

**BRANDEIS UNIVERSITY DEFINED CONTRIBUTION RETIREMENT PLAN  
FOR NONEXEMPT EMPLOYEES**

(Effective January 1, 2019)

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## ARTICLE 1 - INTRODUCTION

Brandeis University (“Brandeis”) adopted the Brandeis University Defined Contribution Retirement Plan for Nonexempt Employees (the “Plan”), originally effective April 1, 1952. The Plan has been amended from time to time and is restated herein. Brandeis also adopted the Brandeis University Tax Deferred Annuity Plan effective January 1, 1966 which allows eligible employees to voluntarily contribute on a tax-deferred basis. The portion of the Tax Deferred Annuity Plan attributable to accounts of Eligible Employees (including former Eligible Employees) under the Brandeis University Tax Deferred Annuity Plan was spun off and merged into this Plan effective December 31, 2008.

Brandeis intends that contributions under the Plan will be used to purchase one or more Annuity Contracts or Custodial Accounts for the benefit of Participants and their beneficiaries and that contributions under the Plan (other than after-tax payroll deduction Required Contributions by Participants) will be excluded from the gross income of the Participants in accordance with Code section 403(b). To the extent any provision of the Plan is inconsistent with any provision of an Annuity Contract or Custodial Account, the provision of the Plan will control. The Plan was amended and restated effective as of January 1, 2009 to comply with the final regulations under Code section 403(b). The Plan was amended and restated effective January 1, 2016 (except as otherwise provided) to incorporate the provisions of the First Amendment to the January 1, 2009 amended and restated Plan, and to comply with the applicable provisions of pertinent federal legislation (i.e., the Pension Protection Act of 2006, the Heroes Earnings and Assistance Relief Tax Act of 2008, and the Worker, Retiree, and Employer Recovery Act of 2008), applicable rulings of the U.S. Supreme Court (i.e., *United States v. Windsor*, 133 S. Ct. 2675 (2013) and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)), and applicable guidance issued by the Internal Revenue Service. The Plan is hereby amended and restated effective January 1, 2019 (unless as otherwise provided herein) to reflect the First Amendment to the January 1, 2016 amended and restated Plan, to reflect the changes made under the Bipartisan Budget Act of 2018 and to make other clarifying changes.

## ARTICLE 2 - DEFINITIONS

Wherever used herein, the following terms have the following meanings:

**2.1 "Administrator"** means Brandeis or such person or committee as may be appointed by Brandeis from time to time.

**2.2 "Affiliated Employer"** means Brandeis and every other employer who, under Code sections 414(b), (c), (m) or (o), is required to be considered as a single employer with Brandeis, but only for periods during which the other employer is required to be considered as such under the applicable Code provisions. For purposes of applying the Code section 415 limits, Code sections 414(b) and (c) will be considered modified as provided in Code section 415(h). For purposes of this section, control of a corporation or an unincorporated trade or business that is a tax-exempt entity under Code section 501(c)(3) will be determined taking into account the provisions of Treasury Regulation section 1.414(c)-5.

**2.3 "Annuity Contracts"** means the non-transferable annuity contracts, if any, as defined in Code section 403(b), selected by Brandeis to which contributions under the Plan may be made. The provisions of each Annuity Contract are hereby incorporated by reference into the Plan to the extent not inconsistent with the provisions of the Plan.

**2.4 "Annuity Starting Date"** means, with respect to a Participant, the first day of the first period for which a benefit is payable as an annuity or any other form.

**2.5 "Brandeis"** means Brandeis University.

**2.6 "Brandeis Contributions"** means contributions made by Brandeis on account of Required Contributions. If qualified nonelective contributions or qualified matching contributions are also made pursuant to Section 4.3(b)(4), they shall be treated as "Brandeis Contributions" for purposes of interpreting the Plan.

**2.7 "Code"** means the Internal Revenue Code of 1986, as amended from time to time. Reference to any section of the Code includes a reference to regulations issued by the Department of Treasury and rulings, notices and other releases issued by the Internal Revenue Service which interpret or implement such Code section. Reference to any section of the Code also includes reference to such section as renumbered and to any successor or replacing section.

**2.8 "Compensation"** for any period means the base salary or wages paid by Brandeis to a Participant during the period, excluding overtime, bonuses, vacation payouts, one-time increases and any non-cash remuneration. Compensation shall also include any amounts which would have been included as compensation in the previous sentence but for a salary reduction election under Code section 125, 132(f)(4), 403(b) or 457(b). Notwithstanding the preceding, except for purposes of Sections 4.1 and 4.2, Compensation for any individual for a Plan Year shall not exceed the annual compensation limit under Code section 401(a)(17) (\$265,000 effective January 1, 2016) as adjusted from time to time by the Secretary of the Treasury under Code section 401(a)(17).

Effective January 1, 2009, Compensation shall include differential pay actually received by an Employee who is called to active duty in the uniformed services. Differential pay is compensation paid by Brandeis equal to the difference between the Participant's Compensation paid by Brandeis and the Participant's military compensation. Each Participant shall be permitted to make Required and/or Voluntary

Contributions against such differential pay. This paragraph shall only apply if all Participants are receiving differential pay on a reasonably equivalent basis, are eligible to participate in this Plan.

**2.9 "Contribution Agreement"** means a written agreement between a Participant and Brandeis satisfying the conditions described in Section 4.1(b), pursuant to which Required Contributions under Section 4.1(a)(1) are made by Brandeis ("Required Contribution Agreement") or Voluntary Contributions under Section 4.1(a)(2) are made by a Participant ("Voluntary Contribution Agreement"), on a salary reduction basis or by the Participant on a payroll deduction basis.

**2.10 "Custodial Account" or "Account"** means the custodial accounts, as defined in Code section 403(b)(7), selected by Brandeis to which contributions under the Plan may be made. The terms of each Custodial Account agreement are hereby incorporated by reference into the Plan to the extent not inconsistent with the provisions of the Plan.

**2.11 "Effective Date"** means January 1, 2016.

**2.12 "Eligible Employee"** means, except as otherwise provided in Section 4.1(a)(2), each Nonexempt Employee who has attained the age of 21, other than:

(a) an employee in a position normally scheduled for a 35-hour week who is scheduled to work fewer than 17½ hours per week, an employee in a position normally scheduled for a 40-hour week who is scheduled to work fewer than 20 hours per week;

(b) an employee whose primary association with Brandeis is as a student;

(c) a temporary employee;

(d) a post-doctoral fellow; or

(e) a leased employee (within the meaning of Code section 414(n)).

An individual who is retained by Brandeis as a leased or contract employee but who is retroactively determined by a court of competent jurisdiction to be a bona fide employee shall continue to be classified as a leased or contract employee for purposes of this Plan and, notwithstanding such determination, shall not be considered an Eligible Employee hereunder and shall not be eligible to make Required Contributions or receive Brandeis Contributions.

**2.13 "Employee"** means any individual employed by Brandeis as a common law employee. Leased employees (as defined in Code section 414(n)(2)) shall be considered Employees only to the extent provided under Code section 414(n)(3).

**2.14 "ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time. Reference to any section or subsection of ERISA includes reference to such section as renumbered and to any comparable or succeeding provisions of any legislation which amends, supplements or replaces such section or subsection, and also includes reference to any regulation or ruling issued pursuant to or with respect to such section or subsection.

**2.15 "Highly Compensated Employee"** means an Employee who:

(a) received compensation in excess of the dollar limitation under Code Section 414(q)(1)(B)(i) (as adjusted under Code section 414(q)(1)) for the preceding Plan Year); and

(b) was in the top-paid group of employees (as defined in Code section 414(q)(3)) for such preceding Plan Year.

To the extent permitted by Code section 414(q) (which is hereby incorporated by reference into the Plan), the Administrator may, in lieu of the definitions set forth above, determine Highly Compensated Employees based upon any alternative or simplified definition available under such section.

**2.16 "Nonexempt Employee"** means an Employee who is subject to the minimum wage and hour provisions of the federal Fair Labor Standards Act.

**2.17 "Participant"** means each Eligible Employee who participates in the Plan in accordance with Article 3.

**2.18 "Plan"** means the Brandeis University Defined Contribution Plan for Nonexempt Employees, as set forth herein, together with any and all amendments and supplements thereto.

**2.19 "Plan Year"** means the calendar year.

**2.20 "Required Contribution"** means the required contribution made with respect to a Participant pursuant to a Contribution Agreement under Section 4.1.

**2.21 "Spouse"** means, effective June 26, 2013, the opposite-sex or same-sex spouse to whom the Participant is legally married under the laws of the jurisdiction in which the Participant's marriage took place. Effective September 16, 2013, the Spouse of a Participant shall include a spouse of the same sex if the marriage was validly entered into in a state whose laws recognize the marriage of two individuals of the same sex even if such individuals are domiciled in a state that does not recognize the validity of same-sex marriages. Effective June 26, 2015, "Spouse" means the opposite-sex or same-sex spouse to whom the Participant is legally married under the laws of the jurisdiction in which the Participant's marriage took place.

**2.22 "Vendor"** means the provider of the Annuity Contract or Custodial Account. Effective as of January 1, 2016, the approved Vendors under the Plan are TIAA and Fidelity Investments.

**2.23 "Voluntary Contribution"** means the voluntary contribution made with respect to a Participant pursuant to a Contribution Agreement under Section 4.

## ARTICLE 3 - PARTICIPATION

### 3.1 Participation.

(a) Each Eligible Employee for whom a Contribution Agreement is in effect on the Effective Date will continue to be a Participant as of such date.

(b) Any other Eligible Employee may become a Participant on the first day of the month following the first anniversary of such Eligible Employee's date of hire. Notwithstanding the foregoing, however, any other Eligible Employee whose date of hire is the first day of a month may become a Participant on the first anniversary of such Eligible Employee's date of hire. In the case of an Eligible Employee who: (1) within 3 months prior to his or her date of hire at Brandeis was an employee at an educational organization satisfying the requirements of Code section 501(c)(3) and (2) was credited with at least one year of benefit eligible service at such educational organization, service with such educational organization will be treated as service with Brandeis for purposes of this Section 3.1(b). In addition, in the case of an individual who: (i) was an employee of the Beth Israel Deaconess Medical Center (BIDMC) prior to August 10, 2016 and (ii) became an Eligible Employee on August 10, 2016, service with BIDMC will be treated as service with Brandeis for purposes of this Section 3.1(b).

(c) To become a Participant, an Eligible Employee who has satisfied the service requirements of Section 3.1(b) shall complete a Contribution Agreement in writing or transmitted by electronic means pursuant to procedures established by the Administrator and containing such information as the Administrator may require prior to the date it is to become effective. The initial election to become a Participant and to make or receive Required Contributions shall be made in the discretion of the Eligible Employee, but once made shall be irrevocable for so long as the Participant remains an Eligible Employee. Notwithstanding the foregoing, a Participant may elect to suspend Required Contributions for any period that Brandeis is not making matching Brandeis Contributions pursuant to Section 4.3. If a Participant does not elect to suspend Required Contributions during such period, Required Contributions shall continue. With respect to a Participant who does elect to suspend Required Contributions during such period, Required Contributions shall automatically resume upon the resumption of matching Brandeis Contributions.

**3.3 Duration of participation.** An individual who has become a Participant will remain a Participant for as long as an Annuity Contract or Custodial Account is maintained under the Plan for his or her benefit, but not beyond his or her death or termination of the Plan. Notwithstanding the preceding sentence, no contributions shall be made with respect to a Participant who is not an Eligible Employee or for whom a Contribution Agreement is not in effect.

**3.4 Reemployment.** A former Participant who is re-employed by Brandeis will be eligible to participate upon meeting the requirements stated in Section 3.1. A former Employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former Employee is an Eligible Employee.



## ARTICLE 4 - CONTRIBUTIONS; INVESTMENT OPTIONS

### 4.1 Participant Contributions.

#### (a) **Required and Voluntary Contributions.**

(1) **Required Contributions.** Required Contributions must be made in order for Eligible Employees to participate in the Plan and receive Brandeis Contributions. For each payroll period during which a Required Contribution Agreement is in effect with respect to a Participant, a Required Contribution shall be made on behalf of such Participant in an amount equal to 3% of the Participant's Compensation for the payroll period.

(2) **Voluntary Contributions.** In addition to, or in lieu of, Required Contributions an Eligible Employee may make pursuant to (1) above, an Eligible Employee may elect to make Voluntary Contributions to the Plan. For each payroll period during which a Voluntary Contribution Agreement is in effect with respect to a Participant, a Voluntary Contribution shall be made on behalf of such Participant as specified by the Participant. Solely for purposes of making Voluntary Contributions hereunder, a Faculty, Professional, or Administrative Employee described in Section 2.12(a), (c) or (d), whether or not such individual has attained age 21, shall also be considered an Eligible Employee. However, such individual shall not be eligible for Brandeis Contributions under Section 4.3. An individual who is retained by Brandeis as a leased or contract employee but who is determined by a court of competent jurisdiction to be a bona fide employee shall be eligible to make Voluntary Contributions following such determination, provided the Employee is otherwise an Eligible Employee hereunder. However, such individual shall not be eligible for Brandeis Contributions under Section 4.3.

(3) Required and Voluntary Contributions shall only be made by Brandeis on a pre-tax, salary reduction basis. However, a Participant who was contributing on an after-tax basis immediately prior to the Effective Date may continue to contribute on an after-tax basis.

(b) **Contribution Agreement.** To the extent Required Contributions are to be made by the Participant by payroll deduction on an after-tax basis, the Contribution Agreement shall provide for the amount of Required Contributions to be made by the Participant (which shall be the applicable amount set forth in Section 4.1(a) above less any amount to be contributed by Brandeis on a salary reduction basis), and shall provide that Brandeis will facilitate such contributions through payroll deduction. To the extent that Required Contributions are to be made on a pre-tax salary reduction basis and with respect to Voluntary Contributions, the Contribution Agreement shall:

(1) be in writing or transmitted by electronic means pursuant to procedures established by the Administrator, and in accordance;

(2) provide for a reduction in the Compensation paid to the Participant by Brandeis in exchange for the contribution of a like amount by Brandeis to the Plan on behalf of the Participant;

(3) specify the amount of Required or Voluntary Contributions (as applicable) to be made on a pre-tax basis (which shall be the applicable amount described in Section 4.1(a) above less any amount to be contributed by the Participant on an after-tax basis);

(4) be binding upon the Participant with respect to Compensation payable while it is in effect;

(5) be terminable as to salary reduction at any time with respect to Compensation not yet payable in order to switch to Required Contributions on an after-tax basis, with any termination effected by filing written notice with the Administrator (or otherwise in accordance with procedures adopted by the Administrator);

(6) pursuant to Section 4.4, not require an amount of contribution for a Plan Year which would exceed the limitation on "annual additions" under Code section 415 applicable to such Plan Year, which is hereby incorporated by reference into the Plan;

(7) not permit an aggregate amount of contributions under this Section 4.1 which, when added to elective deferrals made on the Participant's behalf under another Code section 403(b) program available at Brandeis for a Participant's taxable year, exceeds the limit in effect for the calendar year under Code section 402(g) (\$18,000 for 2016); and

(8) apply only to Compensation payable after the Agreement is in effect.

**(c) Excess deferrals under Code section 402(g).** The Plan does not permit Required or Voluntary Contributions made on a salary reduction basis during any Plan Year in excess of the limits on elective deferrals under Code section 402(g) for such Plan Year. However, in the event that an amount is included in a Participant's gross income for a taxable year as a result of an excess deferral under Code section 402(g), and the Participant notifies the Administrator on or before the March 1 following the taxable year that all or a specified part of Required or Voluntary Contributions made for his or her benefit represents an excess deferral, the Administrator shall make every reasonable effort to cause such excess deferral, adjusted for allocable income or loss in accordance with Code section 402(g)(2) (but excluding "gap earnings" effective as of January 1, 2008, in accordance with the Worker Retiree and Employer Recovery Act of 2008), to be distributed to the Participant no later than the April 15 following the calendar year in which such excess deferral was made. No distribution of an excess deferral shall be made during the taxable year of a Participant in which the excess deferral was made unless the correcting distribution is made after the date on which the Plan received the excess deferral and both the Participant and the Plan designate the distribution as a distribution of an excess deferral. All distributions of excess deferrals are subject to the terms of the Annuity Contract or Custodial Account in which such deferrals are invested, to the extent not inconsistent with the terms of this Plan.

**4.2 Catch-Up Contributions.** For Plan Years beginning on and after January 1, 2002, Participants who have attained age 50 prior to the end of a Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of Code section 414(v) as in effect for such Plan Year. Such catch-up contributions shall be considered Voluntary Contributions but shall not be taken into account for purposes of applying the limitations of Code sections 402(g) and 415. Effective January 1, 2009, the special catch-up contribution provision for individuals with 15 or more years of service under Code section 402(g)(7) shall not apply hereunder.

#### **4.3 Brandeis Contributions.**

**(a) In general.** For each payroll period, Brandeis will contribute, on behalf of each Participant who is an Eligible Employee during the payroll period and for whom a Required Contribution Agreement is in effect, a matching Brandeis Contribution as follows:

(1) 6% of Compensation for the payroll period for a Participant if the payroll period begins before the July 1 following a Participant's attainment of age 50; and

(2) 8% of Compensation for the payroll period for a Participant if the payroll period begins on or after the date described in (1) above.

Notwithstanding the foregoing, effective for the period beginning July 1, 2009 and ending June 30, 2010 matching Brandeis Contributions will be suspended and will not be made by Brandeis on behalf of each Participant for whom Required Contributions are made.

**(b) Code section 401(m) limits.** Pursuant to Code section 403(b)(12)(A)(i), Required Contributions made on an after-tax payroll reduction basis, as well as Brandeis Contributions, shall be subject to the limitations of Code section 401(m), which is hereby incorporated by reference into the Plan to the extent applicable.

**(1) Actual contribution ratios.** For each Plan Year, the Administrator will determine the "actual contribution ratio" for each Eligible Employee. The actual contribution ratio for an Eligible Employee who does not participate for the Plan Year shall be zero. The actual contribution ratio for all other Participants shall be the ratio, calculated to the nearest one-hundredth of one percent, of (i) the sum of such Participant's Required Contributions made on an after-tax payroll deduction basis, if any, and Brandeis Contributions made on behalf of such Participant for the Plan Year, to (ii) such Participant's 401(m) compensation (as hereinafter defined) for the applicable period. For purposes of determining such Participant's actual contribution ratio:

**(A)** contributions will be taken into account only to the extent permitted by Department of Treasury Regulation section 1.401(m)-1(b);

**(B)** "401(m) compensation" means, for purposes of these 401(m) limits, the Participant's wages, salaries, fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with Brandeis to the extent that the amounts are includable in gross income, plus any such amounts that would have been received by the Participant but for a salary reduction election under Code section 125, 132(f)(4), 403(b) or 457(b), but not including those items excludable from the definition of compensation set forth in Department of Treasury Regulation section 1.415-2(d)(2). Brandeis may elect another definition of 401(m) compensation (including that set forth in Section 2.8) to the extent permitted by Code sections 401(m) and 414(s); and

**(C)** The "applicable period" for each Participant for a given Plan Year shall be the 12- month period ending on the last day of such Plan Year; provided, that to the extent permitted under Code section 401(m), the Administrator may choose, on a uniform basis, to treat as the applicable period only that portion of the Plan Year during which the individual was a Participant.

**(2) Actual contribution percentages.** The actual contribution ratios for Eligible Employees who are Highly Compensated Employees for the Plan Year shall be averaged to determine the actual contribution percentage for the highly compensated group for the current Plan Year, and the actual contribution ratios for Eligible Employees who are not Highly Compensated Employees for the Plan Year shall be averaged to determine the actual contribution percentage for the nonhighly compensated group for the Applicable Plan Year. The actual contribution percentages for any Plan Year must satisfy at least one of the following tests, which shall be interpreted and applied by the Administrator in a manner consistent with Department of Treasury Regulation section 1.401(m)-1 (including mandatory disaggregation with respect to any one or more collective bargaining units).

The actual contribution percentage for the highly compensated group does not exceed 125 percent of the actual contribution percentage for the nonhighly compensated group for the Applicable Plan Year;  
or

The excess of the actual contribution percentage for the highly compensated group over the actual contribution percentage for the nonhighly compensated group for the Applicable Plan Year does not exceed two percentage points, and the actual contribution percentage for the highly compensated group does not exceed twice the actual contribution percentage of the nonhighly compensated group for the Applicable Plan Year.

"Applicable Plan Year" means the preceding Plan Year.

**(3) Adjustments by Administrator.** If, prior to the time all after-tax Required Contributions and Brandeis Contributions for a Plan Year have been contributed, the Administrator determines that such contributions are being made at a rate which will cause the Code section 401(m) limits to be exceeded for the Plan Year, the Administrator may, in its sole discretion, limit the amount of any such contributions to be made with respect to one or more highly compensated Participants for the balance of the Plan Year to the extent the Administrator deems appropriate.

**(4) Qualified Nonelective or Qualified Matching Contributions.** In addition to Required Contributions and Brandeis Contributions, Brandeis may, in its discretion, make additional "qualified nonelective contributions" or "qualified matching contributions," each within the meaning of Code section 401(m). Qualified nonelective contributions or qualified matching contributions may be made, as Brandeis determines, on behalf of (i) all Participants, (ii) all Eligible Employees who are not Highly Compensated Employees, or (iii) a specified group of Eligible Employees who are not Highly Compensated Employees. Any qualified nonelective contributions shall be allocated in proportion to 401(m) compensation for the applicable Plan Year, and any qualified matching contributions shall be expressed and allocated as a specified percentage of Required Contributions for the Plan Year. However, allocations of any qualified nonelective contributions or qualified matching contributions for a Plan Year shall comply with the requirements of Code section 401(m) and regulations thereunder applicable to such Plan Year.

**(5) Excess aggregate contributions.** If the Code section 401(m) limits have not been met for a Plan Year after all contributions for the Plan Year have been made, the Administrator will determine the amount of excess aggregate contributions with respect to highly compensated Participants by (i) first, treating Brandeis Contributions and Required Contributions made on an after-tax payroll deduction basis (hereinafter, "401(m) Contributions") made by or on behalf of all highly compensated Participants as having been reduced in the order of the Participants' respective actual contribution ratios, beginning with the largest such ratio, until the actual contribution ratios (as so reduced) would satisfy the nondiscrimination standard of Section 4.3(b)(2) above, and (ii) second, aggregating the excess aggregate contributions determined under clause (i). The Administrator shall then cause an amount equal to the excess aggregate contributions as so determined to be distributed to highly compensated Participants as follows: (A) first, highly compensated Participants shall be ranked in descending order based on the amounts of 401(m) Contributions made by them or for their benefit, and (B) second, there shall be distributed to the highly compensated Participant with the highest dollar amount of 401(m) Contributions the amount required to cause that Participant's undistributed 401(m) Contributions to equal the dollar amount of the 401(m) Contributions made by or for the benefit of the highly compensated Participant with the next highest dollar amount of 401(m) Contributions. These steps shall be repeated until the aggregate amount of 401(m) Contributions so distributed equals the aggregate amount of excess aggregate contributions determined under the first sentence of this Section 4.3(b)(5). Qualified nonelective contributions or qualified matching contributions that are treated as 401(m) Contributions for purposes of applying the Code section 401(m) limits shall be treated as 401(m) Contributions for purposes of this subsection.

**(6) Distribution of excess aggregate contributions.** Brandeis shall cause the excess aggregate contributions, adjusted for income or loss pursuant to Department of Treasury Regulation

section 1.401(m)-2(b)(2)(iv), to be distributed as provided in this paragraph. Distribution will be made first from Brandeis Contributions, and then, to the extent necessary, from Required Contributions made on an after-tax basis through payroll deduction. Distribution of excess aggregate contributions will be designated as such and made after the close of the Plan Year to which the contributions relate, but within 12 months after the close of such Plan Year.

**(7) Recordkeeping requirement.** The Administrator, on behalf of each Participant, shall maintain such records as are necessary to demonstrate compliance with the Code section 401(m) limits.

**4.4 Code section 403(b) and 415 limitations; separate accounting.** Notwithstanding Sections 4.1 and 4.3, the total amount of Voluntary Contributions, Required Contributions and Brandeis Contributions shall not exceed the limitations under Code section 415 on the Participant's "annual additions" for the Plan Year except as permitted under Section 4.2. All of the applicable requirements of Code section 415 are incorporated herein by reference. It shall be the responsibility of each Participant to determine and inform the Administrator of any contributions by an employer other than an Affiliated Employer which are to be aggregated with contributions under the Plan in determining the Code section 415 limits with respect to the Participant. Any Voluntary Contributions shall be reduced first, and then Required Contributions shall be reduced second, prior to Brandeis Contributions, if a reduction is necessary in order to avoid exceeding the Code section 415 limitations. The Administrator may cause any contribution in excess of the section 415 limitations, adjusted for income, gains, losses or expenses attributable to such excess contributions, to be returned or distributed to the Participant to the extent permitted by applicable law. Amounts contributed under Sections 4.1 and 4.3 above shall be separately accounted for. Effective January 1, 2008, any operational corrections necessary due to excess annual additions shall be corrected as set forth in Section 8.6 or as prescribed under a correction program promulgated by the IRS, such as the Employee Plans Compliance Resolution System.

**4.5 Timing of contributions.** In accordance with Department of Labor Regulation section 2510.3-102 and Treasury Regulation section 1.403(b)-8(b), Required Contributions will be paid in cash to the Annuity Contract issuer or Custodial Account custodian, as the case may be, as soon after the applicable pay period as Brandeis determines to be the date such contributions can reasonably be segregated from the general assets of Brandeis, but in any event no later than the 15th business day of the month following the month in which the Compensation to which such contributions relate is paid. In accordance with Department of Treasury Regulation section 1.415-6(b)(7)(ii), Brandeis Contributions for a Plan Year will be contributed in cash to the Annuity Contract issuer or Custodial Account custodian, as the case may be, with such frequency as Brandeis shall determine, but in any event no less frequently than annually and no later than the 15th day of the 6th calendar month following the close of Brandeis' fiscal year with or within which the Plan Year ends.

#### **4.6 Rollover contributions and transfers to the Plan.**

**(a) Rollover contributions to the Plan.** Unless otherwise restricted under an Custodial Account agreement or Annuity Contract, an Eligible Employee who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan on his or her behalf. Such rollover contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code section 402(c)(8)(B). Absent any evidence to the contrary, the Vendor may rely upon the guidance provided by the Internal Revenue Service in Notice 2014-9 to reasonably conclude whether a potential rollover contribution received on or after April 3, 2014 is in fact a valid rollover contribution. If the Vendor later determines that a rollover contribution made to the Plan is an invalid rollover contribution, the amount of the rollover contribution plus any attributable earnings shall be distributed to the Participant within a reasonable time after such determination.

For purposes of this subsection, an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a qualified trust described in Code section 401(a), an annuity plan described in Code section 403(a) or 403(b), or an eligible governmental plan described in Code section 457(b).

The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Participant's account.

**(b) Transfers to the Plan.** Except as provided in subsection (a) above, a Participant shall not be permitted to make a direct transfer to the Plan from another plan described in Code section 403(b).

**4.7 Vesting.** Each Participant will at all times have a fully vested and nonforfeitable interest in all accumulations under his or her Annuity Contracts and/or Custodial Accounts.

#### **4.8 Investment options.**

**(a) Selection of investments.** All contributions made for the benefit of a Participant shall be invested in the Annuity Contract or Custodial Account made available by under the Plan. If more than one Annuity Contract or Custodial Account, or both, are made available by the Administrator, a Participant may direct the investment of the contributions made for his or her benefit among such Annuity Contracts and/or Custodial Accounts, may change such investment directions, and may transfer accounts among such Annuity Contracts and/or Custodial Accounts, in each case in accordance with such rules and procedures as may be prescribed by the Administrator, any custodian of a Custodial Account, or any issuer of an Annuity Contract. A Participant may direct the investment of contributions made for his or her benefit among the funds available with any one Annuity Contract or Custodial Account, may change such investment directions, and may transfer amounts among such funds, in each case in accordance with such rules and procedures as may be prescribed by the Administrator or by the custodian or issuer of the Custodial Account or Annuity Contract. Unless otherwise permitted by the Administrator, an active or former Participant may not make an investment change that includes an investment with a Vendor that is not eligible to receive contributions hereunder (referred to below as an exchange), but, if permitted, the conditions in paragraphs (1) through (3) of this subsection must be satisfied in accordance with Treasury Regulation section 1.403(b)-10(b)(2):

**(1)** The Participant or Beneficiary has an account balance immediately after the exchange that is at least equal to the account balance of that Participant or beneficiary immediately before the exchange (taking into account the account balance of that Participant or beneficiary under both Code section 403(b) contracts or custodial accounts immediately before the exchange).

**(2)** The Custodial Account agreement or Annuity Contract with the receiving Vendor has distribution restrictions with respect to the Participant or beneficiary that are not less stringent than those imposed on the investment being exchanged.

**(3)** Brandeis enters into an agreement with the receiving Vendor for the other contract or custodial account under which Brandeis and the Vendor will from time to time in the future provide each other with the following information:

- (i) Information necessary for the resulting Annuity Contract or Custodial Account, or any other Annuity Contract or Custodial Accounts to which contributions have been made by Brandeis, to satisfy Code section 403(b), including Brandeis providing information as to whether the Participant's employment with Brandeis is continuing, and notifying the Vendor when the Participant has had a severance from employment (for purposes of the distribution restrictions in Section 4.1) and such other information as may be required under Treasury Regulation section 1.403(b)-10(b)(2)(C)(1); and
- (ii) Information necessary in order for the resulting Annuity Contract or Custodial Account and any other Annuity Contract or Custodial Account to which contributions have been made for the Participant by Brandeis to satisfy other tax requirements.

**(b) Investment responsibility.** In the case of a Participant's direction of the investment of the contributions made for his or her benefit, no person, including Brandeis, an Annuity Contract issuer, a Custodial Account custodian or the Administrator, shall be liable for any loss or for any breach of fiduciary duty which is the result of investment instructions given by such Participant. If a Participant fails to make a selection of investments within such time as the Administrator prescribes, such failure shall be deemed to be a direction to the Administrator to invest all contributions made for his or her benefit in one or more default funds selected by the Administrator.

**(c) Application of ERISA section 404(c).** It is intended that the investment options provided under the Plan and the manner of selection among such options shall satisfy ERISA section 404(c). The investment options offered shall provide a Participant or a Participant's beneficiary an opportunity to choose from a broad range of investments within the meaning of ERISA section 404(c). Consistent with the foregoing, the Administrator may change the investment options offered under the Plan at any time, including with respect to amounts already invested, and may terminate the availability of an investment option at any time and cause the assets of a terminated option to be transferred to any other investment option, each to the extent consistent with the Annuity Contracts or Custodial Agreements. The Administrator will communicate to Participants and beneficiaries of Participants the investment options available under the Plan, including changes or terminations of available investment options.

**4.9 Contributions during disability.** To the extent permitted under Code section 415(c), Required and Brandeis Contributions shall continue for a Participant who is considered permanently and totally disabled (as defined under Code section 415) as if the Participant had been paid Compensation at the rate of Compensation paid immediately before becoming permanently and totally disabled.

## ARTICLE 5 - WITHDRAWALS PRIOR TO SEVERANCE FROM EMPLOYMENT

**5.1 In general.** Except as provided in this Article 5, withdrawals by a Participant from his or her Annuity Contract or Custodial Account are not permitted while he or she is still an Employee of Brandeis.

**5.2 Hardship withdrawals.** To the extent provided in an Annuity Contract or Custodial Account and subject to Section 5.4, a Participant may withdraw any amount attributable to Required or Voluntary Contributions made on a salary reduction basis (other than income allocated after December 31, 1988) or (in the case of an Annuity Contract) Required Contributions made on an after-tax basis if the withdrawal is to satisfy an immediate and heavy financial need of the Participant, as described in subsection (a) below and is necessary to satisfy the financial need as described in subsection (b) below. Notwithstanding any Plan provision to the contrary, a hardship withdrawal shall be made in accordance with Code sections 403(b)(7) and (11), and Treasury regulation sections 1.403(b)-6(d)(2) and 1.401(k)-1(d)(3) (as amended effective January 1, 2020).

**(a) Immediate and heavy financial need.** For purpose of this Section, a Participant shall be considered to have an “immediate and heavy financial need” if the expense is due to:

(1) uninsured medical expenses described in Internal Revenue Service Publication 502 (as in effect for the year of withdrawal) incurred by the Participant, his or her Spouse, primary beneficiary, or any of his or her dependents (as defined in Code section 152 as modified for purposes of Code sections 105 and 106);

(2) costs directly related to the purchase of a principal residence of the Participant (excluding mortgage payments);

(3) the payment of tuition and related educational fees and room and board expenses for the next 12 months of post-secondary education for the Participant, his or her Spouse, primary beneficiary, children or dependents (as defined in Code section 152 without regard to section 152(b)(1), (b)(2), and (d)(1)(B));

(4) payments necessary to prevent the eviction of the Participant from his or her principal residence or foreclosure on the mortgage on that principal residence;

(5) payments for burial or funeral expenses for the Participant’s deceased parent, Spouse, primary Beneficiary, children or dependents (as defined in Code section 152, without regarding to section 152(b)(1), (b)(2), and (d)(1)(B));

(6) expenses for the repair of damage to the Participant’s principal residence that would qualify for a casualty deduction under Code section 165 (without regard to Code section 165(h)(5) and whether the loss exceeds 10% of the Participant’s adjusted gross income); or

(7) expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 100-707, provided that the Participant’s principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

For purposes of this Section, a primary beneficiary means a beneficiary designated by the Participant under Section 6.2 who has an unconditional right to receive all or a portion of a Participant's benefits under the Plan.



**(b) Distribution of amount necessary to meet need.** As soon as practicable after (i) the Vendor's determination that an immediate and heavy financial need exists with respect to the Participant, and (ii) all other distributions (but not hardship withdrawals) currently available under the Plan and all other plans maintained by the Affiliated Employers have been made, (iii) the Participant has provided to the Administrator (or its delegate) a representation in writing (including by using an electronic medium as defined in section 1.401(a)-21(e)(3)), or in such other form as may be prescribed by regulation or other Treasury guidance that the Participant has insufficient cash or other liquid assets reasonably available to satisfy the need, and (iv) the Plan Administrator does not have actual knowledge that is contrary to the representation, the Vendor will direct the Annuity Contract issuer or Custodial Account custodian to pay to the Participant the amount necessary to meet the need created by the hardship (but not in excess of the portion of the Participant's interest in an Annuity Contract or Custodial Account that is attributable to Required Contributions). The amount necessary to meet the need may include the amount of any federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal.

**5.3 Certain withdrawals after age 60.** To the extent provided in an Annuity Contract or Custodial Account, and subject to Section 5.4 and any nondiscrimination requirements made applicable by Code section 403(b)(12), a Participant who has attained age 60 and is participating in an early retirement program sponsored by Brandeis may make a withdrawal of up to 100% of his or her interest in the Annuity Contract or Custodial Account (whether attributable to Required Contributions or Brandeis Contributions). As soon as reasonably practicable after the Participant's request, the Administrator will direct the Annuity Contract issuer or Custodial Account custodian to pay the Participant the amount requested.

**5.4 Spousal consent.** No withdrawal or loan under this Article 5 may be made to a Participant who is married on the date of a withdrawal unless the Participant's Spouse consents thereto within 90 days prior to such withdrawal. Such consent must be made in the same manner as provided under Article 6 below for distributions after severance from employment.

**5.5 Loans.** To the extent permitted by an Annuity Contract or Custodial Account, and subject to Section 5.4, a Participant may borrow against his or her interest in the Annuity Contract or Custodial Account attributable to Voluntary Contributions and rollover contributions and, prior to November 14, 2016, only those amounts invested with TIAA, but on or after November 14, 2016, amounts invested with any Vendor. Loans from an Annuity Contract or Custodial Account will be made only in accordance with the terms of the Annuity Contract or Custodial Account, and only in the event that:

**(a)** the loans (1) are available to all Participants on a reasonably equivalent basis, (2) are not made available to highly compensated employees (within the meaning of Code section 414(q)) in an amount (determined under Department of Labor Regulation section 2550.408b-1(d)) greater than the amount made available to other employees, (3) are made in accordance with specific written procedures, (4) bear a reasonable rate of interest, (5) are adequately secured, (6) are amortized evenly and at least quarterly, and (vii) (except in the case of a loan used to acquire a principal residence) are repayable within 5 years;

**(b)** the loan amount does not exceed the lesser of (1) 50% of the aggregate amount of contributions plus allocable earnings, or (2) \$50,000 (reduced by the highest aggregate outstanding loan balance under the Plan and any other plan of the Affiliated Employers (within the meaning of Code section 72(p)(2)(D)) during the year which ends on the date before the loan is made (or such lesser amount or percentage as provided under a specific Annuity Contract or Custodial Agreement);

**(c)** the loan amount is not less than any minimum prescribed under the Annuity Contract or Custodial Account, as applicable; and

(d) the number of loans outstanding is limited to no more than two (2).

The Administrator may promulgate such rules and procedures, not inconsistent with the express provisions of this Section, as it deems necessary to carry out the purpose of this Section including, but not limited to, the suspension of loan repayments as permitted under Code section 414(u)(4). In addition, the Annuity Contract or Custodial Agreement under which a loan is made may contain additional rules and procedures. All such rules and procedures shall be deemed a part of the Plan for purposes of the Department of Labor Regulation section 2550.408b-1(d).

**5.6 Information Coordination Concerning Loans.** The Vendor administering the loan is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 5.5, including the collection of any necessary information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of Brandeis or an Affiliated Employer. The Administrator shall also take such steps as may be appropriate to collect information from Vendors, and to transmit of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of an Affiliated Employer.

**5.7 Certain withdrawals after age 59 ½.** To the extent provided in an Annuity Contract or Custodial Account, and subject to Section 5.4, a Participant who has attained age 59 ½ may make a withdrawal of his or her interest in the Annuity Contract or Custodial Account attributable to Voluntary Contributions or rollover contributions. As soon as reasonably practicable after the Participant's request, the Administrator will direct the Annuity Contract issuer or Custodial Account custodian to pay the Participant the amount requested.

## ARTICLE 6 - DISTRIBUTIONS AFTER SEVERANCE FROM EMPLOYMENT

**6.1 Severance from employment other than death.** In the case of a Participant's severance from employment with Brandeis for reasons other than death, amounts held in an Annuity Contract or Custodial Account for the Participant will be paid in accordance with this Section 6.1, subject to the statutory distribution rules under Section 6.3.

**(a) Participants who are not married on their Annuity Starting Date.** A Participant who is not married on his or her Annuity Starting Date will be entitled to elect to receive distributions from his or her Annuity Contracts and/or Custodial Accounts upon the Participant's severance from employment (for reasons other than death) in the form or forms provided under, and subject to, the terms of the applicable Annuity Contract or Custodial Account.

**(b) Participants who are married on their Annuity Starting Date.** In the case of a Participant who is married on his or her Annuity Starting Date, distributions on account of the Participant's severance from employment with Brandeis (for reasons other than death) will be made as provided in Section 6.1(a) above, subject, however, to the following additional rules:

**(1)** In the case of a Participant whose total balances under the Plan exceed \$5,000 (or such larger limit as may be in effect under ERISA section 205), benefits payable to a Participant who is married on his or her Annuity Starting Date shall be paid in the form of a qualified joint and survivor annuity. A qualified joint and survivor annuity is an annuity that pays a lifetime periodic benefit to the Participant, and after the Participant's death pays a periodic benefit to the Participant's surviving Spouse during the Spouse's remaining lifetime in an amount that is at least 50% but not more than 100% of the periodic benefit payable during the Participant's lifetime. In the event that no such percentage is specified in any particular Annuity Contract or Custodial Account, the percentage shall be 50%.

**(2)** A Participant who is married on his or her Annuity Starting Date may waive the qualified joint and survivor annuity and elect any other form of benefit available under an Annuity Contract or Custodial Account as described in Section 6.1(a) above, or designate a joint annuitant other than the Participant's Spouse, if the Participant's Spouse consents to the election in the manner described in paragraph (3). Any such election must be executed and filed during the 180 day period ending on the Annuity Starting Date, or such shorter period permitted by the Code or ERISA. The Administrator will provide (or arrange for the Annuity Contract issuer or Account Custodian to provide) such information to Participants in connection with the waiver and consent as may be required from time to time under ERISA section 205.

**(3)** Spousal consent as required under this Section must be in writing, must specify the optional form of benefit elected and any non-Spouse beneficiaries, must acknowledge the effect of the election or action to which the consent applies, and must be witnessed by the Administrator or a notary public. Unless the consent form expressly provides that the Participant may make further elections without further consent of the Spouse, the consent will be effective only with respect to the specific election of form of benefit or beneficiary, or both, to which the consent relates. Spousal consent will be effective only with respect to that Spouse, but shall be irrevocable once made. Spousal consent will not be required if it is established to the satisfaction of the Plan representative that there is no Spouse, that the Spouse cannot be located, or that such other circumstances exist as the Secretary of the Treasury may by regulations prescribe.

**6.2 Death benefits.** Benefits payable upon the death of a Participant will be paid only as provided in this Section 6.2, subject to the statutory distribution rules under Section 6.3.

**(a) Death prior to Annuity Starting Date: unmarried Participants.** In the case of a Participant who dies prior to his or her Annuity Starting Date and is not married on the date of death, amounts held in an Annuity Contract or Custodial Account for his or her benefit will be paid to the beneficiary designated by the Participant in accordance with the terms of such Annuity Contract or Custodial Account (or, where no such beneficiary is designated, the Participant's estate). Distribution will be made in the form or forms provided in such Annuity Contract or Custodial Account.

**(b) Death prior to Annuity Starting Date: married Participants.** In the case of a Participant who dies prior to his or her Annuity Starting Date and is married on the date of death:

**(1)** The Participant's surviving Spouse will be entitled to receive an annuity during the Spouse's lifetime having a present value, at the time of the Participant's death, equal to a percentage (no less than 50%, and no more than 100%) of the present value of each Annuity Contract and Custodial Account of the Participant as may be specified in such Annuity Contract or Custodial Account. In the event that no such percentage is specified in any particular Annuity Contract or Custodial Account, the percentage shall be 50%. Any portion of an Annuity Contract or Custodial Account not payable to the Participant's surviving Spouse as provided in this paragraph (b) will be paid to the beneficiary designated by the Participant pursuant to the terms of such Annuity Contract or Custodial Account (or, where no such beneficiary is designated, the Participant's surviving Spouse). The form of distribution available to a non-Spouse beneficiary, and any optional forms available to a surviving Spouse, will be as provided in the Annuity Contract or Custodial Account.

**(2)** To the extent not inconsistent with an Annuity Contract or Custodial Account, a married Participant may waive the preretirement death benefit for his or her surviving Spouse described in paragraph (b)(1) above and name a beneficiary entitled to receive benefits in the event the Participant dies before his or her Annuity Starting Date in lieu of the Participant's surviving Spouse. Any such waiver must be made within the period beginning on the first day of the Plan Year in which the Participant attains age 35 and ending on the earlier of the Annuity Starting Date or the date of the Participant's death. In addition, the Participant's Spouse must consent to the waiver in writing and as otherwise described in Section 6.1(b)(3) above. The Administrator will provide (or arrange for the Annuity Contract issuer or Account custodian to provide) such information to Participants in connection with the preretirement survivor benefits and the Participant's right to waive those benefits as may be required from time to time under ERISA section 205.

**(3)** Notwithstanding paragraphs (1) and (2) above, and where an Annuity Contract or Custodial Account so provides, in the case of the death of a married Participant whose total balances under the Plan do not exceed \$5,000 (or such larger limit as may be in effect under ERISA), such balance may be distributed in a single sum as soon as practicable after the Participant's death.

**(c) Death on or after Annuity Starting Date.** In the case of a Participant who dies on or after his or her Annuity Starting Date, no benefits will be payable to a surviving Spouse or other beneficiary after the Participant's death except to the extent provided in the form or forms of distribution in effect with respect to the Participant pursuant to Section 6.1.

### **6.3 Statutory distribution rules.**

**(a) Participant's consent required.** A Participant whose balances under the Plan exceed \$5,000 (or such larger limit as may be in effect under ERISA section 205) may not have his or her balances immediately distributed without his or her consent.

**(b) Latest time for distributions.** To the extent required by the Code and ERISA, all amounts held in an Annuity Contract or Custodial Account shall become payable beginning no later than the

earlier of the applicable date specified in (i) ERISA section 206(a) or (ii) Code sections 403(b)(10) and 401(a)(9) (currently, April 1 following the later of the calendar year in which the Participant attains age 70½ or retires). Benefits payable to the Participant in accordance with these statutory distribution rules will be paid over the life of the Participant or the joint lives of the Participant and his or her designated beneficiary, or over a period not extending beyond the life expectancy of the Participant or the joint life expectancy of the Participant and his or her designated beneficiary, all as determined under Code sections 403(b)(10) and 401(a)(9). To the extent required by and in accordance with Code section 401(a)(9)(B), benefits payable upon the death of the Participant prior to his or her Annuity Starting Date will be distributed in full within five years after the death of the Participant unless an exemption specified in Code section 401(a)(9)(B) applies, in which case benefits may be payable over the period (and starting at such time) as specified in Code section 401(a)(9)(B). To the extent required by Code section 403(b)(10) and 401(a)(9), benefits payable upon the death of the Participant after his or her Annuity Starting Date will be distributed at least as rapidly as under the method of distribution in effect for the Participant at the time of his or her death. All amounts held in an Annuity Contract or Custodial Account will be payable in accordance with the minimum required distribution rules under Treasury Regulation section 1.403(b)-6(e), including the incidental benefit rules to the extent applicable. In any event, the Plan will apply the minimum distribution requirements of Code section 401(a)(9) in accordance with the Final and Temporary Regulations issued under Code sections 401(a)(9) and 403(b) (or any replacing regulations), notwithstanding any provision of the Plan to the contrary.

**6.4 Optional direct transfer of eligible rollover distributions.** If a Participant, surviving Spouse or designated beneficiary of a Participant, or alternate payee who is the Spouse or former Spouse of a Participant is entitled to receive an “eligible rollover distribution” within the meaning of Code section 402(c)(4), he or she may elect to have the distribution paid directly, in whole or in part, to an “eligible retirement plan” (as defined in Code section 402(c)(8)(B)) specified by the Participant in a direct rollover provided such plan agrees to accept such rollover distribution.

In the case of a distribution to a beneficiary who at the time of the Participant’s death was neither the Spouse of the Participant nor the Spouse or former Spouse of the Participant who is an alternate payee under a domestic relations order, effective as of January 1, 2010, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the beneficiary as an inherited IRA (within the meaning of Code section 408(d)(3)(C) and the Worker Retiree and Employer Recovery Act of 2008).

Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

**6.5 Death during qualified military service.** In the case of a Participant who dies while performing qualified military service (as defined in Code section 414(u)), the survivors of the Participant are entitled to any additional benefits provided under the Plan had the Participant resumed and then terminated employment on account of death. This paragraph shall apply with respect to deaths occurring on or after January 1, 2007.

**6.6 Qualified reservist distributions.** Effective January 1, 2010, a Participant who is a member of a reserve component as defined in Title 37 of U.S.C. section 101, who was ordered or called to active duty after September 11, 2001 for a period in excess of 179 days or for an indefinite period may request a distribution from that portion of his Plan account attributable to Required and/or Voluntary Contributions during the period beginning on the date of the order or call to duty and ending at the close of the active duty period.

**6.7 Withdrawal during qualified military service.** Effective January 1, 2010, a Participant who is a member of a reserve component as defined in Title 37 of U.S.C. section 101, who was ordered or called to active duty after September 11, 2001 for a period in excess of 179 days or for an indefinite period may request a distribution from that portion of his Plan account attributable to Required and/or Voluntary Contributions during the period beginning on the date of the order or call to duty and ending at the close of the active duty period.

## ARTICLE 7 - ADMINISTRATION

**7.1 Powers and responsibilities of the Administrator.** The Administrator will have discretionary authority to operate and administer the Plan in all of its details, subject, however, to ERISA. The Administrator will have all those discretionary powers necessary to carry out the terms of the Plan including, but not limited to, the power: to make and enforce such rules as it deems necessary or proper for the efficient administration of the Plan; to interpret the Plan, to decide all questions concerning the Plan and the eligibility of any person to participate in the Plan; to decide which Annuity Contracts and Custodial Accounts will be available for contribution, from time to time; to authorize the payment of benefits; to appoint such agents, counsel, and consultants as it deems necessary to assist in administering the Plan; and to allocate and delegate, by written instrument, its duties and responsibilities. Any interpretation of the Plan or other determination with respect to the Plan by the Administrator or its delegate shall be final and conclusive on all persons in the absence of clear and convincing evidence that the Administrator or its delegate acted arbitrarily and capriciously. However, the Administrator shall have no liability or responsibility for any action or inaction of any issuer of an Annuity Contract or any custodian of a Custodial Account.

**7.2 Claims and review procedures.** The Administrator shall adopt procedures for the filing and review of claims for benefits in accordance with ERISA section 503.

**7.3 Named fiduciary.** The Administrator will be a "named fiduciary" for purposes of ERISA section 402(a)(1) with respect to the Plan. The Administrator will have discretionary authority to control and manage the operation and administration of the Plan as provided in Section 7.1.

**7.4 Reporting and disclosure.** Brandeis will be responsible, among other things, for complying with all of the reporting and disclosure requirements of Part I of Subtitle B of Title I of ERISA.

**7.5 Expenses of administration.** Any reasonable expense of administering the Plan or of any Annuity Contract or Custodial Account, unless paid by Brandeis, shall be apportioned among and charged against the individual Annuity Contracts and Custodial Accounts of the Participants in such manner as the Administrator may direct, except that expenses allocable to specific Annuity Contracts or Custodial Accounts shall be charged against such Contracts or Accounts. To the extent consistent with ERISA and the Code, an Annuity Contract issuer or Account Custodian may charge a Participant directly for certain transactions as may be set forth in the Annuity Contract, Custodial Account, or other services agreement.

**7.6 Indemnification of Administrator and assistants.** Brandeis agrees to indemnify and defend to the fullest extent permitted by law the Administrator and each current or former member thereof and any current or former employee, officer or trustee of Brandeis who at the request or direction of Brandeis serves as a member of or assists the committee acting as Administrator in administering the Plan against all liabilities, damages, costs and expenses (including reasonable attorneys' fees and amounts paid in settlement of any claims approved by Brandeis) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith. The indemnification provided under this Section 7.6 shall not extend to any Annuity Contract issuer or Custodial Account custodian or to any vendor, contractor or service provider to the Plan who is not a current or former employee, officer or trustee of Brandeis described in the preceding sentence.

**7.7 Paperless Media.** For purposes of this Plan, the term "written" or "in writing" shall also include use of such paperless media as may be approved by the Administrator.

## ARTICLE 8 - MISCELLANEOUS

**8.1 Amendment and termination.** Brandeis shall at all times have the power to amend or terminate the Plan by a written instrument signed by an officer thereof, any such amendment or termination to take effect retroactively if the provisions so provide. No such amendment or termination, however, will adversely affect the rights of Participants and their beneficiaries to benefits attributable to contributions made prior to the amendment or termination, except as permitted by law. Brandeis, may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Annuity Contracts and Custodial Accounts, all accounts under the Plan will be distributed, provided that Brandeis and any member of the Affiliated Employer on the date of termination do not make contributions to an alternative Code section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the income tax regulations.

**8.2 Limitation of rights.** Neither the establishment of the Plan nor any amendment thereof will be construed as giving to any Participant or other person any legal or equitable right against Brandeis or the Administrator except as specifically provided in this document. In no event will the terms of employment or service of any Participant be modified or in any way be affected by the existence of the Plan.

**8.3 Benefits not alienable.** Benefits under the Plan may not be assigned or alienated. However, to the extent provided by a qualified domestic relations order (within the meaning of Code section 414(p) and ERISA section 206(d)) and consistent with the Annuity Contracts or Custodial Accounts established under the Plan, benefits may be paid to an alternate payee from such Annuity Contract or Custodial Account, or a new Annuity Contract or Custodial Account may be established in favor of an alternate payee from a Participant's Annuity Contract or Custodial Account, even if the Participant is not otherwise entitled to benefits at the time of such payment or establishment. Also, in accordance with ERISA section 206(d)(4), the benefits under a Participant's Annuity Contract or Custodial Account may be offset by an amount the Participant is ordered or required to pay to the Plan if the order or requirement to pay arises under a judgment of conviction for a crime involving the Plan, or under a civil judgment entered by a court (or pursuant to a settlement agreement between the U.S. Secretary of Labor and the Participant) in connection with a violation of Part 4 of Subtitle B of Title I of ERISA. The Administrator has adopted procedures provided by the Vendors to determine the qualified status of domestic relations orders, to administer distributions under qualified orders, and to administer any offset of payments pursuant to a judgment, order, decree or settlement.

Effective August 17, 2006, a domestic relations order will not fail to be treated as a qualified domestic relations order: (a) solely because the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or (b) solely because of the time as which the order is issued, including issuance after the annuity starting date or after the Participant's death, or after the Participant's divorce, provided that the other requirements for a qualified domestic relations order as set forth in the Plan's procedures and/or defined in Code section 414(p) and ERISA section 206(d) are satisfied.

**8.4 Participants' periods of military service.** Notwithstanding the provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code section 414(u) , including subsection 414(u)(9) effective January 1, 2007..

**8.5 Determination of employment status; reclassification.** Determinations of an Employee's employment classification and status (for example, exempt or nonexempt, Faculty, temporary, post-



doctoral fellow and the like, and normal scheduled work week or appointment) will be made by the Administrator using the regular personnel classifications and practices of Brandeis and the Administrator's determination will be binding.

Notwithstanding anything herein to the contrary, an individual who is not characterized or treated by Brandeis as a common law employee of Brandeis shall not be eligible to receive contributions under Section 4.3. However, in the event that such an individual is reclassified or deemed to be reclassified as a common law employee of Brandeis, contributions under Section 4.3 shall be made on the individual's behalf as of the actual date on which such reclassification occurs (to the extent such individual otherwise qualifies as a Participant and an Eligible Employee hereunder). If the effective date of any such reclassification is prior to the actual date on which such reclassification occurs, in no event shall the reclassified individual be treated as a Participant on whose behalf Brandeis Contributions are made under Section 4.3 retroactively to the effective date of such reclassification.

**8.6 Correction of Mistakes.** If as a result of a mistake in Plan operation or administration (including by way of illustration and not by way of limitation, the omission of an Eligible Employee who should have become a Participant, the crediting of the wrong amount to a Participant's Annuity Contract or Custodial Account, and similar mistakes), the Administrator may take such steps as the Administrator determines are necessary or appropriate to correct the mistake (that is, to put the affected Participant(s)) in the same position he or she (they) would have been in if the mistake had not occurred. In so doing, the Administrator may apply a correction methodology promulgated in any program of the IRS, such as EPCRS as it is applied to Code section 403(b) arrangements.

**8.7 Governing law.** The Plan and all provisions thereof will be governed by the laws of the Commonwealth of Massachusetts to the extent not preempted by federal law.

**8.8 Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Voluntary and Required Contributions, which constitute wages under Code section 3121). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Code section 3401 and the Employment Tax Regulations thereunder). A payee shall provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

**8.9 Liability for Employee Representations.** Brandeis, the Administrator and any other Plan fiduciary shall be discharged from any liability in acting upon any representations by any individual of any fact affecting his status under this Plan or upon any notice, request, consent, letter, telegram, or other document believed by them, or any of them, to be genuine, and to have been signed or sent by the proper person.

**8.10 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 Administrator, benefits will be paid to such person as the Administrator 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 any liability for such payments under the Plan

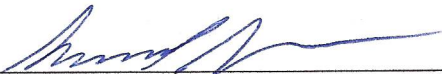
**8.11 Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Brandeis's or the Administrator's or the Vendor's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

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

**8.13 Incorporation of Annuity Contracts and Custodial Accounts.** The Plan, together with the Annuity Contracts and Custodial Accounts, is intended to satisfy the requirements of Code section 403(b) and the Treasury Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Code section 403(b).

IN WITNESS WHEREOF, Brandeis University has caused this document to be executed by its duly authorized officer this 26<sup>th</sup> day of March, 2020.

BRANDEIS UNIVERSITY

By:   
Sam Solomon  
Title: Chief Finance Officer & Treasurer