

This is an addendum to Contract 001319 and Mr. Guest has already approved it.

**FIRST AMENDMENT**

**TO**

**MISSISSIPPI STATE UNIVERSITY 403(b) PLAN**

The Mississippi State University 403(b) Plan is amended, effective January 1, 2009, as follows:

1. Section 1.04 is hereby amended in its entirety as follows:

**1.04 Annuity Contract:** A nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company or other organization qualified to issue annuities in Mississippi and that includes payment in the form of an annuity.

2. Section 1.08 is hereby amended by the addition of the following at the end thereof:

**Deemed Section 125 Compensation.** Compensation shall include Deemed Section 125 Compensation. Deemed Section 125 Compensation means amounts under a Code section 125 plan of the Employer that are not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he/she has other health coverage.

**Post-Severance Compensation.** Compensation shall include the types of compensation described below that are paid after the Participant's Severance from Employment ("Post-Severance Compensation"). However, amounts described in subsections (a) and (b) below may only be included in Compensation to the extent such amounts are paid by the later of 2-1/2 months after Severance from Employment or by the end of the Plan Year that includes the date of such Severance from Employment.

(a) **Regular pay.** Post-Severance Compensation shall include regular pay after Severance from Employment if:

- (1) the payment is regular compensation for service during the Participant's regular working hours, or compensation for services outside Participant's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments; and
- (2) the payment would have been paid to the Participant prior to Severance from Employment if the Participant had continued in employment with the Employer.

(b) **Leave cashouts.** Post-Severance Compensation shall include leave cashouts if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's Severance from Employment, and the amounts are for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use such leave if employment had continued.

- (c) **Salary continuation for disability.** Post-Severance Compensation shall include Compensation paid to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)).

Any payment not described above, including (without limitation) severance pay and nonqualified deferred compensation payments, is not Post-Severance Compensation, even if paid within the applicable time period.

- 3. Section 1.14 is hereby amended by the addition of the following at the end thereof:

Includible Compensation shall be adjusted to include Post-Severance Compensation in the same manner as Compensation, as described in Section 1.08.

- 4. Section 3.06 is hereby amended by the addition of the following at the end thereof:

For purposes of computing the income adjustment, such adjustment (gain or loss) shall not include an adjustment for the period between the end of the Plan Year and the date of distribution (the "gap period").

- 5. Section 3.07 is hereby amended by the addition of the following at the end thereof:

In addition, the following shall apply with respect to individuals who perform qualified military service:

- (a) **Qualified Reservist Distributions.** Qualified Reservist Distributions shall be permitted. A Qualified Reservist Distribution is a distribution from a Participant's Pre-Tax Elective Deferral Account or Roth Elective Deferral Account made to an individual who was (by reason of being a member of a reserve component, as defined in section 101 of Title 37, United States Code) ordered or called to active duty after September 11, 2001 for a period in excess of 179 days or for an indefinite period, provided such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.
- (b) **Death Benefits.** If a Participant dies while performing qualified military service (as defined in Code section 414(u)) on or after January 1, 2007, the survivors of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) related to death benefits provided under Plan as if the Participant had resumed employment and then terminated employment on account of death.
- (c) **Severance Distributions.** Solely for purposes of Plan Section 5.02 (relating to eligibility for distributions of Elective Deferrals), an individual shall be deemed to have been severed from employment during any period that the individual is performing service in the uniformed services, as described in Code section 3401(h)(2)(A). However, if such individual elects to receive a distribution solely by reason of such deemed severance from employment, the individual may not make any additional Elective Deferrals to the Plan during the six (6) month period beginning on the date of distribution.
- (d) **Differential Wage Payments.** An individual receiving a differential wage payment, as defined in Code section 3401(h)(2), shall be treated as an Employee and the differential

wage shall be treated as Compensation for purposes of Section 1.08 of the Plan. Notwithstanding the foregoing, the Plan shall not be treated as failing any provision described in Code section 414(u)(1)(C) (relating to nondiscrimination requirements) by reason of any contribution or benefit which is based on differential wage payments, provided that all Employees performing service in the uniformed services (as described in Code section 3401(h)(2)(A)) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions with respect to such payments on reasonably equivalent terms.

6. Section 5.03 is hereby amended by the addition of the following at the end thereof:

If permitted by the Individual Agreement, and provided the Individual Agreement separately accounts for a Participant's pre-1987 Account balance, the required minimum distribution rules do not apply to the pre-1987 Account. Earnings after December 31, 1986 are not part of such pre-1987 Account. The pre-1987 Account will be subject to the distribution rules in effect as of July 27, 1987 and the requirements of Regulation 1.401-1(b)(1)(i) and Regulation 1.403(b)-6(e)(6).

7. Section 5.06(a) is hereby amended by the addition of the following sentence at the end thereof:

Notwithstanding the foregoing, the direct rollover of an eligible rollover distribution to a Roth IRA described in Code section 408A(b) shall be permitted.

8. Section 9.05 is hereby amended in its entirety as follows:

**9.05 Indemnification of Employees**

If the Employer appoints an Employee or committee of Employees to serve as Administrator or to assist the Administrator with the day to day operations of the Plan, such Employee or Employees shall not be personally liable for any acts or omissions occurring within the course and scope and with the good faith discharge of such duties under the Plan, said protection being provided under the Mississippi Tort Claims Act, Section 11-46-7(2) MCA.

9. Section 11.02 is hereby amended in its entirety as follows:

**11.02 Domestic Relations Orders**

Notwithstanding Section 11.01, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant, is made pursuant to the domestic relations law of any State ("domestic relations order") and is determined to be a qualified domestic relations order ("QDRO") under Code section 414(p), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in such qualified domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for

determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

A domestic relations order that otherwise satisfies the requirements for a QDRO will not fail to be a QDRO solely because the order is issued after, or revises another domestic relations order or QDRO, or solely because of the time the order is issued (including orders issued after benefit payments have commenced or after the Participant's death). A domestic relations order described in this paragraph is subject to the same requirements and protections that apply to all QDROs.

IN WITNESS WHEREOF, Mississippi State University has caused this First Amendment to the Mississippi State University 403(b) Plan to be executed by its duly authorized representative this 17 day of December, 2009.

**MISSISSIPPI STATE UNIVERSITY**

By: Don Buffum

Title: Don Buffum  
Director of Procurement and Contracts

## EXPLANATION OF AMENDMENT CHANGES

**Section 1.04** The definition of Annuity Contract is amended to accommodate TIAA-CREF. Although CREF is qualified to sell annuity contracts in Mississippi, it is not organized as an insurance company.  
*Clarification, effective January 1, 2009.*

**Section 1.08** The definition of Compensation is amended to:

- Include “deemed section 125 compensation” as Compensation for plan purposes. Generally, salary deferrals and 125 salary reductions are added back into the compensation used to calculate 403(b) deferrals (so that the employee is not penalized for using the other programs). In some health plan designs, employees are automatically enrolled in the group health program (with the employee portion of premiums paid on a pre-tax basis) unless the employee can certify that he or she has other health coverage. Technically, the employee paid premium in this type of an arrangement is not a cash or deferred election and does not meet the technical definition of a 125 deferral. By adding the “deemed 125 compensation” language to the 403(b) plan, the 403(b) treats these employee paid premiums to the health plan as if they met the technical section 125 definition. This language is added strictly as a failsafe to avoid future problems if changes are ever made to the group health program. Our experience is that when health programs are changed, the impact on retirement plans is often not considered.
- The final IRC section 415 regulations made some changes regarding the definition of compensation used by a plan for purposes of applying the deferral limits. Prior to the final regulations, plans were generally required to exclude any compensation paid after severance from employment. The final regulations *require* certain types of post-severance compensation to be counted for purpose of the plan limits and allow some other types of post-severance compensation to be included at the option of the employer. Based on our understanding of your current practices, the plan has been amended to include the following types of post-severance compensation:
  - Regular compensation that is paid after termination of employment (subject to the timing requirement discussed below). Regular compensation includes compensation for services during the participant’s regular working hours, overtime pay, shift differential, commissions and bonuses. The most common example is the last pay check paid shortly after termination of employment due to the timing of payroll processing.
  - Payments for unused sick leave or vacation (subject to the timing requirements below).
  - Salary continuation payments to disabled participants (not subject to the timing requirements).

The timing rule for the first two items requires the compensation to be paid by the later of: (a) the end of the plan year (i.e. the calendar year) in which the participant terminates, or (b) 2-1/2 months following the date the participant terminates. If paid later than these limits, the compensation does not count as post-severance compensation.

Note that post-severance compensation (and any deferrals related to this compensation) counts for the year in which the compensation is actually paid (and not the year in which it may have been earned). Also, true severance pay (i.e. pay after termination under the terms of a severance agreement) is never considered “post-severance compensation”.

*This change is required to comply with the final section 415 regulations.*

**Section 1.14** The plan is permitted to use a definition of compensation for purposes of applying contribution limits (called “Includible Compensation” and defined in Section 1.14 of your plan) that is different from the one used for calculating employee deferrals (called “Compensation” and defined in Section 1.08 of your plan). Generally, plan sponsors want to keep these definitions the same in order to avoid tracking compensation under multiple definitions and we have assumed that you wish to use the same definition for both purposes. The definition of Includible Compensation is amended to use the same post-severance compensation elements as Compensation.

*This change is required to comply with the final section 415 regulations.*

**Section 3.06** This section is amended to eliminate “gap period earnings”. Gap period earnings can occur when a participant has contributions in excess of the annual limits. Under prior law, earnings had to be calculated for the period from the end of the plan year to the date the excess was distributed (the “gap period”). PPA (and later technical corrections) eliminates the need to include gap period earnings in the distribution.

*This provision is optional under PPA.*

**Section 3.07** This section is amended to add provisions required by the HEART Act and to allow Qualified Reservists Distributions. These provisions apply to participants on military leave.

- **Qualified Reservist Distributions (“QRDs”).** Generally, an individual who is on military duty is considered to be on a leave of absence and is not eligible to receive a distribution solely due to such leave. This provision allows the plan to make distributions of salary deferral contributions to individuals who are qualified reservists. A qualified reservist is an individual who is called to active duty (after 9/11/2001) for a period of at least 180 days or of indefinite duration. Qualified reservist distributions are not subject to the 10% excise tax that typically applies to distributions made prior to age 59-1/2.

*This provision is optional under the Pension Protection Act (PPA).*

- **In-Service Withdrawals and Suspension.** Except for financial hardships or the attainment of age 59-1/2, participants generally are not allowed to take in-service withdrawals of 403(b) salary deferral contributions. The HEART Act provides an exception to this rule for participants performing qualified military service. Such participants are deemed to have experienced a “severance from employment” for purposes of determining eligibility to elect a distribution of 403(b) salary deferral contributions. Any such distribution (made solely as a result of this exception) must result in a 6-month

suspension of deferrals. Unlike QRDs (discussed above) there is no relief from the 10% excise tax on premature distributions.

*This provision is mandatory under the HEART Act.*

- **HEART Act Death Benefit.** If a participant dies while performing qualified military service, the survivors of the participant are entitled to the same benefits they would have received had the participant returned to work and then terminated due to death.

*This provision is mandatory under the HEART Act.*

- **Differential Wage Payments.** Differential wages are wages voluntarily paid by an employer to an employee on active military duty. If any participants are paid differential wages, the HEART Act requires that such payments be counted as compensation for purposes of the plan (including employee salary deferral elections), and that individuals who receive such wages be counted as employees for purposes of the plan. This provision is effective for Plan Years beginning on or after January 1, 2009 and is mandatory if the employer pays differential wages. Our understanding is that the University does not currently pay differential wages and hence, this provision currently has no effect.

*This provision is mandatory under the HEART Act.*

**Section 5.03** The language regarding required minimum distributions is clarified to reflect that the minimum distribution rules do not apply to the pre-1987 account balance. This exception is only available if the annuity contract or custodial account provides that the pre-1987 balance will be maintained separately.  
*Clarification, effective January 1, 2009*

**Section 5.06(a)** This subsection is amended to allow a participant (who is otherwise eligible for a distribution other than a hardship distribution) to rollover non-Roth amounts to a Roth IRA. The participant would, of course, have to pay income taxes on the distribution at the time the rollover is made.  
*This provision is optional under PPA.*

**Section 9.05** This section is amended to correct the indemnification provisions affecting employees of the University who serve on administrative committees or assist the plan administrator. It is our understanding that the prior language may conflict with State law requirements pertaining to indemnification clauses.  
*Clarification, effective January 1, 2009*

**Section 11.02** This section is amended to make it clear that a plan could accept QDROs that had been modified after having been initially approved. This change is mandatory under PPA.  
*This provision is mandatory under PPA.*