

**AMHERST COLLEGE DEFINED CONTRIBUTION RETIREMENT PLAN**

**Restated Effective July 1, 2019**

## ARTICLE I

### INTRODUCTION

This document amends and restates the Amherst College Defined Contribution Retirement Plan (the “Plan”) effective as of July 1, 2019, except as otherwise provided in this paragraph or elsewhere herein. The Plan is sponsored by the Trustees of Amherst College. Amherst intends that contributions will be used to purchase one or more Annuity Contracts for the benefit of Participants and their beneficiaries, and that contributions under the Plan will be excluded from the gross income of the Participants in accordance with Section 403(b) of the Code. In accordance with Notice 2009-03, the Plan was restated effective July 1, 2009 to conform to the requirements of the final Treasury regulations under Code section 403(b). As permitted under Revenue Procedure 2017-18, the following Sections of this restated Plan are effective as of July 1, 2010: 2.23, 3.1(a), 4.1 (except with respect to Roth provisions), 7.2, 9.5, 9.6, 9.7, 8.2(b), 8.10, 11.1, 11.3, 12.1, and 12.5.

## ARTICLE II

### DEFINITIONS

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

- 2.1. “Administrator”** means Amherst College or such Committee as may be appointed by Amherst from time to time.
- 2.2. “Amherst”** means Amherst College. Amherst and Folger comprise the entire “controlled group” of employers of which either is a member under Code sections 414(b), (c), (m) or (o).
- 2.3. “Amherst Employee”** means any individual employed by Amherst performing services in Amherst, Massachusetts, other than an employee whose employment is incidental to his or her education as an enrolled student at Amherst.
- 2.4. “Amherst Participant”** means an Amherst Employee who participates in the Plan in accordance with Article III.
- 2.5. “Annuity Contracts”** means the non-transferable annuity contracts as defined in Code section 403(b), and Custodial Accounts, in each case selected by the Administrator to which contributions under the Plan may be made. The provisions of each Annuity Contract (including Custodial Account agreements as defined below) are hereby incorporated by reference into the Plan to the extent not inconsistent with the provisions of the Plan and as of the date hereof include the following types: Retirement Annuity contracts issued by TIAA/CREF (“RAs”), Supplemental Retirement Annuity contracts issued by TIAA/CREF (“SRAs”), Group Supplemental Retirement Annuity contracts issued by TIAA/CREF (“GSRAs”), Retirement Choice Annuity contracts issued by TIAA/CREF (“RCs”), and Retirement Choice Plus Annuity contracts issued by TIAA/CREF (“RC Plus”).

**2.6. “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.

**2.7. “Beneficiary”** means any person or entity designated by the Participant (in accordance with the Plan’s procedures) to receive a benefit from an Annuity Contract or Custodial Account on account of the death of the Participant or, where no such person or entity is designated or the Beneficiary predeceases the Participant (and no other default Beneficiary is specified in an Annuity Contract or Custodial Agreement), the Participant’s spouse or, if none, the Participant’s estate..

**2.8. “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 notices and other releases issued by the Internal Revenue Service which interpret and implement such Code section.

**2.9. “Contribution Agreement”** means an agreement between a Participant and Amherst, satisfying the conditions described in Section 4.2, pursuant to which Elective Contributions are contributed by Amherst or Folger on a pre-tax or Roth basis.

**2.10. “Core Contribution”** means a contribution made by Amherst or Folger in accordance with Section 5.1 or 6.1, respectively.

**2.11. “Custodial Account”** Shall mean an account described in Code section 403(b)(7) maintained pursuant to an agreement between a Participant and a custodian approved or selected by the Administrator. The provisions of each Custodial Account agreement are hereby incorporated by reference into the Plan to the extent not inconsistent with the provisions of the Plan.

**2.12. “Deemed Contribution Agreement”** means a Contribution Agreement deemed to be entered into by a Participant in accordance with the automatic enrollment provisions of Section 4.2(b).

**2.13. “Educational Organization”** means an organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where the educational activities are regularly carried on.

**2.14. “Employee”** means an Amherst Employee or a Folger Employee.

**2.15. “Elective Contribution”** means a contribution made by Amherst or Folger pursuant to a Contribution Agreement in accordance with Section 4.2(a), or Deemed Contribution Agreement in accordance with Section 4.2(b). Notwithstanding the foregoing, the term Elective Contribution, where applicable, shall also include any amount of a Participant’s Regular Salary contributed by Amherst or Folger on behalf of such Participant prior to February 1, 2018 as an “Employee Basic Contribution”.

**2.16. “Eligible Amherst Employee”** means all Amherst Employees, *other* than those whose employment is funded by a grant which does not bear the cost of Amherst’s contributions:

**2.17. “Eligible Folger Employee”** means Folger Employees who are Trustee-Appointed or are members of the Professional or Other Staff, *other* than those whose employment is funded by a grant which does not bear the cost of Folger’s contributions.

**2.18. “ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

**2.19. “Folger”** means the Folger Shakespeare Library in Washington, D.C.

**2.20. “Folger Employee”** means any individual employed at Folger, other than an employee whose employment is incidental to his or her education as an enrolled student at Amherst.

**2.21. “Folger Participant”** means a Folger Employee who participates in the Plan in accordance with Article III.

**2.22. “Integration Level”** means the amount specified on Schedule A hereto from time to time.

**2.23. “Includible Compensation”** means an Employee’s compensation received from Amherst or Folger, as applicable, that is includible in gross income for federal tax purposes (computed without regard to Code section 911) including differential wage payments under Code section 3401(h), for the most recent period that is a “Year of Service.” Includible Compensation also includes any salary reduction contribution or other amount contributed or deferred by Amherst or Folger at the election of the Employee that would be includible in gross income but for the rules of Code section 125, 132(f)(4), 401(k), 403(b), or 457(b). The amount of Includible Compensation of each Participant taken into account in determining contributions shall not exceed the dollar limit in effect under Code section 401(a)(17)(A), as adjusted for cost-of- living increases in accordance with Code section 401(a)(17)(B). For purposes of determining Includible Compensation, “Year of Service” means each full year during which an individual is a full-time Employee, plus fractional credit for each part of a year during which the individual is either a full-time Employee for a part of a year or a part-time Employee. The Employee must be credited with a full Year of Service for each year during which the Employee is a full-time Employee and a fraction of a year for each part of a work period during which the Employee is a full-time or part-time Employee. An Employee’s number of Years of Service equals the aggregate of the annual work periods during which the Employee is employed by Amherst or Folger. The work period is the Employer’s annual work period. The amount of Includible Compensation of each Participant taken into account in determining contributions shall not exceed the dollar limit in effect under Code section 401(a)(17)(A), as adjusted for cost-of- living increases in accordance with Code section 401(a)(17)(B).

**2.24. “Matching Contribution”** means a contribution made on account of an Elective Contribution in accordance with Section 5.2 or 6.2.

**2.25. “Participant”** means each Amherst Employee and Folger Employee who participates in the Plan in accordance with Article III.

**2.26. “Plan”** means the Amherst College Defined Contribution Retirement Plan, as set forth herein, together with any and all amendments and supplements thereto.

**2.27. “Plan Year”** means the twelve month period beginning each July 1.

**2.28. “Professional or Other Staff”** means a Folger Employee who is not Trustee-Appointed.

**2.29. “Regular Salary”** for a period, in the case of a member of the faculty of Amherst or Folger, means the regular salary as stated in the faculty member’s annual salary letter in effect for the period, and in the case of each other Employee, the regular salary actually paid by Amherst or Folger to the Employee and subject to the following rules:

(a) Regular Salary shall include any amount which would have been included in the previous sentence but for a salary reduction agreement with Amherst or Folger under a Code section 125, 132, or 403(b) arrangement, and shall include any amount paid as a lump sum bonus in lieu of a salary increase for non-faculty employees.

(b) Grant-funded research support and summer salary will be included in Regular Salary unless the grant specifically excludes coverage of pension benefits.

(c) Regular Salary shall not include overtime, bonuses not described above, or other benefits.

(d) Regular Salary for purposes of the Plan may not exceed \$270,000 for any Plan Year (or such other limit as may be in effect from time to time under Code sections 403(b)(12) and 401(a)(17)).

(e) Regular Salary shall include payments of regular pay, paid time off cashouts and deferred compensation made by the later of 2½ months after severance from employment or the last day of the Plan Year in which such severance from employment occurs, if they are amounts described in Treasury regulation section 1.415(c)-(2)(e)(3)(ii) or (iii) that would have been included as Regular Salary if paid prior to the severance from employment with Amherst or Folger. Any payments not described in the preceding sentence shall not be considered Regular Salary if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Plan Year that includes the date of severance from employment.

**2.30. “Rollover Contribution”** means any rollover contributions contributed to the Plan by a Participant in accordance with Section 7.1, and earnings thereon.

**2.31. “Roth Contribution”** means the dollar amount of Elective Contributions elected to be contributed by a Participant on a Roth basis pursuant to a Contribution Agreement.

**2.32. “Trustee-Appointed”** means, with respect to a Folger Employee or a Folger Participant, an individual who is appointed by the Board of Trustees, or who is classified as a Director of Administration, including Librarian.

**2.33.** A **“Two-Year Period of Service”** shall be determined according to the individual’s status as described below:

**(a) Elapsed Time Method.** Except as provided in (b) below for certain individuals described therein, a Two-Year Period of Service shall be determined under the “Elapsed Time Method” described in DOL Regulation §2530.200b-9. In general, a Two-Year Period of Service ends on the second anniversary of the date an Employee first performed service for Amherst or Folger, provided he or she is an Employee on such date. In the case of an individual with respect to whom there is an unpaid leave, quit, retirement or discharge prior to such second anniversary but who later returns to Amherst or Folger as an Employee, periods of service shall be aggregated according to the following special rules:

(i) absences due to a quit, retirement or discharge shall not count towards the Two-Year Period of Service;

(ii) absences due to an approved unpaid leave of absence of less than one year shall count towards the Two-Year Period of Service;

(iii) the first year only of an absence due to an approved unpaid leave of absence of one year or more shall count towards the Two-Year Period of Service, but periods beyond such year shall not be counted;

(iv) any additional periods required to be counted under ERISA due to pregnancy, birth, adoption-related absences or absences for service in the armed forces, shall count toward the Two-Year Period of Service to the extent so required; and

(v) periods of absence beyond five years shall cause an individual to be considered as a new Employee with no prior service to the extent permitted under ERISA.

**(b) Hour of Service Method.** In the case of an individual (i) whose employment is incidental to his or her education at Amherst, (ii) who normally works less than 20 hours per week, (iii) who is categorized as a “causal employee” only, or (iv) is hired as a member of the Amherst faculty to teach a single course in a specific semester (including a series of semesters), a **“Two-Year Period of Service”** shall be determined under the “hours of service” method under DOL Regulation §2530.200b-2 and shall mean the completion of two separate Computation Periods described below, during each of which the individual completes at least 1,000 Hours of Service. The following rules shall also apply:

(i) a **“Computation Period”** for an individual shall mean the 12-consecutive-month period that begins on the date the individual first performs an Hour of Service, and each anniversary thereafter.

(ii) an “Hour of Service” means

(A) Each hour for which the Employee is paid or entitled to payment for the performance of duties for Amherst or Folger, each such hour to be credited to the Employee for the computation period in which the duties were performed;

(B) Each hour for which the Employee is directly or indirectly paid or entitled to payment by Amherst or Folger (including payments made or due from a trust or insurer to which Amherst or Folger contributes or pays premiums) on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has severed) due to vacation, holiday, illness, incapacity, disability, layoff, jury duty, military duty, or leave of absence, each such hour to be credited to the Employee for the computation period in which such period of time occurs, subject to the following rules:

(1) No more than 501 Hours of Service shall be credited under this paragraph (b) to the Employee on account of any single continuous period during which the Employee performs no duties;

(2) Hours of Service shall not be credited under this paragraph (b) to an Employee for a payment which solely reimburses the Employee for medically related expenses incurred by the Employee, or which is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, unemployment compensation or disability insurance laws; and

(3) If the period during which the Employee performs no duties falls within two or more computation periods, and if the payment made on account of such period is not calculated on the basis of units of time, the number of Hours of Service credited with respect to such period shall be allocated between not more than the first two such periods based on the amount of the payment divided by the Employee's most recent hourly rate of Regular Salary before the period during which no duties were performed;

(C) Each hour not counted under paragraph (A) or (B) for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to be paid by Amherst or Folger, each such hour to be credited to the Employee for the computation period to which the award or agreement for back pay pertains, provided that crediting of Hours of Service under this paragraph (C) with respect to periods described in paragraph (B) above shall be subject to the limitations and special rules set forth in clauses (1), (2) and (3) of paragraph (B);

(D) Each noncompensated hour during a period of absence from Amherst or Folger for service in the armed forces of the United States if the Employee returns to work for Amherst or Folger at a time when he or she has reemployment rights under federal law, and each noncompensated hour while an Employee on an unpaid leave of absence granted by Amherst or Folger, on sick leave, on disability leave or on leave subject to the Family and Medical Leave Act of 1993; and

(E) Solely in the case of (i) members of the Amherst faculty hired to teach a single course for a specific semester (including a series of semesters), and (ii) members of the Amherst coaching staff hired on a seasonal basis, Hours of Service shall be credited on the “equivalency” basis under DOL regulation section 2530.200b-3(e), under which such individual will be credited with 190 Hours of Service for each calendar month in which he or she completes at least one Hour of Service;

Hours of Service to be credited to an Employee under (A), (B) and (C) above will be calculated and credited pursuant to paragraphs (b) and (c) of section 2530.200b-2 of the Department of Labor regulations, which are incorporated herein by reference. The Hours of Service to be credited to an Employee during a period described in (D) above will be determined by the Administrator with reference to the individual’s most recent normal work schedule, or at the rate of eight hours per day in the event the Administrator is unable to establish such schedule.

(iii) If an individual described in this paragraph (b) incurs one or more **“Breaks in Service”** prior to completing a Two-Year Period of Service, then only Hours of Service completed after the Break in Service shall be taken into account, and the Computation Period shall begin on the first day an Hour of Service is completed following such Break in Service and each anniversary thereafter. A **“Break in Service”** shall mean a Computation Period during which the Employee does not complete more than 500 Hours of Service. Solely for purposes of determining whether a Break in Service has occurred, an Employee who is absent from work for maternity or paternity reasons shall receive credit of up to 501 Hours of Service for the Hours of Service which would otherwise have been credited to such Employee but for such absence, or, in any case in which such hours cannot be determined eight Hours of Service per day of such absence. If the absence extends beyond one Computation Period, the Hours of Service credited under this paragraph (iii) shall be credited in the Computation Period in which the absence begins if the crediting is necessary to prevent a Break in Service in that Computation Period, otherwise the Hours of Service shall be credited to the following Computation Period. For purposes of this paragraph (iii), an absence from work for maternity or paternity reasons means an absence of up to 24 consecutive months:

(A) by reason of the pregnancy of the Employee;

(B) by reason of the birth of a child of the Employee;

(C) by reason of the placement of a child with the Employee in connection with the adoption of such child by such Employee; or

(D) for purposes of caring for a child described in (A), (B) or (C) above for a period beginning immediately following such birth or placement.

No credit shall be given for such Hours unless the individual furnishes to the Administrator whatever timely information the Administrator reasonably requests to establish that an absence is for one of the reasons listed above.

**(c) Limited Recognition of Prior Service.**

(i) Service with an educational institution immediately before becoming an Amherst Employee will be credited as service for purposes of this Section 2.32 to the extent (and only to the extent):

(A) such service is rendered in a capacity that would be recognized as an Eligible Amherst Employee were the individual actually employed by Amherst;

(B) such service would otherwise count towards a “Two-Year Period of Service” had it been rendered in the employ of Amherst; and

(C) the affected individual provides documentation of such services sufficient to demonstrate the criteria set forth in (A) and (B) above.

(ii) For Amherst Employees, service credit will be given on the same basis as would be credited under this Plan to any individual for periods for which he or she received contributions or accrued benefits under a plan described in Code section 401(a), 403(b) or 408(k) maintained by the individual’s immediately preceding employer, provided (A) he or she was employed by the prior employer within six months of his or her date of hire by Amherst, (B) the individual provides documentation sufficient to demonstrate such criteria; and (C) credit under this paragraph (ii) shall not result in any duplication of service otherwise creditable under (a)(i) above.

(iii) For purposes of calculating a Two-Year Period of Service, a Folger Employee’s service with (i) an organization eligible to maintain a section 403(b) arrangement or (ii) a college or university with a main campus outside of the United States, shall be taken into account as if employed by Folger during the relevant time period, provided he or she was employed by such entity within six months of his or her date of hire by Folger and the individual provides documentation of such employment sufficient to demonstrate the criteria set forth in this paragraph.

**2.34. “Vendor”** means the provider of an Annuity Contract or Custodial Account.

### **ARTICLE III**

#### **PARTICIPATION**

##### **3.1. Commencement of participation.**

**(a) For Elective Contributions.** Any Amherst Employee or Folger Employee may become a Participant by entering into a Contribution Agreement or Deemed Contribution Agreement in accordance with Section 4.2 at any time, whether or not he or she has fulfilled the eligibility and service requirements of other contributions described below.

**(b) For Contributions other than Elective Contributions.** With respect to contributions other than Elective Contributions, an Eligible Amherst Employee or Eligible Folger Employee will become a Participant upon satisfying the following:

(i) Each Eligible Amherst Employee and each Trustee-Appointed Eligible Folger Employee will become a Participant on the later of (A) the first day of the month after he or she completes a Two-Year Period of Service, and (B) the first day of the month following his or her attainment of age 21.

(ii) An Eligible Folger Employee who is a member of the Professional or Other Staff will become a Folger Participant as of the first payroll period for which a Contribution Agreement is in effect, which may be any payroll period that the Employee elects which begins after the first day of the month following the later of his or her completion of a Two-Year Period of Service and the attainment of age 21.

**3.2. Duration of participation.** An individual who has become a Participant under the Plan will remain a Participant for as long as an Annuity Contract is maintained under the Plan for his or her benefit, or until his or her death, if earlier. Notwithstanding the preceding sentence, no employer contributions shall be made with respect to a Participant who has not satisfied the eligibility requirements of Section 3.1(b).

**3.3. Reclassification of Employment Status.** Notwithstanding anything herein to the contrary, an individual who is not characterized or treated by Amherst or Folger as a common law employee of Amherst or Folger shall not be eligible to receive contributions under Articles V or VI. However, in the event that such an individual is reclassified or deemed to be reclassified as a common law employee of Amherst or Folger, such Employee (a) will become a Participant in accordance with Section 4.1, and unless such Employee elects otherwise, shall be deemed to have entered into a Deemed Contribution Agreement in accordance with Section 4.2(b); and (b) contributions under Articles V or VI shall be made on the Employee’s behalf as of the actual date on which such reclassification occurs (to the extent such individual otherwise satisfied the eligibility requirements set forth in Section 3.1(b)). 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 Core Contributions or Matching Contributions are made retroactively to the effective date of such reclassification.

**3.4. Continued Contributions for Participants Receiving Long Term Disability.**

While employed by Amherst and/or Folger, Amherst will continue to make contributions (i.e., Elective Contributions, Matching Contributions and Core Contributions) on behalf of any Participant receiving long-term disability benefits under the long-term disability plan maintained by Amherst and/or Folger. Following severance of employment, Amherst and/or Folger will continue to make Core Contributions on behalf of any Participant receiving long-term disability benefits under the long-term disability plan maintained by Amherst and/or Folger for five years following the date on which the Participant's employment severed.

**ARTICLE IV**

**EMPLOYEE DEFERRALS**

**4.1. Elective Contributions.** For each payroll period during which a Contribution Agreement is in effect or deemed to be in effect pursuant to Section 4.2, Amherst will contribute on behalf of an Amherst Participant and Folger will contribute on behalf of a Folger Participant, as applicable, (i) the amount specified in the Contribution Agreement, or (ii) for purposes of a Deemed Contribution Agreement, 3% of the Participant's Regular Salary.

(a) Elective Contributions may be made on a pre-tax basis, a Roth basis, or a combination of pre-tax and Roth.

(b) Absent any written direction by a Participant in accordance with procedures established by the Administrator, Elective Contributions shall be made to the RC Plus Annuity Contracts.

(c) In the event a Participant wishes to elect Roth Contributions, such election shall irrevocably designate the Roth Contributions as such at the time the election is made. The amount of any Roth Contribution shall be treated as includable in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made an election to make the Roth Contribution. Contributions and withdrawals of Roth Contributions shall be credited and debited to the Roth Contribution source account maintained for each Participant. The Plan will maintain a record of the amount of Roth Contributions with respect to each Participant and gains, losses and other credits or charges shall be separately allocated on a reasonable and consistent basis to each Participant's Roth Contribution source account and the Participant's other accounts under the Plan. No contributions other than Roth Contributions and properly attributable earnings will be credited to each Participant's Roth Contribution source account. Unless specifically stated otherwise, Roth Contributions will be treated as Elective Contributions for all purposes under the Plan.

(d) Anything herein to the contrary notwithstanding and as further described in Article XI, Elective Contributions for any year may not exceed the limitations

specified in Code section 402(g)(1)(B) or 415(c)(1), except as permitted by Code section 402(g)(7) or 414(v).

#### **4.2. Contribution Agreement.**

(a) To the extent that Elective Contributions are to be made by an Amherst Participant or Folger Participant, the Contribution Agreement shall:

(i) be in a form (which may be electronic if permitted by the Administrator) prescribed or approved by the Administrator, and made by the Participant before amounts are paid with respect to which the Agreement is to be effective;

(ii) provide for a reduction in the Regular Salary paid to the Participant by Amherst or Folger, as applicable, in exchange for the contribution of a like amount by Amherst or Folger to the Plan on behalf of the Participant;

(iii) specify the amount of Elective Contributions to be made on a pre-tax or Roth basis, as applicable;

(iv) be binding upon the Participant with respect to Regular Salary payable while it is in effect;

(v) be terminable as to salary reduction at any time, with respect to Regular Salary not yet currently available, with any termination effected by filing notice with the Amherst or Folger Office of Human Resources, as applicable (or otherwise permitted by the Administrator);

(vi) not require an amount of contribution which would exceed the Participant's maximum "annual additions" under Code section 415, which is hereby incorporated by reference into the Plan;

(vii) not permit an aggregate amount of Elective Contributions which, when added to elective deferrals made on the Participant's behalf under any other 403(b) program available at Amherst or Folger for a Participant's taxable year, exceeds \$18,000 (for 2017, or such higher limit as may be in effect for the year under Code section 402(g), including additional amounts under Code section 402(g)(7), if available) plus any so-called "catch-up" contributions available for Participants who have attained age 50 as permitted under the Code section 414(v); and

(viii) apply only to Regular Salary payable after the Agreement is in effect.

A Participant may change his or her Contribution Agreement at such time or times and with such prior notice as the Administrator may determine. Subject to this Section 4.2, a completed Contribution Agreement must be filed with the Amherst or Folger Office of Human

Resources, by such time or times as the Administrator may determine and communicate to Participants, before the payroll is run for the period for which it is to become effective.

(b) Notwithstanding any Plan provision to the contrary, the following automatic enrollment provisions shall apply:

(i) Notwithstanding Section 4.2(a) above, an Amherst Employee or Folger Employee who is hired on or after February 1, 2018, and who does not enter into a Contribution Agreement by the administrative deadline established by the Administrator, shall be deemed to have entered into a Deemed Contribution Agreement to make an Elective Contribution for each pay period in an amount equal to 3% of his or her Regular Salary, effective as of the first day of the month next following the Employee's completion of thirty (30) days of service beginning on the Employee's date of hire.

(ii) Elective Contributions made pursuant to Section 4.2(b)(i) will be made on a pre-tax salary reduction basis until such time as the Participant makes an election in accordance with the Section 4.2(a).

(iii) At anytime following the date the Participant is deemed to have entered a Deemed Contribution Agreement pursuant to 4.2(b)(i), such Participant may choose to not to have his or her Regular Salary reduced or reduced in a different percentage amount by filing a Contribution Agreement with the Administrator in accordance with Section 4.2(a).

## ARTICLE V

### AMHERST CONTRIBUTIONS ON BEHALF OF AMHERST PARTICIPANTS

**5.1. Amherst Core Contributions.** On behalf of each Amherst Participant who has satisfied the eligibility requirement set forth in Section 3.1(b)(i) (and subject to Section 5.3 below in the case of casual employees), Amherst will contribute a Core Contribution equal to 6.8% of the Participant's Regular Salary that is not in excess of the Integration Level, and 9% of any Regular Salary that is in excess of the Integration Level. Core Contributions shall be subject to any limits that Amherst may impose in order to allow the Plan to satisfy the nondiscrimination rules of Code section 403(b)(12)(i) and shall be made with respect to Regular Salary payable after the individual has fulfilled the eligibility requirements set forth in Section 3.1(b)(i). Amherst Core Contributions will be made to the RC only.

**5.2. Amherst Matching Contributions.** On behalf of each Amherst Participant who has satisfied the eligibility requirement set forth in Section 3.1(b)(i) (and subject to Section 5.3 below in the case of casual employees), Amherst will contribute a Matching Contribution in an amount equal to 100% of the Participant's Elective Contributions up to 3% of the Participant's Regular Salary on behalf of the Participant. Amherst Matching Contributions will be made to the RC only.

**5.3. Special Rule for Casual Employees.** An employee who is otherwise an Amherst Participant described in Section 3.1(b)(i) above but who is employed solely as a "casual

employee” shall only receive Amherst Core and/or Amherst Matching Contributions (as applicable) with respect to a Plan Year during which he or she completes at least 500 Hours of Casual Service. An “Hour of Casual Service” shall mean each Hour of Service described in Section 2.32(b)(ii) that is rendered in the capacity as a casual employee. In a Plan Year during which an Amherst Participant switches to (or from) casual employee status from (or to) other status, Amherst Core and/or Amherst Matching Contributions with respect to Regular Salary earned while a casual employee shall be made only if the individual completes at least 500 Hours of Casual Service. If during a Plan Year an Amherst Participant is working *concurrently* as a casual employee and otherwise, neither Amherst Core nor Amherst Matching Contributions shall be made with respect to Hours of Casual Service or the Regular Salary earned with respect to such Hours of Casual Service.

## ARTICLE VI

### FOLGER CONTRIBUTIONS ON BEHALF OF FOLGER PARTICIPANTS

**6.1. Folger Core Contributions for Trustee-Appointed Employees.** On behalf of each Trustee-Appointed Eligible Folger Employee who has satisfied the eligibility requirement set forth in Section 3.1(b)(i) (and subject to Section 6.3 below in the case of casual employees), Folger will contribute a Core Contribution equal to 6% of the Participant’s Regular Salary that is not in excess of the Integration Level, and 9% of any Regular Salary that is in excess of the Integration Level. Core Contributions shall be subject to any limits that Amherst and Folger may impose in order to allow the Plan to satisfy the nondiscrimination rules of Code section 403(b)(12)(i). Folger Core Contributions will be made to RCs only and shall be made with respect to Regular Salary payable after the individual has completed the eligibility requirements set forth in Section 3.1(b)(i).

**6.2. Folger Matching Contributions.**

**(a) Trustee-Appointed Employees.** On behalf of each Trustee-Appointed Folger Participant who has satisfied the eligibility requirements set forth in Section 3.1(b)(i), Folger will contribute a Matching Contribution in an amount equal to 100% of the Participant’s Elective Contributions up to 3% of the Participant’s Regular Salary. Matching Contributions will be made to RCs only.

**(b) Professional or Other Staff.** On behalf of each Eligible Folger Employee who is a Professional or Other Staff Employee who has satisfied the eligibility requirements set forth in Section 3.1(b)(ii) and for whom Elective Contributions in amount equal to at least 3% of such Participant’s Regular Salary are made for a payroll period, Folger will contribute on behalf of such Participant a Matching Contribution equal to 9% of the Participant’s Regular Salary that is not in excess of the Integration Level and 12% of any Regular Salary that is in excess of the Integration Level. Such contributions shall be made to RCs only and shall be based on Regular Salary payable after the individual has fulfilled the eligibility requirements set forth in Section 3.1(b)(ii).

**6.3. Special Rule for Casual Employees.** An Employee who is otherwise a Folger Participant described in Section 6.2(b) above but who is employed solely as a “casual employee”

shall only receive Folger Matching Contributions with respect to a Plan Year during which he or she completes at least 500 Hours of Casual Service (as defined in Section 5.3 above). In a Plan Year during which a Folger Participant switches to (or from) casual employee status from (or to) other status, Folger Matching Contributions with respect to Regular Salary earned while a casual employee shall be made only if the individual completes at least 500 Hours of Casual Service. If during a Plan Year a Folger Participant is working *concurrently* as a casual employee and otherwise, Folger Matching Contributions shall not be made with respect to Hours of Casual Service or the related Regular Salary.

## ARTICLE VII

### ROLLOVERS, VESTING AND INVESTMENT

#### 7.1. Rollovers.

(a) **Eligible Rollover Contributions.** A Participant may make a rollover contribution to the Plan, or cause a direct rollover to the Plan, from another plan described in Code section 401(a), 403(a), or 403(b), from a plan described in Code section 457(b) that is maintained by a state or political subdivision or any agency or instrumentality of a state or political subdivision, or from an individual retirement account or annuity described in Code section 408, upon a demonstration satisfactory to the Administrator that the amounts are eligible for rollover to the Plan under the Code. The Administrator may limit the Annuity Contracts or Custodial Accounts to which amounts may be contributed or the types of rollovers that will be accepted by the Plan. Separate accounts shall be established and maintained for the Participant for any rollover contribution paid to the Plan.

(b) **Roth Rollovers.** A rollover contribution received under Section 7.1(a) above may be transferred to a Participant's Roth Contribution source account in accordance with section 402A(c)(3) of the Code. The Administrator will maintain such records as are necessary for the proper reporting of Roth rollovers.

#### 7.2. Plan-to-Plan Transfers to the Plan.

(a) At the direction of Amherst or Folger, for a class of Employees who are participants or beneficiaries in another plan under Code section 403(b), the Administrator may accept a transfer of assets to the Plan, provided that:

- (i) the transferor plan provides for direct transfers of assets;
- (ii) the Participant is an Employee or former Employee;
- (iii) the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to the Participant or Beneficiary immediately before the transfer; and

(iv) the transferred amounts are subject to statutory restrictions on distributions that are not less stringent than those imposed under the transferor plan.

(b) Amherst or Folger and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. Amherst or Folger 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 Treasury regulation section 1.403(b)-10(b)(3) and to confirm that the other plan involved in the transfer satisfies Code section 403(b). The transferred amount shall not be considered a contribution under the Plan in determining the maximum deferral under Section 4.1.

**7.3. Timing of Contributions.** In accordance with Department of Labor Regulation section 2510.3-102, Elective Contributions will be paid in cash to the Annuity Contract issuer or Custodial Account Custodian as soon after the applicable pay period that such contributions can reasonably be segregated from the general assets of Amherst or Folger, as applicable, but in any event no later than the 15th business day of the month following the month in which the Regular Salary to which such contributions relate is paid. In accordance with Department of Treasury Regulation section 1.415-6(b)(7)(ii), Core Contributions and Matching Contributions for a Plan Year will be contributed in cash to the Annuity Contract issuer with such frequency as Amherst or Folger (as applicable) 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 Amherst's and Folger's fiscal year with or within which the Plan Year ends. In accordance with section 302(c) of ERISA, all contributions for a Plan Year will be contributed no later than 8½ months following the close of the Plan Year.

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

**7.5. Investment Options.**

(a) The Plan is intended to be a plan described in section 404(c) of ERISA and title 29 of the Code of Federal Regulations section 2550.404c-1. Each Participant shall have the opportunity, at least once in any 3-month period, to give investment instructions to the Administrator or the Amherst or Folger Office of Human Resources (applicable) or its delegate (with an opportunity to obtain written confirmation of such instructions) as to the investment of contributions made on his or her behalf among such Annuity Contracts (and investment options under such Annuity Contracts) as the Administrator may make available from time to time. The Administrator or its delegate shall be obligated to comply with such instructions except as otherwise provided in the ERISA section 404(c) regulations. The Administrator or its delegate shall prescribe the form and manner in which such directions shall be made, as well as the frequency with which such directions may be made or changed, and the dates as of which they shall be effective, in a manner consistent with the foregoing. Absent any direction by a Participant, all contributions on his or her behalf shall be made to the Plan's qualified default investment alternative. The Administrator or its delegate shall designate the

qualified default investment alternative in accordance with applicable DOL regulations unless and until changed by the Administrator or its delegate. The Administrator shall be the fiduciary identified to furnish the information contemplated by ERISA section 404(c), but may designate another person or entity to provide such information on its behalf.

(b) To the extent permitted by an Annuity Contract issuer (or Custodial Account custodian), a Participant may, in his or her discretion, appoint an “investment manager” as defined in ERISA section 3(38) (other than an employee, officer or trustee of Amherst) to give investment instructions on the Participant’s behalf; provided, that no amounts held in an Annuity Contract be used to pay in whole or part any fees owed to such investment manager; and further provided, that no person or entity who is otherwise a fiduciary with respect to the Plan (other than the investment manager) shall in any way be liable for any loss or by reason of any breach of duty resulting from the appointment of such agent and the investment directions made pursuant to such appointment.

(c) The Administrator shall promulgate such rules and procedures and provide Participants (or cause to be provided to Participants) such information with respect to the investment options offered under the Plan, not inconsistent with the express provisions of this Section, as it deems necessary or advisable for purposes of satisfying the applicable requirements of ERISA section 404(c) and its regulations. All such rules and procedures, identifications and information shall be deemed to be part of the Plan for purposes of DOL regulation section 2550.404c-1.

#### **7.6. Annuity Contract and Custodial Account Exchanges Among Separate Vendors Under the Plan.**

(a) To the extent permitted by the Administrator, a Participant may change the investment of his or her Annuity Contracts and Custodial Accounts among the Vendors, subject to the terms of the Annuity Contracts or Custodial Account agreements. However, an investment change that includes an investment with a Vendor that is not eligible to receive further Elective Contributions, Core Contributions and Matching Contributions under the Plan (referred to below as an exchange) is not permitted unless the conditions in paragraphs (b) through (d) of this Section 7.6 are satisfied.

(b) The Participant must have an accumulation under the Plan immediately after the exchange that is at least equal to the accumulation under the Plan of that Participant immediately before the exchange (taking into account the accumulation of that Participant under all Annuity Contracts and Custodial Accounts immediately before the exchange).

(c) The Annuity Contract or Custodial Account 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) Amherst enters into an agreement with the receiving Vendor under which Amherst or Folger and the Vendor will from time to time in the future provide each other with the following information:

(i) Information necessary for the receiving Annuity Contract, to satisfy section 403(b) of the Code, including the following: (1) the Administrator providing information as to whether the Participant's employment with Amherst or Folger is continuing, and notifying the Vendor when the Participant has had a severance from employment; (2) the Vendor notifying the Administrator of any hardship withdrawal under Section 8.3 if the withdrawal results in a 6-month suspension of the Participant's right to make Contributions under the Plan; and (3) the Vendor providing information to the Administrator or other Vendors concerning the Participant's Annuity Contracts or qualified employer plan benefits (to enable a Vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Section 8.3); and

(ii) Information necessary in order for the receiving Annuity Contract to satisfy other tax requirements, including the following: (1) the amount of any plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional plan loan satisfies the loan limitations of Section 8.2, so that any such additional loan is not a deemed distribution under Code section 72(p)(1); and (2) information concerning the Participant's after-tax employee contributions in order for a Vendor to determine the extent to which a distribution is includible in gross income.

(e) If any Vendor ceases to be eligible to receive additional Elective Contributions, Core Contributions and Matching Contributions under the Plan, Amherst or Folger (or the Administrator) will enter into an information sharing agreement as described in Section 7.6(d) to the extent the Annuity Contract or Custodial Account Agreement with the Vendor does not provide for the exchange of information described in Section 7.6(d).

**7.7. Current and Former Vendors.** The Administrator shall maintain a list of all Vendors. Such list is hereby incorporated as part of the Plan at Schedule B. 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 contributions under the Plan (including a Vendor which has ceased to be a vendor eligible to receive additional Elective Contributions, Core Contributions and Matching Contributions under the Plan and a vendor holding assets under the Plan in accordance with Section 7.2 or 7.5), the Administrator 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.

**7.8. Return of Contributions.** If any contribution by Amherst or Folger is made by reason of good faith mistake or fact, the Annuity Contract issuer or Custodial Account custodian shall, upon request by Amherst or Folger, as applicable, return the excess of the amount contributed over the amount, if any, that would have been contributed had there not occurred a mistake of fact. In no event shall the return of a contribution hereunder cause the amount of contributions made on behalf of a Participant to be reduced to less than it would have been had

the mistaken or nondeductible amount not been contributed. No return of a contribution hereunder shall be made more than one year after the mistaken payment of the contribution.

## ARTICLE VIII

### IN-SERVICE WITHDRAWALS PRIOR TO SEPARATION FROM SERVICE

**8.1. In General.** Except as provided in this Article VIII, withdrawals are not permitted prior to the severance of employment with Amherst and Folger.

**8.2. Loans.** To the extent permitted by an Annuity Contract and by Code section 72(p) and the regulations thereunder, and subject to Section 8.8, a Participant (including for the avoidance of doubt, a Participant who is no longer employed at Amherst or Folger) may borrow against his or her interest in the Annuity Contract allocable to Employee Basic Contributions, Elective Contributions and Rollover Contributions (and related income), provided, however, that such Participant may not borrow against Elective Contributions and Rollover Contributions (and related income) allocable to the Participant's Roth Contribution source account. Loans from an Annuity Contract will be made only in accordance with the terms of such contract or Custodial Account agreement, and only in the event that:

(a) the loans (i) are available to all Participants on a reasonably equivalent basis, (ii) 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(c)), greater than the amount made available to other employees, (iii) are made in accordance with specific written procedures, (iv) bear a reasonable rate of interest, (v) are adequately secured, (vi) 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; and

(b) the loan amount does not exceed the lesser of (i) 50% of the Participant's account balance under the Plan, or (ii) \$50,000 (reduced by the highest outstanding loan balance during the year which ends on the date before the loan is made), provided, however, that no loans of less than \$1,000 will be made.

The Administrator shall 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. In addition, the Annuity Contract from which a loan is made may contain additional rules and procedures consistent with this Section. All such rules and procedures shall be deemed a part of the Plan for purposes of Department of Labor Regulation section 2550.408b-1(d). Each Vendor 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 8.2(b), including the collection of 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 Amherst or Folger.

### **8.3. Hardship Withdrawals.**

**(a) Immediate and Heavy Financial Need.** To the extent permitted by an Annuity Contract, and subject to Section 8.8, a Participant may make a withdrawal of his or her Elective Contributions (excluding any income attributable to such Contributions which is allocated after December 31, 1988) in the event of an immediate and heavy financial need arising from:

- (i) Expenses for (or necessary to obtain) medical care that would be deductible under Code section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income, but including such care for a primary beneficiary);
- (ii) costs directly related to the purchase of a principal residence of the Participant (excluding mortgage payments);
- (iii) the payment of tuition, 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 and without regard to subsections 152(b)(1), (b)(2), and (d)(1)(B));
- (iv) payments necessary to prevent the eviction of the Participant from his or her principal residence or foreclosure on the mortgage on that principal residence;
- (v) payments for burial or funeral expenses for the employee's deceased parents, spouse, primary beneficiary, children or dependents (as defined in Code section 152, and without regard to subsection 152(d)(1)(B)); or
- (vi) expenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under Code section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

The Administrator may require documentation to support a Participant's assertion of a financial hardship. For purposes of this Section 8.3(a), a "primary beneficiary" with respect to a Participant is an individual who is named as a Beneficiary under the plan and has an unconditional right to all or a portion of the Participant's Annuity Contract upon the death of the Participant.

### **(b) Distribution of Amount Necessary to Meet Need.**

- (i) As soon as practicable after the determination by the Office of Human Resources that an immediate and heavy financial need exists with respect to the Participant, and

(ii) all other distributions and nontaxable loans currently available under the Plan and all other plans maintained by Amherst have been made, the Office of Human Resources will direct the Annuity Contract issuer to pay to the Participant the amount necessary to meet the need created by the hardship, not in excess of the amount available for withdrawal as described in paragraph (a) above, up to 99% of the value of the Participant's interest in the Annuity Contract from which the withdrawal is to be made pro rata from Rollover Contributions, if any, and Elective 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.

(c) **Effect of Hardship Distribution.** If a Participant receives a hardship distribution under this Section, then any Contribution Agreement shall be suspended for 6 months, beginning with the pay period after the hardship withdrawal is approved.

(d) Annuity Contracts and Custodial Agreements shall provide for the exchange of information among the Administrator and the Vendors to the extent necessary to implement the Annuity Contracts and the Custodial Account Agreements, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Participant's financial need (pursuant to section 1.401(k) 1(d)(3)(iv)(E) of the Treasury regulations), the Vendor notifying the Administrator of the withdrawal in order for the Administrator to implement the resulting 6-month suspension of the Participant's right to make Contributions under the Plan.

**8.4. Withdrawals on Account of Disability.** To the extent permitted by an Annuity Contract or Custodial Account and subject to Section 8.8, a Participant who becomes disabled (within the meaning of Code section 72(m)(7)) but who has not otherwise severed from employment with Amherst or Folger may withdraw any amounts held under such Annuity Contract or Custodial Account for his or her benefit, but with such prior notice as the Administrator may prescribe, and subject to such conditions and restrictions as may be imposed under the applicable Annuity Contract or Custodial Agreement.

**8.5. Attainment of Age 59 ½.** To the extent permitted by an Annuity Contract or Custodial Account and subject to Section 8.8, a Participant who is still employed by Amherst or Folger and who has attained the age of 59 ½ may (a) withdraw amounts attributable to his or her Rollover Contributions or Elective Contributions held under or held therein for his or her benefit and (b) only with respect to a TIAA RA contract issued prior to 2003, annuitize amounts attributable to his or her Core Contributions, Matching Contributions, Rollover Contributions or Elective Contributions held under or held therein for his or her benefit.

**8.6. Attainment of Age 65.** To the extent permitted by an Annuity Contract or Custodial Account and subject to Section 8.8, a Participant who is employed at Amherst or Folger solely as a "casual employee" and who has attained the age of 65 (including a Participant who has switched classification to casual employee) may withdraw any amounts held under such Annuity Contract or Custodial Account for his or her benefit.

**8.7. Phased Retirement.** A Participant who has agreed to the terms of and is participating in Amherst's Phased Retirement Program may receive distributions from amounts held under an Annuity Contract or Custodial Account, after the attainment of age 65 in accordance with the terms of such Annuity Contracts or Custodial Account.

**8.8. Spousal Consent.** No in-service withdrawal or loan may be made to a Participant who is married on the date of such withdrawal or loan unless the Participant's spouse consents thereto within 90 days prior to such withdrawal or loan. Such consent must be made in the same manner as provided under Section 9.1(b)(iii) below for distributions after separation from service.

**8.9. Elective Deferrals Made prior to 1989.** To the extent permitted by an Annuity Contract or Custodial Account and subject to Section 8.8, a Participant who is still employed by Amherst or Folger may withdraw amounts attributable to his or her Elective Contributions made prior to 1989.

**8.10. Qualified Reservist Distributions.** To the extent permitted by an Annuity Contract or Custodial Agreement, a Participant who qualifies for a "qualified reservist distribution" within the meaning of Code section 72(t)(2)(G) may obtain such a distribution.

## ARTICLE IX

### DISTRIBUTIONS AFTER SEPARATION FROM SERVICE

**9.1. Severance from Employment other than Death.** In the case of a Participant's severance from employment with Amherst or Folger for reasons other than death, amounts held in an Annuity Contract for the Participant will be paid in accordance with this Section 9.1, subject to the statutory distribution rules under Section 9.3.

(a) **Participants who are not Married on their Annuity Starting Date.** A Participant who is not married on his or her Annuity Starting Date shall be entitled to elect to receive distributions from his or her Annuity Contracts 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.

(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 (for reasons other than death) from Amherst or Folger will be made as provided in Section 9.1(a) above, subject, however, to the following additional rules:

(i) In the case of a Participant whose total balances under the Plan exceed \$5,000, or such larger limits 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 unless waived as further provided below. 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. If the Annuity Contract does not specify the survivor percentage under the qualified joint and survivor annuity, such percentage shall be 50%.

(ii) 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 as described in Section 9.1(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 (iii), subject to the notice requirements of Section 9.3. Any such election must be executed and filed during the 90 day period ending on the Annuity Starting Date, or such shorter period permitted by the Section 9.3(c).

(iii) 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 a notary public or Plan representative. 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.

**9.2. Time of Distributions.** Distribution with respect to a Participant's severance from employment normally will be made as soon as practicable after such severance and completion of any necessary forms required by the Administrator. In the case of a Participant who has not yet attained age 65, however, distribution may not be made unless:

(a) the Participant has received the written notice described in Section 9.3(a);  
and

(b) the Participant consents to the distribution in writing after the above-described notice has been provided to him or her and files such consent with the Administrator.

**9.3. Notice Requirements.**

(a) **General Notice.** The Administrator shall provide (or cause the Annuity Contract issuer or the Custodial Account custodian to provide) each Participant with a written general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit and the automatic forms of benefit as well as satisfy the requirements of Department of Treasury regulation section 1.401(a)-20 (to the

extent applicable). If the Participant has not yet attained age 65, the notice shall also inform the Participant of his or her right to defer payment of benefits until the earlier of (i) the date he or she consents to payment and (ii) the date he or she attains age 65. This general notice shall be provided no more than 90 days and no less than 30 days (subject to Section 9.3(c) below) before the Participant's Annuity Starting Date.

**(b) Joint and Survivor Annuity Notice.** The Administrator shall also provide (or cause the Annuity Contract issuer or the Custodial Account custodian to provide) to each married Participant who is eligible to receive benefits under the Plan a written explanation in non-technical language of the terms and conditions of the 50% joint and survivor annuity, the Participant's right to make and the effect of an election not to receive benefits in such form, the rights of the Participant's spouse with respect to receiving benefits as a 50% joint and survivor annuity, and the right to revoke and the effect of a revocation of an election not to receive benefits in the form of a joint and survivor annuity. The written explanation shall also include a general explanation of the relative financial effect on the Participant's benefit of electing the 50% joint and survivor annuity and any other information required by Department of Treasury regulation section 1.401(a)-20 (to the extent applicable). This explanation shall be provided no more than 90 days and no less than 30 days (subject to Section 9.3(c) below) prior to the Participant's Annuity Starting Date.

**(c) Expedited Notice Procedures.** Notwithstanding any provision of the Plan to the contrary, the Annuity Starting Date may be at any time more than 7 days after the written notification under Section 9.3(a) and (if required) under Section 9.3(b) is distributed to a Participant, provided that:

(i) The Administrator provides (or causes the Annuity Contract issuer or the Custodial Account custodian to provide) information to the Participant clearly indicating that the Participant has a right to at least 30 days to consider whether to waive the Plan's automatic forms of payment and consent to a form of distribution other than the automatic form of payment.

(ii) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the 7-day period that begins after the written explanation is provided to the Participant.

(iii) Distribution in accordance with the Participant's affirmative election does not commence before the expiration of the 7-day period that begins on the day after the written explanation is distributed to the Participant.

**9.4. Death Benefits.** Benefits payable upon the death of a Participant will be paid only as provided in this Section 9.4, subject to the statutory distribution rules described in Section 9.5.

**(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 for his or her benefit will be paid to the Beneficiary. Distribution will be made in the form or forms as provided in such Annuity Contract.

**(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, 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 the Participant's Annuity Contracts as may be specified in such Annuity Contracts. In the event that no such percentage is specified in any particular Annuity Contract, the percentage shall be 50%. Any portion of an Annuity Contract not payable to the Participant's surviving spouse as provided in this paragraph will be paid to the Participant's Beneficiary. The form of distribution available to a nonspouse Beneficiary, and any optional forms available to a surviving spouse, will be as provided in the particular Annuity Contract(s) in which contributions made on behalf of the Participant are held.

**(c) Waiver of Spousal Survivor Benefit.** To the extent provided in his or her Annuity Contract, a married Participant may waive the preretirement death benefit for his or her surviving spouse described in paragraph (b) 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 (or at such other earlier time that may be permitted by regulation or administrative authority) 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 9.1(b)(iii) above.

**(d) Information.** The Administrator shall provide to all Participants (or cause the Annuity Contract issuer or Custodial Account custodian to provide) a written explanation of the qualified preretirement survivor annuity, the Participant's right to waive the qualified preretirement survivor annuity, the rights of the Participant's spouse with respect to receiving a qualified preretirement survivor annuity, the right to make and the effect of a revocation of such waiver, and such other information as may be required by Treasury regulation section 1.401(a)-20 (to the extent applicable). The written explanation shall be provided before the later of:

- (i) the period beginning with the first day of the Plan Year in which a Participant reaches age 32 and ending with the end of the Plan Year preceding the Plan Year in which he or she reaches age 35, or
- (ii) one year after the individual becomes a Plan Participant.

In the case of a Participant who severs his or her employment before age 35, the explanation shall be provided during the period beginning one year before severance from employment and ending one year after severance from

employment. If the Participant is rehired an explanation shall again be provided during the later of the periods described in (i) and (ii) above.

(e) **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 already in effect with respect to the Participant.

(f) **Beneficiary Designation.** A Participant may designate a Beneficiary to receive benefits following his or her death by completing a form approved and received by the Administrator/Office of Human Resources (or as may otherwise be specified in a Custodial Account, Annuity Contract, or recordkeeping agreement between Amherst and a Vendor). In the event that there is no valid beneficiary designation on file as of the Participant's death, any amounts otherwise payable to a beneficiary shall be paid to the Participant's estate.

#### **9.5. Statutory Distribution Rules.**

(a) Small account balances. This Plan does not require immediate cash out of balances under \$5,000. A Participant whose balances under the Plan exceed \$5,000, or such larger limits as may be in effect under ERISA section 205, may not have his or her balances immediately distributed without his or her consent provided in a manner consistent with ERISA section 205.

(b) Minimum required distributions: In general. The Plan shall comply with the minimum distribution requirements of Code section 401(a)(9) and the Treasury regulations thereunder, in accordance with the terms governing each Annuity Contract or Custodial Agreement, unless and to the extent otherwise permitted by law and in regulations or other rules of general applicability published by the Department of Treasury or the Internal Revenue Service. For purposes of applying the distribution rules of Code section 401(a)(9), each Annuity Contract or Custodial Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Treasury regulation section 1.408-8, except as provided in Treasury regulation section 1.403(b)-6(e).

#### **9.6. Optional Direct Transfer of Eligible Rollover Distributions.**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least \$500 paid directly to an Eligible Retirement Plan specified by the Distributee in a direct rollover. If an Eligible Rollover Distribution is less than \$500, a Distributee may not make the election described in the preceding sentence to roll over only a portion of the Eligible Rollover Distribution.

(b) For purposes of this Section 9.6(b), the following terms shall have the following definitions:

(i) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a period of 10 years or more;

(B) any distribution to the extent such distribution is required under Code section 401(a)(9) (other than amounts that would have been required but for a statutory waiver of the section 401(a)(9) requirements)

(C) any hardship withdrawal;

(D) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities);

(E) any distribution(s) that is reasonably expected to total less than \$200 during a year;

(F) any corrective distribution of excess amounts under Code section 402(g), 401(k), 401(m) and/or 415(c) and income allocable thereto;

(G) any loans that are treated as deemed distributions pursuant to Code section 72(p);

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

(ii) Eligible Retirement Plan. An Eligible Retirement Plan is a qualified plan described in Code section 401(a), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), an individual retirement account or annuity described in Code section 408(a) or 408(b), a Roth IRA described in Code section 408A or an eligible plan under Code section 457(b) which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state

and which agrees to separately account for amount transferred into such plan from this Plan, that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code section 414(q). If the Distributee is a nonspouse beneficiary within the meaning of Code section 402(c)(11), an Eligible Retirement Plan shall mean only an individual account or annuity described in Code section 408(a) or 408(b) that is established on behalf of the Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11).

(c) Distributee. A Distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p), are Distributees with regard to the interest of the spouse or former spouse. A Distributee also includes a nonspouse beneficiary within the meaning of Code section 402(c)(11). In this case, the determination of any required minimum distribution under Code section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A-17 and 18, 2007 I.R.B. 395.

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

(a) At the direction of the Employer, the Administrator may permit a class of Participants to elect to have all or any portion of their Annuity Contracts or Custodial Accounts transferred to another plan if:

(i) The Participant is an employee or former employee of the employer providing the receiving plan;

(ii) 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; and

(iii) The transferred amounts are subject to statutory restrictions on distributions that are not less stringent than those imposed under this Plan.

(b) The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with the requirements of Treasury regulation section 1.403(b)-10(b)(3) and to confirm that any other plan involved in the transfer satisfies Code section 403(b). Upon the transfer of assets under this Section 7.6, the Plan's liability to pay benefits to the Participant under this Plan shall be discharged to the extent of the amount so transferred for the Participant.

## ARTICLE X

### ADMINISTRATION

**10.1. Named Fiduciary.** The Administrator will be a “named fiduciary” for purposes of section 402(a)(2) of ERISA with authority to control and manage the operation and administration of the Plan.

**10.2. Reporting and Disclosure.** Amherst will be responsible, among other things, for complying with the reporting and disclosure requirements of ERISA.

**10.3. Withholding of Tax.** Any distribution under the Plan will in all events be subject to such tax and other withholdings as may be required by the Code and applicable regulations.

**10.4. Examination of Records.** The Amherst Office of Human Resources or Folger Office of Human Resources, as applicable, will make available to each Participant such of its records as pertain to him or her, for examination at reasonable times during normal business hours.

**10.5. Reliance on Tables, etc.** In administering the Plan, the Administrator and Amherst will be entitled to the extent permitted by law to rely conclusively on all tables, valuations, certificates, opinions and reports which are furnished by an actuary, accountant, trustee, counsel or other expert who is employed or engaged by Amherst.

**10.6. Powers and Responsibilities of the Administrator.** The Administrator (and the Amherst Office of Human Resources to the extent discretionary powers are delegated to such office) will have discretionary authority to administer the Plan in all of its details, subject, however, to the requirements of ERISA. For this purpose the Administrator’s (and, to the extent applicable, the Amherst Office of Human Resources) discretionary powers will include, but not be limited to, the following authority:

- (a) to make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan;
- (b) to interpret the Plan;
- (c) to decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (d) to decide which Annuity Contracts (and underlying investment options) will be available for contribution and investment, from time to time;
- (e) to authorize the payment of benefits;
- (f) to keep such records and submit such filings, elections, applications, returns or other documents or forms as may be required under the Code and applicable regulations, or under other federal, state or local law and regulations;

(g) to appoint such agents, counsel, accountants, consultants, and actuaries as it deems necessary to assist in administering the Plan; and

(h) to allocate and delegate its fiduciary responsibilities under the Plan, any such allocation or delegation to be by written instrument and in accordance with ERISA section 405.

**10.7. Effect of Interpretation or Determination.** 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 such interpretation or other determination was made arbitrarily and capriciously.

**10.8. Expenses of Administration.** All expenses of administering the Plan, to the extent reasonable and appropriate as determined by the Administrator or Amherst shall be borne by the Plan, either directly from individual Annuity Contracts, or from an account established for such purpose by the Annuity Contract issuer or custodian in the nature of “revenue sharing” or similar deposits of asset management fees in excess of a negotiated amount as also determined by the Administrator or Amherst. Notwithstanding the foregoing, Amherst in its sole discretion may, but is under no obligation to, itself pay any administrative expense, provided that the payment of any such expenses shall not relieve the Plan of its obligation to pay other such expenses.

**10.9. Indemnification of Administrator and Assistants.** Amherst agrees to indemnify and defend to the fullest extent permitted by law any current or former Amherst or Folger Employee, Officer or Trustee who serves as the Administrator or as a member of a committee appointed to serve as Administrator, or who assists the Administrator in administering the Plan (including any such individual who formerly served in any such capacity) against all liabilities, damages, costs and expenses (including attorneys’ fees and amounts paid in settlement of any claims approved by Amherst) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

**10.10. Claims and Review Procedures.** The Administrator shall establish and communicate to Participants procedures for the filing and review of benefits claims pursuant to ERISA section 503.

## ARTICLE XI

### CERTAIN LIMITS ON CONTRIBUTIONS

#### 11.1. Excess Deferrals under Code Section 402(g).

(a) **In General.** The Plan does not permit Elective Contributions in excess of the limits on elective deferrals under Code section 402(g) for any particular year. If the Elective Contributions on behalf of a Participant for any calendar year exceed the limitations described in Section 4.1, or the Contributions on behalf of a Participant for any calendar year exceed the limitations described in Section 4.1 when combined with other amounts deferred by the Participant under another plan of Amherst or Folger under Code section 403(b) (and any other plan that permits elective deferrals under Code

section 402(g) for which the Participant provides information that is accepted by the Administrator), then the Elective Contributions, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto through the end of the applicable calendar year), shall be distributed to the Participant. All distributions of excess deferrals are subject to the terms of the Annuity Contract or Custodial Agreement in which such deferrals are invested.

**(b) Special Section 403(b) Catch-Up Limitation for Employees with 15 Years of Service.** Because Amherst (including Folger, a constituent part of Amherst) is a qualified organization (within the meaning of Treasury Regulation section 1.403(b)-4(c)(3)(ii)), a Participant who is a “qualified Employee” may contribute an additional amount of Elective Contributions equal to the least of:

- (i) \$3,000;
- (ii) The excess of:
  - (A) \$15,000 over
  - (B) The total special 403(b) catch-up Elective Contributions made for the qualified Employee by the qualified organization for prior years; or
- (iii) The excess of:
  - (A) \$5,000 multiplied by the number of Years of Service of the Employee with the qualified organization, over
  - (B) The total Elective Contributions made for the Employee by the qualified organization for prior years.

For purposes of this Section 11.1, a “qualified Employee” means an Employee who has completed at least 15 Years of Service taking into account only employment with Amherst and Folger and “Years of Service” shall have the meaning set forth in Section 2.23 above.

**(c) Age 50 Catch-Up Contributions.** An Employee who is a Participant who has attained or will attain age 50 or more by the end of the Plan Year is permitted to elect an additional amount of Elective Contributions, up to the maximum age 50 catch-up dollar amount limit for the Plan Year. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code sections 402(g) and 415.

**(d) Coordination.** Amounts in excess of the limitation set forth in Section 11.1(a) shall be allocated first to the special 403(b) catch-up under Section 11.1(b) and next as an age 50 catch-up contribution under Section 11.1(c). However, in no event can the amount of the Elective Contributions under the Plan for a year be more than the Participant’s Includible Compensation for the year.

(e) **Special Rule for a Participant Covered by Another Section 403(b) Plan.** For purposes of Section 4.1, if the Participant is or has been a participant in one or more other plans under Code section 403(b) (and any other plan that permits elective deferrals under Code section 402(g)), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitation of Section 4.1.

**11.2. Code Section 401(m) Limits.** Pursuant to Code section 403(b)(12)(A)(i), Amherst Matching Contributions and Folger Matching 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.

(a) **Actual Contribution Ratios.** For each Plan Year, the Administrator will determine the “actual contribution ratio” for each Participant. The actual contribution ratio shall be the ratio, calculated to the nearest one-hundredth of one percent, of (A) the sum of all Matching Contributions and, to the extent elected by the Administrator consistent with Code section 401(m), Core Contributions made on behalf of such Participant for the Plan Year, to (B) such Participant’s 401(m) compensation (as hereinafter defined) for the applicable period. For purposes of determining such Participant’s actual contribution ratio,

(i) Contributions will be taken into account only to the extent permitted by Department of Treasury regulation section 1.401(m)-1(b)(5);

(ii) “A highly compensated Participant” is a Participant who is a highly compensated employee within the meaning of Code section 414(q) and a “nonhighly compensated Participant” is a Participant who is not a highly compensated employee;

(iii) “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 Amherst or Folger 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 agreement with Amherst or Folger under a Code section 125 or 403(b) arrangement, but not including those items excludable from the definition of compensation under Department of Treasury regulations section 1.415-2(d)(2). Amherst may elect another definition of 401(m) compensation to the extent permitted by Code sections 401(m) and 414(s);

(iv) 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;

(v) “catch-up” contributions made pursuant to Code section 414(v) shall not be taken into account.

**(b) Actual Contribution Percentages.** The actual contribution ratios for highly compensated Participants 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 Participants who are nonhighly compensated Participants shall be averaged to determine the actual contribution percentage for the nonhighly compensated group for the current 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:

(i) The actual contribution percentage for the highly compensated group does not exceed 125 percent of the actual contribution percentage for the nonhighly compensated group; or

(ii) The excess of the actual contribution percentage for the highly compensated group over the actual contribution percentage for the nonhighly compensated group 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.

**(c) Adjustments by Administrator.** If, prior to the time all Elective Contributions and Matching 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.

**(d) Qualified Nonelective or Qualified Matching Contributions.** In addition to Employee Matching, and Core Contributions, Amherst 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 Amherst determines, on behalf of (i) all Amherst Participants and/or Folger Participants, (ii) all nonhighly compensated Amherst Participants and/or Folger Participants, or (iii) a specified group of nonhighly compensated Amherst Participants and/or Folger Participants. Any qualified nonelective contributions shall be allocated in proportion to 401(m) compensation for the applicable Plan Year or on such other basis as may satisfy the requirements of sections 401(a)(4) and 410(b). Any qualified matching contributions shall be expressed and allocated as a specified percentage of Elective Contributions for the Plan Year.

**(e) 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 Matching Contributions (and, if applicable, Core Contributions) (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 11.2(b) 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 11.2(e). Elective Contributions and Qualified Nonelective 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.

**(f) Distribution of Excess Aggregate Contributions.** Amherst shall cause a Participant’s excess aggregate contributions, adjusted for income or loss pursuant to Department of Treasury regulation section 1.401(m)-1(e)(3)(ii), to be distributed to the Participant. Distribution will be made from Matching Contributions. 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.

**(g) Recordkeeping Requirement.** The Administrator shall maintain (or cause to be maintained) such records as are necessary to demonstrate compliance with the Code section 401(m) limits.

**11.3. Code Section 415 Limitations.** Code section 415 and the Treasury regulations thereunder are hereby incorporated by reference into the Plan.

**(a) Annual Additions Limit.** A Participant’s annual additions under the Plan for a limitation year shall not exceed the lesser of (i) the dollar limit in effect under Code section 415(c), as adjusted for increases in the cost-of-living under Code section 415(d), or (ii) 100% of the Participant’s Includible Compensation for the limitation year. If annual additions are credited to a Participant under any section 403(b) plans of Amherst or Folger in addition to this Plan for a limitation year, the sum of the Participant’s annual additions for the limitation year under this Plan and such other section 403(b) plans may not exceed the limitation set forth in this Section 11.3(a). If a Participant is in control of any employer for a limitation year, the sum of the Participant’s annual additions for the limitation year under this Plan, any other section 403(b) plans of Amherst and Folger, and any defined contribution plans

maintained by controlled employers may not exceed the limitation set forth in this Section 11.3(a). For purposes of this paragraph, a Participant is in control of an employer based upon the rules of Code sections 414(b), 414(c), and 415(h), and a defined contribution plan means a defined contribution plan that is qualified under Code section 401(a) or 403(a), a section 403(b) plan, or a simplified employee pension within the meaning of Code section 408(k). Contributions to the Participant's Annuity Contracts or Custodial Accounts under this Plan will be reduced to the extent necessary to prevent this limitation from being exceeded, and Amherst and Folger, as applicable, will reduce annual additions under this Plan before reducing annual additions to other plans.

**(b) Correction of excess annual additions.** If a Participant's annual additions exceed the limitation described in Section 11.3(a) above for the limitation year, the Administrator may correct such excess in accordance with the Employee Plans Correction Resolution System (as set forth in Revenue Procedure 2019-19 or such superseding revenue procedure). Alternatively, a Participant's excess annual additions attributable to this Plan may be credited in the year of the excess to a separate account under the Plan for such excess annual additions which will be maintained by the Plan's vendor until the excess annual additions are distributed. This separate account will be treated as a separate contract to which section 403(c) (or another applicable provision of the Code) applies, and the excess annual additions for a taxable year are includible in the Participant's gross income for that taxable year. Amounts in the separate account may be distributed at any time, notwithstanding any other provisions of the Plan.

**(c) Definitions.** For purposes of this Section 4.7,

**(i)** "Annual additions" means the following amounts credited to a Participant under the Plan or any other plan aggregated with the Plan under this Section 11.3: (A) Employer contributions, including elective deferrals (other than age 50 catch up contributions described in Code section 414(v) and excess contributions that have been distributed to the Participant); (B) after-tax employee contributions; (C) forfeitures allocated to the Participant's account; (D) amounts allocated to an individual medical account, as defined in Code section 415(l)(2), which is part of a pension or annuity plan, and amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code section 419A(d)(3), under a welfare benefit fund, as defined in Code section 419(e); and (E) allocations under a simplified employee pension. Amounts described in (A), (B), (C), and (E) are annual additions for purposes of both the dollar limitation under Section 11.3(a) and the percentage of compensation limitation under Section 11.3(a). Amounts described in (D) are annual additions solely for purposes of the dollar limitation under Section 11.3(a).

**(ii)** The "limitation year" shall be the calendar year. However, if the Participant is in control of an employer pursuant to Section 11.3(a) above, the limitation year shall be the limitation year in the defined contribution plan controlled by the Participant.

## ARTICLE XII

### MISCELLANEOUS

#### **12.1. Amendment and Termination.**

(a) Amherst hopes and expects to continue the Plan in effect, but it reserves the right (a) to amend the Plan in any respect and at any time and from time to time (any such amendment to take effect retroactively if Amherst so provides), (b) to merge the Plan into any other plan, and (c) to terminate the Plan (provided that any termination shall comply with Treasury regulation §1.403(b).10(a). Upon termination of the Plan, any nonvested amounts under the Plan will be fully vested, and subject to any restrictions contained in the terms governing the applicable Annuity Contracts and Custodial Accounts, all accounts will be distributed, provided that the Employer and any Affiliated Employer on the date of termination do not make contributions to an alternative 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 Treasury regulations.

(b) Any amendment of the Plan or the termination of the Plan will be set forth in a written instrument signed by the Treasurer or President of Amherst to the extent authorized by the Board of Trustees, or other duly authorized officer. Schedule A hereto shall be amended from time to time by an officer of Amherst or an employee of its Office of Human Resources to reflect any changes in the Integration Amount, which changes will normally be determined by Amherst prior to payroll periods for which the changes are to be effective.

**12.2. 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 Amherst or the Administrator except as 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.

**12.3. Benefits not Alienable.** The benefits provided hereunder will not be subject in any manner to alienation, assignment, garnishment, attachment, execution, or levy of any kind, and any attempt to cause such benefits to be so subjected will not be recognized, except to such extent as may be required by law. However, to the extent provided by a qualified domestic relations order (within the meaning of Code section 414(p) and ERISA section 206(d)) benefits may be paid to an alternate payee from the Participant's Annuity Contracts, or a new Annuity Contract may be established in favor of an alternate payee from a Participant's Annuity Contract, 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 paid to a Participant from an Annuity Contract 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 shall

adopt procedures to determine the qualified status of domestic relations orders, to administer distribution under qualified orders, and to administer any offset of payments pursuant to a judgment, order, decree or settlement.

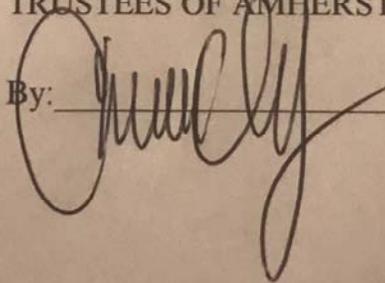
**12.4. Procedure when Distributee Cannot be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on Amherst's or Folger'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.

**12.5. 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). In addition, the survivors of any Participant who dies on or after January 1, 2007, while performing qualified military service, are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan had the Participant resumed employment and then terminated employment on account of death.

**12.6. 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.

IN WITNESS WHEREOF, the Trustees of Amherst College have caused this document to be executed by its duly authorized officer this 30 day of June, 2020.

TRUSTEES OF AMHERST COLLEGE

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


**Schedule A**  
**Integration Level**

<b>For payroll periods falling within the Plan years beginning on or after:</b>	July 1, 2017
<b>An amount equal to:</b>	50% of the federal Social Security Wage Base in effect as of the beginning of the Plan Year.

**Schedule B**

**Current and Former Vendors**

**Current:**

1) TIAA

**Former:**

1) Fidelity (frozen as of 12/01/2011)