for Human Resources] is authorized to correct any scrivener’s error that he or she discovers in this document or any other document of the Plan.

IN WITNESS WHEREOF, as authorized by resolution of the Board of Trustees of the Employer, the Plan is hereby adopted effective as of July 1, 2018.

THE PENNSYLVANIA STATE UNIVERSITY

By: _____

Date: _____

Name:

Title: