

**Davidson College  
Defined Contribution Plan**

**Amended and Restated Effective September 10, 2015**

## Davidson College Defined Contribution Plan

### Section 1 Definition of Terms Used

The following words and terms, when used in the Plan, have the meaning set forth below.

1.1 **“Account”**: The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account. The current balance of a Participant’s Account includes all Plan Contributions, less any expense charges, and reflects investment experience.

1.2 **“Account Balance”**: The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant’s Account under all Accounts, including the Plan Contributions, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or the Participant’s Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant’s death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).

1.3 **“Administrator”**: The Retirement Planning Committee, as appointed by the Board from time to time.

1.4 **“Annual Additions”**: The sum of the amounts credited to a Participant’s Account during the Plan Year for (i) Plan Contributions and (ii) forfeitures, if any.

1.5 **“Annuity Contract”**: A nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the College, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in North Carolina and that includes payment in the form of an annuity.

1.6 **“Beneficiary”**: The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.

1.7 **“Board”**: Either the College’s Board of Trustees or the Executive Committee of the College’s Board of Trustees.

1.8 **“Break in Service”**: A 12-consecutive month period (computation period) during which the Participant does not complete more than 500 Hours of Service with the College. For determining whether a Break in Service has occurred in a computation period, an individual who is absent from work for maternity or paternity reasons will receive credit for the Hours of Service that would otherwise have been

credited to the individual but for his or her absence, or in any case in which the hours cannot be determined, 8 Hours of Service per day for the absence. For this paragraph, an absence from work for maternity or paternity reasons means an absence (a) because of the pregnancy of the individual, (b) because of a birth of a child of the individual, (c) because of the placement of a child with the individual in connection with the adoption of the child by the individual, or (d) for purposes of caring for the child for a period beginning immediately following birth or placement. The Hours of Service credited under this paragraph will be credited (a) in the computation period in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or (b) in all other cases, in the following computation period. The total number of Hours of Service credited shall not exceed 501 hours.

1.9 **“Custodial Account”**: The group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the College, or by each Participant individually, to hold assets of the Plan.

1.10 **“Code”**: The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.11 **“College”**: Davidson College.

1.12 **“Compensation”**: Compensation means

(a) For faculty, Compensation means the salary stated in the academic year contract or appointment letter.

(b) For exempt Employees, Compensation means the annual base salary as designated in writing by the College.

(c) For all other Employees, Compensation means all cash compensation for services to the College that is includible in the Employee's gross income for the calendar year, including salary and overtime pay but excluding bonuses or other non-budgeted compensation.

In each case Compensation shall include cash compensation for services to the College that would be includible in the Employee's gross income for the calendar year but which were excluded under a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code.

In addition to any other applicable limitations on Compensation stated in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation taken into account under the Plan shall not exceed a maximum of \$265,000 in 2015 (or such higher maximum as may annually apply under section 401(a)(17) of the Code).

Notwithstanding the foregoing, Compensation shall not include any compensation received pursuant to a grant-funded position for which the grant funds do not provide funding for Plan Contributions.

1.13 **“Date of Employment or Reemployment:”** The effective date of the appointment for a faculty member. For all other Employees, the Date of Employment or Reemployment is the first day upon which an Employee completes an Hour of Service for performance of duties during the Employee's most recent period of service with the College.

1.14 **“Disabled”:** The definition of disability provided in the applicable Individual Agreement.

1.15 **“Effective Date:”** The Effective Date of this amended and restated Plan is September 10, 2015, in compliance with the final Treasury Regulations under section 403(b) of the Code. The plan was originally established as of January 1, 1926.

1.16 **“Eligibility Year of Service”:** A 12-month period (computation period) during which the Employee completes 1,000 or more Hours of Service. For purposes of eligibility for participation, Year(s) of Service with an Eligible Employer within the three years immediately preceding employment at the College will be counted. The computation period by which a Participant’s Eligibility Years of Service shall be measured from the Participant’s Date of Employment or Reemployment through each anniversary thereof.

1.17 **“Eligible Employee”:** All Employees of the College except (a) student employees, (b) adjunct faculty members, (c) participants in the Davidson College Fellows Program, the Davidson College Advisory Corp program, or other Employees employed pursuant to a fellowship program or (d) employees employed solely pursuant to a grant-funded position whose grant-funding terms do not provide funds for participation in this Plan.

1.18 **“Eligible Employer”:** Any organization that meets the eligibility requirements of section 403(b)(1) of the Code, teaching institution, institution of higher education, or nonprofit (research) institution.

1.19 **“Employee”:** All common law employees of the College. No individual who is deemed to be an independent contractor, as determined by the Administrator in its sole discretion, or individual performing services for the College pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer, shall be an Employee for purposes of this Plan. If an individual is classified as an independent contractor during any period of providing services to the College, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation. Notwithstanding the above, if the failure to cover such reclassified individual would prevent the Plan from satisfying the minimum coverage requirement under section 410(b) of the Code for a Plan Year, the minimum number of such individuals necessary for the plan to fulfill such minimum coverage requirements will be included as eligible employees for the Plan Year, with preference given to those reclassified individuals with the smallest amount of compensation.

1.20 **“Funding Vehicles“:** The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the College for use under the Plan.

1.21 **“Hours of Service”:** Hours of Service means

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the College.

(b) Each hour for which an Employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the Employee for medical or medically-related expenses, is excluded. An Employee is directly or indirectly paid, or entitled to payment by the College regardless of whether payment is made by or due from the College directly or made indirectly through a trust fund, insurer or other entity to which the College contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under this paragraph will be calculated and credited pursuant to §2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the College, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of a group of trades or businesses under common control (under Code Section 414(c)) of which the College is a member pursuant to §1.414(c)-5 of the Treasury Regulations, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the Treasury Regulations thereunder.

Hours of Service will be determined on the basis of actual hours that an Employee is paid or entitled to payment.

1.22 **“Individual Agreement”:** The agreements between a Vendor and the College or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

1.23 **“Normal Retirement Age”:** Age 65.

1.24 **“Participant”:** An Eligible Employee who is eligible to participate in the Plan pursuant to Section 2, and who has not received a distribution of his or her entire benefit under the Plan.

1.25 **“Plan”**: The Davidson College Defined Contribution Plan

1.26 **“Plan Contributions”**: Contributions made by the College under this Plan.

1.27 **“Plan Entry Date”**: The first of the month beginning after the date that the Employee has met the participation requirements set forth in Section 2.

1.28 **“Plan Year”**: The calendar year.

1.29 **“Qualified Election”**: A waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-retirement Survivor Annuity shall not be effective unless: (a) the Participant's spouse consents in writing to the election; (b) the election designates a specific Beneficiary(ies), including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (unless the spouse expressly permits designations by the Participant without any further spousal consent); (c) the spouse's consent acknowledges the effect of the election; and (d) the spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment that may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that there is no spouse or that the spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary(ies), and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 5.5.

1.30 **“Qualified Joint and Survivor Annuity”**: An immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse that is not less than 50 percent (and not more than 100 percent) of the amount payable during the joint lives of the Participant and the spouse that can be purchased with the Participant's Account. The percentage of the survivor annuity under the Plan shall be 50 percent.

1.31 **“Qualified Pre-retirement Survivor Annuity”**: An annuity for the life of the surviving spouse of a deceased Participant the actuarial equivalent of which is not less than 50 percent of the Participant's Account Balance at the date of death.

1.32 **“Related Service”**: The College recognizes related service if an Employee has worked for 12-consecutive months with an Eligible Employer at any time within the three years immediately preceding employment at the College.

1.33 **“Severance from Employment”**: For purpose of the Plan, Severance from Employment means Severance from Employment with the College.

1.34 **“TDA Plan”**: The Davidson College Tax Deferred Annuity Plan.

1.35 **“Vendor”**: The provider of an Annuity Contract or Custodial Account.

1.36 **“Vesting Year of Service”**: A 12-month period (computation period) during which the Employee performs services for the College. The computation period by which a Participant’s Vesting Years of Service shall be measured from the Participant’s Date of Employment or Reemployment through each anniversary thereof. Notwithstanding the foregoing, for Participants who are not yet fully vested in their Plan Contributions as of September 10, 2015, but who were employed by the College on or prior to September 10, 2015, such Participant’s Vesting Years of Service shall be determined according to the rules set forth under §2530.200b-9(f) and (g) of the Department of Labor regulations, as finalized under §1.410(a)-7(f) and (g) of the Treasury Regulations.

## **Section 2 Participation**

2.1 **Eligibility**. An Eligible Employee will begin participation in this Plan on the Plan Entry Date following the completion of one (1) Eligibility Year of Service at the College.

Eligibility Year(s) of Service with an Eligible Employer will be counted for meeting the eligibility requirements. (See definition of Related Service.)

2.2 **Notification**. The College (or its agent) will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.

2.3 **Enrollment in Plan**. Following the completion of the requirements in Section 2.1, an Eligible Employee will be requested to complete an enrollment form. An Eligible Employee who has been notified that he or she is eligible to participate in the Plan but who fails to complete the enrollment form will be enrolled in a Funding Vehicle selected by the Committee.

2.4 **Reemployment**.

(a) A former Participant will become a Participant immediately upon returning to the employ of the College if the former Participant had a nonforfeitable right to all or a portion of the Account derived from the Plan Contributions at the time of termination from service and the former Participant is an Employee.

(b) A former Participant who did not have a nonforfeitable right to any portion of the Account derived from the Plan Contributions at the time of termination from service will be considered a new employee for eligibility purposes, if the number of consecutive one-year Breaks in Service equals or exceeds five. If the Eligibility Years of Service before termination from service cannot be disregarded pursuant to the preceding sentence, the former Participant will participate immediately upon reemployment provided the former Participant is an Employee.

2.5 **Termination of Participation.** A Participant will continue to be eligible to participate in the Plan until one of the following conditions occur:

- he or she ceases to be an Eligible Employee;
- the Plan is terminated.

Furthermore, if a Participant begins to receive retirement benefits from the Account arising from Plan Contributions under this Plan before termination of employment, he or she will cease to be eligible to participate and no further Plan Contributions will be made on his or her behalf. This does not pertain to those employees who are at least age 70 ½ who are still employed and receiving benefits in an amount equal to or less than the minimum distribution amount calculated under Section 5.4 as if the Participant was required to begin receiving minimum distributions.

### **Section 3 Plan Contributions**

3.1 **Plan Contributions.** Plan Contributions will be made for Employees who have satisfied the requirements of Section 2 in accordance with the schedule below.

#### **Plan Contributions as a Percentage of Compensation**

On Compensation within the Social Security Taxable Wage Base	8.5% or 9.5% *
On Compensation that exceeds the Social Security Taxable Wage Base	12.5%

\*The College shall make an appropriate adjustment, if necessary, if the Participant defers at least 1% of the Participant's "compensation" (as defined by the TDA Plan) into the TDA Plan at any time during the Plan Year, so that a Participant who defers at least such amount into the TDA Plan over a Plan Year will receive a Plan Contribution of 9.5% for such Plan Year.



For purposes of this Section 3.1, Social Security Taxable Wage Base means the contribution and benefit base under section 230 of the Social Security Act (42 U.S.C. §430) for the Plan Year of determination.

If Plan Contributions that would have been made on behalf of a Participant cease prior to the end of the Plan Year because the Participant is prohibited from making additional salary deferral contributions due to the limitations under the TDA Plan, the College shall make an appropriate adjustment, if necessary, to ensure that such Participant receives the maximum Plan Contribution to which the Participant would be entitled under this Plan based on the amount of the Participant's total salary deferral contributions actually made during the Plan Year to the TDA Plan.

3.2 **When Contributions Are Made.** Plan Contributions will begin when the College has determined that the Participant has met or will meet the requirements of Section 2. Any part of a year's Plan Contributions not contributed before this determination will be included in Plan Contributions made for that year after the determination. Plan Contributions will be forwarded to the Funding Vehicles in accordance with the procedures established by the College. Plan Contributions will be forwarded to the Funding Vehicles at least annually.

3.3 **Allocation of Contributions.** A Participant may allocate Plan Contributions to the Funding Vehicles. A Participant may change his or her allocation of future contributions to the Funding Vehicles at any time.

3.4 **Leave of Absence.** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the College. No Plan Contributions will be made during an unpaid leave of absence.

3.5 **Uniformed Services.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code. See Appendix A for additional rules relating to the Plan's rules regarding Participants who are engaged in military service.

3.6 **Maximum Plan Contributions.** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of section 415 of the Code are hereby incorporated by reference.

For the purpose of calculating the limits of section 415 of the Code, compensation means W-2 reported wages, plus contributions made by the College on behalf of an Employee that are not includible in W-2 wages under sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), and 457(b) of the Code. For this purpose "W-2 reported wages" means wages within the meaning of section 3401 (a) of the Code and all other payments of compensation by the College for which the College is required to provide a written statement to the Employee under sections 6041(d), 6051(a)(3) and 6052 of the

Code, without regard to any rules under section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed. The amount of compensation for any Plan Year will not exceed the Code section 401(a)(17) annual compensation limit. Except as specifically provided below, to be included in compensation, any compensation must be paid or made available to the Employee during the Plan Year.

For this purpose, compensation shall also include the following:

(i) Payments to an individual who does not currently perform services for the College by reason of qualified military service (as that term is used in Code section 414(u)).

(ii) Any regular payments for services during the Employee's regular working hours, compensation for services outside the Employee's regular work hours (such as, overtime or shift differential), commissions, bonuses or other similar payments that are paid after the Employee's termination of employment; provided that all such payments, compensation, commissions, bonuses and other similar payments would have been paid to the Employee had he not severed from service and are made within the later of 2 ½ months after severance of service or the end of the Plan Year that includes the date of severance.

(iii) Payments for unused accrued bona fide sick, vacation, or other leave, but only if (A) the employee would have been able to use the leave if employment had continued, (B) the payments are made within the later of 2 ½ months after severance of service or the end of the Plan Year that includes the date of severance, and (C) the amounts would have been included in the definition of compensation if they were paid prior to severance from employment with the College.

(iv) Amounts earned for services rendered outside of the United States even if those amounts are not includible in gross income due to the location of the services and the amounts would be excluded from gross income under sections 872, 893, 894, 911, 931 and 933 of the Code. However, any foreign compensation earned by a non-resident alien who is not an Employee in the Plan is not treated as compensation.

(v) Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate an Employee for lost wages are compensation within the meaning of the section 415(c)(3) of the Code for the Plan Year to which the back-pay relates, but only to the extent that such payments represent wages and compensation that would otherwise have been included in compensation.

(vi) Amounts earned during the Plan Year but that are not paid during that Plan Year because of the timing of pay periods and pay dates if: (A) these amounts are paid during the first few weeks of the next Plan Year; (B) the amounts are included on a uniform and consistent basis with respect to all similarly situated Employees; and (C) no compensation is included in more than one Plan Year.

Compensation excludes any payments not described in this Section. Without limiting the foregoing sentence, items excluded from compensation include: (A) post-severance payments of severance pay or parachute payments within the meaning of Code section 280G(b)(2), and (B) post-severance payments under a nonqualified deferred compensation plan.

To the extent permitted by section 415 of the Code and the Treasury regulations thereunder, if the Annual Additions exceed the limitations in section 415 of the Code, the excess will be held unallocated in a suspense account and will be applied to reduce Plan Contributions in succeeding limitation years.

If the limitations are exceeded because the Participant is also participating in another Plan required to be aggregated with this Plan for section 415 of the Code, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the College in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the College will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

The amount of Plan Contributions will also be subject to the limitations of section 403(b) of the Code, which hereby are incorporated by reference.

#### **Section 4 Vesting**

4.1 **Plan Contributions.** Plan Contributions shall be fully vested and nonforfeitable in the Participant upon completion of three (3) Vesting Years of Service at the College or at Normal Retirement Age., death or the Participant becoming Disabled, if earlier.

If employment terminates before the date of full vesting, the contracts or certificates issued to the College for a Participant are returned to the Funding Vehicles and amended to provide for a transfer of ownership in the vested amount of the Account, if any, to the Participant. The nonvested amount of the Account will constitute a forfeiture that will be applied to reduce Plan Contributions for the next Plan Year.

4.2 **Termination of Service; Reinstatement.** If a Participant in this Plan terminates without any nonforfeitable interest in the Plan Contributions, the Participant's pre-break service will count in vesting of the pre-break and post-break Account only if the Participant is reemployed before the number of consecutive one-year Breaks in Service equals five years.

In the case of a non-vested Participant who has five or more consecutive one-year Breaks in Service, all service after such Break will be disregarded for the purpose of vesting the College-derived Account that accrued before the Break. Such Participant's pre-Break service will not count in vesting the post-break Account.

4.3 **Computation Period for Vesting.** For purposes of determining Vesting Years of Service and Breaks in Service, the computation period shall be measured by the Participant's Date of Employment or Reemployment and each anniversary thereof.

4.4 **Amendment to Vesting Schedule or Provisions.** In the event the vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's vested percentage, those Participants with at least three Vesting Years of Service may elect to have their nonforfeitable percentage computed without regard to the amendment.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of (a) 60 days after the amendment is adopted, (b) 60 days after the amendment becomes effective, or (c) 60 days after the Participant is issued a written notice of the amendment by the College or the Administrator.

## **Section 5 Benefit Distributions**

5.1 **Benefit Distributions At Severance from Employment or Other Distribution Event.** Except as permitted under Section 9.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

5.2 **Cash Withdrawals.** A Participant may receive a cash withdrawal as permitted by the Funding Vehicle. Notwithstanding the foregoing, a Participant who is employed by the College and has attained age 70 ½ may elect to receive cash withdrawals from the Plan up to an amount that would otherwise be the minimum distribution amount if the Participant was not employed by the College (as described in Section 5.4 below) and continue to participate in the Plan, as provided by Section 2.5 of the Plan.

5.3 **Small Account Balances.** The terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed \$5,000 (determined without regard to any separate account that holds rollover contributions under Section 6.1) and any such distribution shall comply with the requirements of section 401 (a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

5.4 **Minimum Distributions.** Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the Treasury Regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement

account (IRA) and distributions shall be made in accordance with the provisions of §1.408-8 of the Treasury Regulations, except as provided in §1.403(b)-6(e) of the Treasury Regulations.

5.5 **Types and Forms of Distributions.** A Participant may select among the types, forms and method of payment that are described in such Participant's Individual Agreement.

5.6 **Joint and Survivor Annuity Requirements.** The provisions of this section shall apply to any Participant who is credited with one Hour of Service at the College on or after August 23, 1984. However, any Participant in this Plan not receiving benefits as of August 23, 1984 may elect to have benefits paid in a manner described herein.

(a) **Pre-retirement Spousal Entitlement.** Unless a Qualified Election is made, if a married Participant dies before the date benefits commence, the Participant's Account shall be applied toward the purchase of a Qualified Pre-retirement Survivor Annuity. The surviving spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

In the case of a Qualified Pre-retirement Survivor Annuity, the College shall provide each Participant, within the applicable period for such Participant, a written explanation of the Qualified Pre-retirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements for notification of a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (a) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (b) a reasonable period after an Eligible Employee becomes a Participant; or (c) a reasonable period ending after this section first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation of service in the case of a Participant who separates from service before attaining age 35.

For applying the preceding paragraph, a reasonable period ending after the enumerated events is the end of the two-year period beginning one year before the date the applicable event occurs, and ending one year after that date. For a Participant who separates from service before the Plan Year in which age 35 is attained, notice should be provided within the two-year period beginning one year before separation and ending one year after separation. If such a Participant thereafter returns to employment with the College, the applicable period for such Participant shall be redetermined.

(b) **Post-retirement Spousal Entitlement.** Unless a Qualified Election is made within the 90-day period ending on the date benefits commence, a married Participant's Account will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Account will be paid in the form of a single life annuity.

(c) **Notification of Post-retirement Spousal Entitlement.** In the case of a Qualified Joint and Survivor Annuity, the College shall no less than 30 days and no more than 180 days before the date benefits commence provide each Participant a written explanation of: (a) the terms and conditions of a Qualified Joint and Survivor Annuity; (b) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (c) the rights of a Participant's spouse; and (d) the right to waive a Qualified Joint and Survivor Annuity.

If the Participant, after receiving the explanation, elects a form of benefit and the spouse consents to the benefit (if necessary), the Plan will not fail to satisfy the requirements of this paragraph merely because the annuity starting date is less than 30 days after the written explanation is given to the Participant provided (1) the explanation is provided prior to the annuity starting date; (2) the distribution does not commence before the expiration of the 7-day period that begins the day after the explanation is provided to the Participant; and (3) prior to the expiration of the 7-day period, or the annuity starting date, if later, the Participant may revoke the distribution election.

#### 5.7 **Rollover Distributions.**

(a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant or Beneficiary in a direct rollover. 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, 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 section 408(d)(3)(C) of the Code).

(b) 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.

## Section 6 Rollovers to the Plan and Transfers

### 6.1 Eligible Rollover Contributions to the Plan.

(a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, an Employee who is a Participant 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. 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 section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. However, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code or a Roth IRA described in section 408A of the Code.

(b) **Eligible Rollover Distribution.** For purposes of Section 6.1(a), 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 section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) **Separate Accounts.** The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

### 6.2 Plan-to-Plan Transfers to the Plan.

(a) Any Employee who is a participant in another plan under section 403(b) of the Code may permit a transfer of assets to the Plan as provided in this Section 6.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an employee or former employee of the College. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the

other plan as it deems necessary to effectuate the transfer in accordance with § 1.403(b)-10(b)(3) of the Treasury Regulations and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.

(b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.

(c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that (1) the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant whose assets are being transferred that are not less stringent than those imposed on the transferor plan and (2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

### **6.3 Plan-to-Plan Transfers from the Plan.**

(a) A Participant may elect to have all or any portion of his or her Account Balance transferred to another plan that satisfies section 403(b) of the Code in accordance with § 1.403(b)-10(b)(3) of the Treasury Regulations. A transfer is permitted under this Section 6.3(a) only if such Participant is an employee or former employee of the employer (or the business of the employer) under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and for each Participant to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) The other plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the other plan shall impose restrictions on distributions to the Participant whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's interest in the transferor plan (e.g., a pro rata portion of the Participant's interest in any after-tax employee contributions).

(c) Upon the transfer of assets under this Section 6.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or



Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.3 (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to §1.403(b)-10(b)(3) of the Treasury Regulations.

6.4 **Contract and Custodial Account Exchanges.**

(a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Vendors under the Plan, subject to the terms of the Individual Agreements. However, an investment change that includes an investment with a Vendor that is not eligible to receive contributions under Section 2 (referred to below as an exchange) is not permitted unless the conditions in paragraphs (b) through (d) of this Section 6.4 are satisfied.

(b) The Participant or Beneficiary must have 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 section 403(b) contracts or custodial accounts immediately before the exchange).

(c) The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

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

(1) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the College, to satisfy section 403(b) of the Code, including but not limited to providing information as to whether the Participant's employment with the College is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5.1).

(2) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the College to satisfy other tax requirements.

(e) If any Vendor ceases to be eligible to receive Plan Contributions under the Plan, the College will enter into an information sharing agreement as described in Section 6.4(d) to the extent the College's contract with the Vendor does not provide for the exchange of information described in Section 6.4(d)(1) and (2).

## **Section 7**

### **Investment of Contributions**

7.1 **Manner of Investment.** All Plan Contributions or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

7.2 **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under applicable Treasury Regulations.

7.3 **Current and Former Vendors.** The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Plan Contributions under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Plan Contributions under the Plan and a Vendor holding assets under the Plan in accordance with Section 6.2 or 6.4), the College shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

## **Section 8**

### **Administration**

8.1 **Plan Administrator.** The Administrator is located at #11 Jackson Court, Box 7163, Davidson, NC 28035-7163 and has designated Human Resources Director to be responsible for enrolling Participants, sending Plan Contributions for each Participant to the Vendors, and for performing other duties required for the operation of the Plan.

8.2 **Authority of the College.** The College has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the College shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the College will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The College may employ

attorneys, agents, and accountants as it finds necessary or advisable to assist it in carrying out its duties. The College will be a "named fiduciary" as that term is defined in Section 402(a)(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") for determining eligibility and computing and making Plan Contributions. The College, by action of its Board, may designate a person or persons other than the College to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.

8.3 **Action of the College.** Any act authorized, permitted, or required to be taken by the College under the Plan, which has not been delegated in accordance with Section 8.2, may be taken by a majority of the members of the Board, either by vote at a meeting, or in writing without a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the College under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by an instrument in writing, signed by all members, as having authority to execute the documents on its behalf, or ii) a person who becomes authorized to act for the College in accordance with the provisions of Section 8.2. Any action taken by the College that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the College, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the College.

8.4 **Indemnification.** The College will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the College is delegated pursuant to Section 8.2 (other than the Vendors). These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the College, under any provision of law, or under any other agreement.

8.5 **Investment Manager.** To the extent that Participants allocate contributions to the TIAA Real Estate Account, TIAA will be the investment manager (within the meaning of Section 3(38) of ERISA) with respect to the account balance in the TIAA Real Estate Account. TIAA acknowledges that it is a fiduciary with respect to such assets.

8.6 **No Reversion.** Under no circumstances or conditions will any Plan Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the College. However, if Plan Contributions are made by the College by mistake of fact, these amounts may be returned to the College within one year of the date that they were made.

8.7 **Statements.** The College will determine the total amount of contributions to be made for each Participant from time to time on the basis of its payroll records and in accordance with the provisions of this Section 8.7. When each contribution payment is made by the College, the College will prepare a statement showing the name of each

Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the College, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution's payment.

8.8 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Funding Vehicles will send each Participant a report summarizing the status of his or her Account with such Funding Vehicle as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Funding Vehicles.

## **Section 9 Amendment and Plan Termination**

9.1 **Termination of Contributions.** The College has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the College has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

9.2 **Amendment and Termination.** The College reserves the authority to amend or terminate this Plan at any time.

9.3 **Distribution upon Termination of the Plan.** The College may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the College on the date of termination does not make contributions to an alternative Annuity Contract or Custodial Account under section 403(b) of the Code 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 Treasury Regulations.

## **Section 10 Miscellaneous**

10.1 **Non-Assignability.** Except as provided in Section 10.2 and 10.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

10.2 **Domestic Relation Orders.** Notwithstanding Section 10.1, 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”), then the amount of the Participant’s Account Balance shall be paid in the manner and to the person or persons so directed in the 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.

10.3 **IRS Levy.** Notwithstanding Section 10.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

10.4 **Tax Withholding.** 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.

10.5 **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.

10.6 **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the College.

10.7 **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 Davidson College’s or the Administrator'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.

10.8 **Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the

Code 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 section 403(b) of the Code.

10.9 **Governing Law.** The Plan will be construed, administered and enforced according to the Code and the laws of the State of North Carolina.

10.10 **Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

10.11 **Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

IN WITNESS WHEREOF, the College has caused this Plan to be executed this 10th day of September, 2015.

College: Davidson College  
By: [Signature]  
Title: Chair - Board of Trustees  
Date signed: October 9, 2015

## APPENDIX A

### RIGHTS RELATING TO MILITARY SERVICE UNDER USERRA AND HEART

#### Section A.01. CREDITING OF SERVICE FOR PERIODS OF MILITARY SERVICE.

(a) *Uniformed Service.* Absence from employment due to a leave of absence for service in the Uniformed Services of the United States will be counted as employment with the College; however, that leave of absence must not extend beyond the end of the period during which the Employee's reemployment rights are protected under the Veterans' Reemployment Rights Act (as modified by USERRA). Further, the Employee must return to employment with the College at or prior to the end of such leave.

(b) *Aggregation of Service on Return.* If the Employee returns to service with the College within the period during which his reemployment rights are protected under USERRA, the period of his Uniformed Service to the date of his return to employment by the College will be considered service with the College. If the Employee does not return to active employment with the College, his service will be deemed to have ceased on the earliest date permitted under applicable law. The College's leave policy will be applied in a uniform and nondiscriminatory manner to all Participants under similar circumstances.

#### Section A.02. MILITARY SERVICE MAKE-UP CONTRIBUTIONS.

(a) If the College is required to make contributions to the Plan for any Participant in order to comply with the provisions of USERRA, such contributions will be made (without adjustment for any investment gains or losses, earnings or expenses) when the Participant resumes service as an Employee of the College within the time that his reemployment rights are protected under the Veterans' Reemployment Rights Act.

(b) Any such Uniformed Service make-up contribution will be in an amount equal to the sum of the Plan Contributions that the College would have allocated to the Participant's Account (without adjustment to reflect investment gains or losses or income or expenses) if the Participant had remained in the employ of the College as an eligible Participant throughout the period of his military service, with imputed Compensation equal to the Compensation he would have earned at his rate of pay from the College in effect immediately prior to inception of his absence for military service.

Section A.03. SPECIAL DEATH BENEFIT RULES. In the case of a Participant's death that occurs on or after January 1, 2007, if a Participant dies while performing Uniformed Service and entitled to reemployment rights under USERRA, the survivors of the Participant will be entitled to any additional benefits (other than benefit accruals relating to the period of Qualified Military

Service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.

Section A.04. DIFFERENTIAL WAGE PAYMENTS. For remuneration paid after and Plan Years beginning on and after December 31, 2008:

- (a) An individual receiving a Differential Wage Payment while performing Qualified Military Service for more than 30 days, is treated as an employee of the College during the period in which payments are made;
- (b) The Differential Wage Payment is treated as Compensation for purposes of the Plan;
- (c) The Plan is not treated as failing to meet the requirements of any provision described in Code section 414(u)(1)(C) by reason of any contribution or benefit that is based on the Differential Wage Payment; and
- (d) However, this Section shall apply only if all employees of the College performing service in the Uniformed Services are entitled to receive Differential Wage Payments on reasonably equivalent terms and, if eligible to participate in a retirement plan sponsored by the College, to make contributions based on the payments on reasonably equivalent terms, taking into account Code sections 410(b)(3), (4), and (5).

Section A.05. SEVERANCE FROM EMPLOYMENT. Notwithstanding the provisions of Section A.04(a), for purposes of Code sections 401(k)(2)(B)(I)(i), 403(b)(7)(A)(ii), 403(b)(11)(A), and 457(d)(1)(A)(ii), a Participant shall be treated as having been severed from employment during any period in which the Participant is performing service in the Uniformed Services. Further, if the Participant elects to receive a distribution by reason of Section A.04(b) and this Subsection, the Participant may not make any additional Deferrals during the six-month period beginning on the date of the distribution.

Section A.06. DEFINITIONS. For purposes of this Appendix A, specified terms shall be defined as follows:

- (a) “Differential Wage Payment” shall have the meaning set forth in Code section 3401(h)(2).
- (b) “HEART” shall mean the Heroes Earnings Assistance and Relief Tax Act, as amended.
- (c) “Qualified Military Service” shall have the meaning set forth in Code section 414(u).
- (d) “Uniformed Service” shall have the meaning set forth in Code section 414(u).



- (e) “Uniformed Services” shall have the meaning set forth in Code section 3401(h)(2).

