

**BOARD OF REGENTS**  
EASTERN MICHIGAN UNIVERSITY

SECTION: 29

DATE:

January 17, 2006

**RECOMMENDATION  
APPROVAL OF MIGRATION TO  
TIAA-CREF OPEN PLAN SOLUTIONS**

**ACTION REQUESTED**

It is recommended that the Board of Regents approve the TIAA-CREF Open Plan Solutions Record Keeping Services Agreement and Custodial Account Agreements for Eastern Michigan University's defined contribution retirement plan, tax-deferred annuity plan, and 457(b) deferred compensation plan.

**STAFF SUMMARY**

TIAA-CREF's Open Plan Solutions is a new administrative platform, which will facilitate the implementation of new administrative and enrollment services; the offering of individual objective advice; and an expansion of the plans' fund offering.

Streamlined plan management will allow the University to automatically enroll participants into the retirement plan without having to complete an application. It will also provide compliance monitoring for 415 and 402(g) plan contribution limits, maintain participant termination dates, and offer enhanced reporting for plan administrative purposes.

New objective advice and planning will provide participants with fund specific recommendations through an association with a leading provider of independent investment advice: Ibboston Associates. This independent and objective advice service will consider a participant's retirement income goals, desired retirement age, annual savings rate, and retirement assets from multiple plans in order to provide personalized and actionable recommendations.

Open Plan Solutions will also enable the University to expand its retirement plan fund offering to include TIAA-CREF Lifecycle and other mutual funds as well as additional non-proprietary mutual funds, bringing the total number of funds under the plan to twenty-six. Participants will be able to make fund choices beginning with very simple strategies to the more complex: 1) One Decision – age appropriate TIAA-CREF Lifecycle mutual funds; 2) Build Your Own Portfolio – a core menu of the existing annuity accounts and other TIAA-CREF mutual funds; and 3) Further Customization – the full array of funds available plus additional non-proprietary mutual funds. Lastly, age appropriate Lifecycle funds will serve as the default fund for participants who are automatically enrolled in the retirement plan.

### **FISCAL IMPLICATIONS**

Currently, there is no charge to the University for Open Plan Solutions services. Any fees associated with the investment choices offered through Open Plan Solutions are paid for by the participant.

### **ADMINISTRATIVE RECOMMENDATION**

The proposed Board action has been reviewed and is recommended for Board approval.

\_\_\_\_\_  
**University Executive Officer**

\_\_\_\_\_  
**Date**



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62

## SCHEDULE B

The actual funds selected by your Employer and their related expense charges, if any, will be detailed in schedule (B) of the actual Record Keeping Agreement sent to you for your signature.

### TIAA-CREF Annuity Contract

TIAA Traditional Annuity  
TIAA Real Estate Account  
CREF Stock Account  
CREF Money Market Account  
CREF Bond Market Account  
CREF Social Choice Account  
CREF Global Equities Account  
CREF Equity Index Account  
CREF Growth Account  
CREF Inflation Linked Bond Account

### TIAA-CREF Mutual Funds

TIAA-CREF Lifecycle Funds 2010, 2015, 2020, 2025, 2030, 2035, 2040  
TIAA-CREF Mid Cap Value Fund  
TIAA-CREF Mid Cap Growth Fund  
TIAA-CREF International Equity Index Fund  
TIAA-CREF Large-Cap Value Index Fund  
TIAA-CREF Small-Cap Blend Index Fund

### Non-Proprietary Mutual Funds, Administrative Fees and Cost Sharing Payments

Vanguard Asset Allocation Fund Investor Shares

The annual administrative fee shall be 14 basis points.

Vanguard Explorer Fund Admiral Shares

The annual administrative fee shall be 14 basis points.

American Funds: Washington Mutual Investors Fund

The annual administrative fee shall be 14 basis points. This fee shall be offset by annual cost sharing of 5 basis points, of which SunGuard shall receive .5 basis points. The net fee to participants will be 9.5 basis points.

American Funds: EuroPacific Growth Fund

The annual administrative fee shall be 14 basis points. This fee shall be offset by annual cost sharing of 5 basis points, of which SunGuard shall receive .5 basis points. The net fee to participants will be 9.5 basis points.

The administrative fees and cost sharing payments for non-proprietary funds can change upon advance written notice to the Employer pursuant to section 8.2 of this Agreement.

below) on such day but after the Close of Trading, will be executed by JPMorgan Chase Bank at the net asset value determined as the Close of Trading on the next Business Day following the date of receipt of the Instruction. Instructions shall be considered received in "good order" when all necessary information and monies in connection with such Instructions balance and conform to all other operating procedures, including any restrictions or limits set forth in the applicable fund prospectus or as otherwise set forth by TIAA on behalf of JPMorgan Chase Bank. The date the Instructions are executed shall be referred to as the "Participation Date". Notwithstanding the foregoing, in the event that the Securities and Exchange Commission promulgates or amends rules under which the foregoing procedures would be impermissible, this paragraph 11 shall be amended to provide a procedure that conforms to such rules.

12. TIAA shall deliver, or cause to be delivered to the Plan Administrator or at the direction of the Plan Administrator, directly to Plan participants and beneficiaries, all notices, prospectuses, financial statements, proxies and proxy soliciting materials received by TIAA relating to the TIAA-CREF annuity contracts or the mutual fund shares held in a participant's Plan accounts. Proxies shall be voted by, or in accordance with, the instructions of the participants or beneficiaries. If no instructions for voting proxies applicable to mutual fund shares are received, TIAA shall not exercise the voting rights for such shares and shall not be responsible for the failure to vote, or instruct the vote on such shares.
13. TIAA shall, as authorized by a Plan Administrator, offer a Plan level service that delivers investment and savings advice to Plan participants from an independent third party advice provider. The program follows the guidelines set forth in Department of Labor ("DOL") Advisory Opinion 2001-09A (known as the Sun America Opinion). Ibbotson Associates, Inc. is the independent financial expert under this participant advice program. The advice service will be delivered to participants over the phone, through the web, and by TIAA-CREF consultants in the field. TIAA accepts fiduciary responsibility for the provision of advice under this program.
14. TIAA shall, at such times as the Plan Administrators and TIAA shall agree, provide reports to the Plan Administrators concerning employee elective deferrals in order to aid in their compliance with the applicable limits on employee elective deferrals in sections 402(g) and 414(v) of the Code.





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6. TIAA shall, as authorized under a Plan by a Plan Administrator and subject to applicable law, administer and account for plan loans available under the terms of a Plan and shall, as authorized under a Plan by a Plan Administrator and subject to applicable law, administer and account for hardship distributions or distributions on account of an unforeseeable emergency in accordance with, and if permitted under the terms of, the Plan.
7. TIAA shall, as authorized under a Plan by a Plan Administrator and subject to applicable law, provide for the liquidation of amounts in and make plan benefit payment distributions permitted under, the TIAA-CREF annuity contracts in a participant's Plan account. In addition, TIAA shall, as authorized under a Plan by a Plan Administrator and subject to applicable law, provide instructions to JPMorgan Chase Bank for the liquidation of investments in and to make plan benefit payment distributions permitted under the mutual funds in a participant's Plan account. TIAA shall, as authorized by the Plan Administrator and subject to applicable law, administer the spousal consent requirements applicable to a Plan and have distributed Plan account balances in accordance with any Qualified Domestic Relations Order (as defined in section 414(p) of the Code) received by it or forwarded to it by a Plan and in accordance with the instructions of the Plan Administrator.
8. TIAA shall maintain records of each participant's designated beneficiaries based on information provided by the participants or the Plan.
9. To the extent permitted under applicable law, TIAA shall see to the performance of any required withholding of income tax from distributions and withdrawals. The foregoing notwithstanding, TIAA shall not provide for the performance of withholding of income tax from distributions and withdrawals from any Code section 457(f) Plan covered under this Agreement. Prior to the distribution of each participant's benefits, TIAA shall provide the appropriate notice as required under section 402(f) of the Code.
10. If the Plan is subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), TIAA shall provide the information necessary for filing the annual report (5500 Series) for the Plan with the Department of Labor ("DOL") and shall assist the Plan Administrator in completing the filing.
11. On each day the New York Stock Exchange (the "Exchange") is open for business (each a "Business Day"), TIAA may receive instructions from a Plan and/or Plan participant on behalf of JPMorgan Chase Bank for the purchase or redemption of shares of the mutual funds offered under the terms of the Plan ("Instructions"). Instructions which are received in "good order" (defined below) prior to the close of regular trading of the Exchange (generally 4:00 pm Eastern Time) (the "Close of Trading") on any given Business Day, will be executed by JPMorgan Chase Bank at the net asset value determined as of the Close of Trading on such Business Day. Instructions which are received in "good order" (defined



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59

## **SCHEDULE A**

### **LIST OF SERVICES**

1. TIAA will prepare Plan enrollment kits and shall otherwise aid in the enrollment of employees eligible to participate in a Plan.
2. TIAA shall maintain records of each Plan participant's and beneficiary's account balances including those amounts paid as premiums to and balances in TIAA-CREF annuity contracts. The records of each such account balance shall reflect amounts attributable to employer contributions, participant elective-deferral contributions, rollover contributions and transfers, and any after-tax contributions. These records shall be based solely on information provided to TIAA by the Plan.
3. TIAA shall arrange for contributions to and investments in a participant's account to be allocated to the mutual funds under a Plan or in TIAA-CREF annuity contracts available under a Plan, as directed by the participant or the participant's beneficiary in the event of the participant's death. The mutual funds and TIAA-CREF annuity contracts initially chosen for the Plans are set forth in Schedule B. All contributions shall be allocated among such contracts and mutual funds in accordance with the most recent valid instructions. Transfers among plan funding options shall be made pursuant to the instructions of the participant or beneficiary in accordance with the terms of the Plans but subject to any restrictions in the applicable mutual fund or TIAA-CREF annuity contract. TIAA shall provide to the participant or beneficiary all of the forms necessary to enable him or her to allocate contributions or transfer amounts among the Plan funding options. In the event that Schedule B is amended to eliminate a mutual fund or funds as an investment under the Plans, TIAA shall follow the instructions of the Plan Administrators in transferring accumulations from the eliminated mutual fund or funds to the fund or funds chosen by the Employer as replacement(s) and no future allocations will be made to the eliminated fund or funds. TIAA will work with the Plan Administrators to develop a plan for such transfers and in communicating with the Plans' participants and beneficiaries concerning the change in the Plans' investment options.
4. TIAA shall send periodic record keeping reports and communications to the Plan Administrators and each Plan participant and beneficiary, including but not limited to information regarding returns and investment performance under the mutual funds and TIAA-CREF annuity contracts used to fund the participant's account under a Plan.
5. TIAA shall send any communication that it is required to provide by mail to a participant or beneficiary to the address provided to TIAA by the Plan or by the participant or beneficiary.



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58

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement  
as of the date first above written.

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

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

Doug Roggow

Director, Pension Products

EASTERN MICHIGAN UNIVERSITY

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

Steven Holda

Interim Director of Finance



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57

## 18. SEVERABILITY

If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of the Agreement shall not be affected thereby.

## 19. SUCCESSORS AND ASSIGNS

This Agreement will be binding upon, insure to the benefit of, and be enforceable by the respective successors of the Parties. This Agreement will not be assignable by any Party hereto without the written consent of the other Party.

## 20. NON-EXCLUSIVITY

Each of the Parties acknowledges and agrees that this Agreement and the arrangements described herein are intended to be non-exclusive and that each of the Parties is free to enter into similar agreements and arrangements with other entities.



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56

If to the Employer, to:

Jeanette Hassan  
Director, Benefits Program  
Eastern Michigan University  
235 Warner  
Ypsilanti, MI 48197

With copies to:

Donald Wood  
Assistant Vice President for Human Resource  
Eastern Michigan University  
202 Bowen  
Ypsilanti, MI 48197

#### **14. EFFECTIVENESS; TERMINATION**

This Agreement shall become effective as of the date set forth above. Employer may remove TIAA as record keeper upon ninety (90) days prior written notice to TIAA. TIAA may resign as record keeper upon ninety (90) days prior written notice to Employer.

#### **15. APPLICABLE LAW**

This Agreement shall be construed, and the provisions hereof interpreted under, in accordance with the laws of the State of New York.

#### **16. COMPLETE AGREEMENT; MODIFICATIONS**

This Agreement embodies the entire agreement between the Parties and supercedes all prior agreements relating to the subject matter of this Agreement. All amendments to this Agreement must be in writing and signed by both Parties.

#### **17. COUNTERPARTS**

This Agreement may be executed simultaneously in two or more counterparts, each of which taken together shall constitute one and the same Agreement.



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55

use by TIAA. Upon termination of the Agreement, TIAA agrees to immediately discontinue use of the Employer name.

## 12. WAIVER

The failure of either TIAA or the Employer at any time to require performance of any provisions hereof will in no manner affect its right at a later time to enforce such provision and will not act as a waiver thereof.

## 13. NOTICE

Any notices that may be required under this Agreement shall be given in writing and delivered personally or mailed by certified mail or courier service to the other Party at the following address or such other address as each Party may give notice to the other.

If to TIAA, to:

Doug Roggow  
Director, Pension Products  
TIAA-CREF  
370 Seventeenth Street, Suite 200  
Denver, CO 80202

With copies to:

Robert Kissel  
Regional Vice President, Client Services  
TIAA-CREF  
200 North LaSalle Street, Suite 1600  
Chicago, IL 60601

Nicholas Mattera  
Director, Institutional Client Services  
TIAA-CREF  
301 East Liberty Street, Suite 330  
Ann Arbor, MI 48104



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54

Party may participate in the defense of such claim at its own expense. Without the prior written consent of the Indemnified Party, which consent shall not be withheld unreasonably, the Indemnifying Party may not settle or compromise the liability of the Indemnified Party in such action, or consent to or permit the entry of any judgment in respect thereof, unless in connection with such settlement, compromise or consent the Indemnified Party receives from such claimant an unconditional release from all liability in respect of such claim.

- 10.4 The indemnities granted by the Parties in this Section shall survive the termination of this Agreement.

## 11. CONFIDENTIALITY; EMPLOYER NAME

- 11.1 TIAA and the Employer recognize and acknowledge that, by entering into this Agreement, each Party may have access to certain information of the other Party that is confidential and constitutes valuable, special and unique property of that other Party. The Parties agree that they will not at any time, either during or subsequent to the term of this Agreement, disclose confidential information to others, or use, copy or permit the transmittal of confidential information to others, or use, copy or permit confidential information to be copied, without the other Party's express prior written consent. Except for disclosure by their Parties to their legal counsel, accountant or financial advisors (none of whom will be associated or affiliated in any way with the other Party or any of its affiliates), the Parties will not disclose the terms of this Agreement to any other person, unless disclosure is required by law or otherwise authorized by this Agreement or with the consent of the non-disclosing Party. Unauthorized disclosure of the terms of this Agreement will be a material breach of this Agreement and will provide the non-breaching Party the option of pursuing remedies for breach or immediate termination of this Agreement.
- 11.2 All payroll, employee, and Participant information received by TIAA under this Agreement shall be treated as confidential information and shall be handled in accordance with all state and federal laws relating to such information, the terms of the Plan, and in accordance with the requirements of this Agreement.
- 11.3 Subject to the express written consent of the Employer, TIAA shall have the non-exclusive and non-transferable right to use the name of the Employer solely in connection with rendering services pursuant to this Agreement. Any material, including electronic, print, or other media, in which the Employer's name may be used shall be submitted to the Employer in hard copy for review and approval prior to





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53

Records until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. Upon the expiration or termination of this Agreement, TIAA shall provide Records to Employer upon such schedule and in such form or format as Employer and TIAA agree is reasonable.

## 10. INDEMNIFICATION

- 10.1 TIAA agrees to indemnify and hold harmless the Employer and its respective employees, officers, directors, agents, affiliates and subcontractors or other related persons or organizations (the "Employer Parties") from all loss, damage, costs, charges, liability, or expense, including without limitation, reasonable attorneys' fees, and accountants' fees and disbursements (hereinafter referred to as "Losses") that may be incurred by, imposed upon, or asserted against the Employer Parties, on account of any claim or action at law or in equity against the Employer Parties to the proportionate extent that it results from the negligence, errors, omissions or wrongdoing of TIAA, or its employees, officers, directors, agents, affiliates and subcontractors or other related persons or organizations (the "TIAA Parties") in the performance of their duties and obligations hereunder. Notwithstanding the foregoing, TIAA shall not hold harmless or indemnify the Employer Parties against Losses stemming from the Employer Parties' bad faith, negligence, or willful misconduct.
- 10.2 The Employer agrees to indemnify and hold harmless the TIAA Parties against Losses that may be incurred by, imposed upon, or asserted against the TIAA Parties, on account of any claim or action at law or in equity against the TIAA Parties to the proportionate extent that it results from the negligence, errors, omissions or wrongdoing of the Employer's Parties in the performance of their duties and obligations hereunder. Notwithstanding the foregoing, the Employer shall not hold harmless or indemnify the TIAA Parties against Losses stemming from the TIAA Parties' bad faith, negligence, or willful misconduct.
- 10.3 If any third party threatens to commence or commences any action for which one Party (the "Indemnifying Party") may be required to indemnify the other Party hereunder (the "Indemnified Party"), the Indemnified Party shall promptly give notice thereof to the Indemnifying Party. The Indemnifying Party shall be entitled, at its own expense and without limiting its obligations to indemnify the Indemnified Party, to assume control of the defense of such action with counsel selected by the Indemnifying Party, which counsel shall be reasonably satisfactory to the Indemnified Party. If the Indemnifying Party assumes the control of the defense, the Indemnified





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52

- e. This Agreement, when executed and delivered, shall constitute the valid, legal and binding obligation of the Employer, enforceable in accordance with its terms.

## 8. FEES

- 8.1 The Employer understands and accepts that TIAA may be compensated for its services under this Agreement by payments made by providers of mutual funds, or their affiliates, used as allocation options under the Plans and from fees under the TIAA-CREF annuity contracts. This shall include sharing, on a periodic basis, in the revenue derived by such mutual fund providers and TIAA-CREF.
- 8.2 The Employer understands and accepts that in addition to charges imposed by the funds themselves, TIAA may charge administrative fees in connection with certain non-proprietary mutual funds as set forth in Schedule B of this Agreement. TIAA shall be entitled to be paid all such fees from assets held in such mutual funds under this Agreement. The Employer authorizes TIAA, on its behalf, to instruct JPMorgan Chase Bank to debit the applicable participant's account under the Plan in the appropriate amount. In addition, the Employer understands that certain of these non-proprietary mutual funds may pay cost-sharing payments. The Employer agrees that the amount of such cost-sharing payments not paid to SunGard pursuant to an agreement between SunGard and TIAA entered into as of May 1, 2004 (as it may be amended from time to time) shall be used to offset the administrative fee charged in connection with the non-proprietary mutual fund that pays the cost-sharing payment. The current schedule of administrative fees and cost-sharing payments is listed in Schedule B. Such fees and payments are subject to change upon advance written notice from TIAA.

## 9. MAINTENANCE OF RECORDS

TIAA agrees that the books, records, accounts, ledgers, documents, and other compilations of data (whether written, electronic, computer related or otherwise) collected and maintained by TIAA for Employer and/or the Plans under any provision or requirement of this Agreement (the "Records") are the property of Employer. During the term of this Agreement, TIAA will at all times cooperate with and grant Employer or its designee reasonable access to the Records during TIAA's normal business hours. If any litigation, claim, negotiation, audit, or other action involving the Records is commenced prior to the expiration of the applicable retention period, both TIAA and Employer shall retain all



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51

into and is not responsible for the authenticity or accuracy of such data or information. If TIAA is required to repeat or reprocess any task as a result of incomplete or inaccurate information provided by a Plan, TIAA may charge a reasonable reprocessing fee. In addition, if amounts are sent with incorrect instructions, or in amounts that do not reconcile with the instructions given, TIAA may (1) apply the amounts for which accurate instructions are given and refund any excess amounts to the Employer; or (2) if amounts are less than the instructions call for, refund the entire amounts to the Employer.

- 6.3 A Plan Administrator of a Plan shall review all record keeping reports and shall immediately notify TIAA of any claimed error with respect to any data or report. TIAA assumes no responsibility for verification and any report not challenged in writing by a Plan Administrator within sixty (60) days of receipt thereof shall be conclusively presumed accurate and complete.

## 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 7.1 Each Party represents that it is free to enter into this Agreement and that by doing so it will not breach or otherwise impair any other agreement or understanding with any other person, corporation or entity. TIAA further represents, warrants and covenants that:
- a. It has full power and authority under applicable law, and has taken all action necessary, to enter into and perform this Agreement, and that the person executing this Agreement on its behalf is duly authorized and empowered to execute and deliver this Agreement;
  - b. This Agreement, when executed and delivered, shall constitute the valid, legal and binding obligation of TIAA, enforceable in accordance with its terms;
  - c. TIAA is a stock life insurance company duly organized, existing and in good standing under the laws of the State of New York; and

The Employer further represents, warrants and covenants that:

- d. It has full power and authority under applicable law, and has taken all action necessary, to enter into and perform this Agreement, and that the person executing this Agreement on its behalf is duly authorized and empowered to execute and deliver this Agreement; and



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50

### 3. CHANGES TO ADMINISTRATIVE PROCEDURES

TIAA reserves the right to make changes to any administrative procedures in order to assure quality service; provided, that TIAA agrees to provide Employer with (i) reasonable advance notice of any changes, and (ii) the opportunity to have input into the manner in which any such changes are made and implemented.

### 4. DATA REQUIREMENTS; TRANSMITTAL OF DATA

TIAA and Employer shall work together to develop guidelines for data processing. Employer shall be responsible for the timely transmittal to TIAA of participant data that is materially correct and complete.

### 5. PERSONNEL AND RESOURCES

TIAA shall provide sufficient personnel and resources as may be necessary to perform the services contemplated under this Agreement in a thorough and professional manner. The personnel designated by TIAA to perform the services contemplated under this Agreement shall have the training and background necessary to perform such services.

### 6. ERRORS, OMISSIONS OR DELAYS

6.1 Each Party to this Agreement will be responsible to the other Party for their own respective errors, omissions or delays in the performance of services contemplated under this Agreement. Each Party shall notify the other Party (i) of any errors, omissions or interruptions in, or delay or unavailability of the services contemplated under this Agreement, or (ii) if it is unable to perform any of its obligations under this Agreement. Such notice shall be provided as promptly as possible but in no event later than the next business day following the occurrence of any events covered by (i) or (ii) of this paragraph. Notification under this provision shall be in such form as is required by Section 13 of this Agreement. Such notice shall not relieve the notifying Party of its obligations under this Agreement.

6.2 The Employer acknowledges that in performing the services contemplated under this Agreement, TIAA must rely exclusively on the data and information provided to TIAA by the Employer and participants, and that TIAA is not obligated to inquire



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49

## 1. APPOINTMENT; ACCEPTANCE; AUTHORITY TO DIRECT OTHERS

- 1.1 Employer hereby appoints TIAA as a record keeper for the Plans to provide the services listed in Schedule A of this Agreement. TIAA shall provide such services in accordance with the provisions of the Plans, but TIAA shall have no discretionary control over the Plans.
- 1.2 TIAA hereby accepts the appointment as a record keeper for the Plans and agrees to provide the services listed in Schedule A. TIAA shall act in good faith and exercise reasonable care in performing the services under this Agreement. Responsibility for reasonable care is limited solely to correcting processing errors resulting from malfunction of TIAA equipment, error by its staff, or error by its programs. TIAA shall make a good faith effort to correct any error caused by its performance subject to the limitations herein set forth; provided that the Employer notifies TIAA in writing of such error and furnishes all data necessary to make such correction within sixty (60) days following the date in which the Employer is furnished with a report in which the claimed error is contained. TIAA shall in no event be liable, regardless of the form of the action, for loss of profit, goodwill, or other special consequential damages suffered by the Employer or its Plans as a result of the services provided under this Agreement. The services to be performed by TIAA under this Agreement may be performed on TIAA's behalf wholly or in part through subsidiaries or affiliates of TIAA or through vendors designated by TIAA. TIAA shall continue to be liable for the performance of any service performed by such subsidiary, affiliate, or vendor and shall be solely responsible for paying the fees such subsidiary, affiliate or vendor charges for such service. To the extent that services under this Agreement are to be performed by a broker-dealer as determined solely by TIAA, Employer agrees that such services may be performed by TIAA-CREF Individual & Institutional Services, LLC, a wholly owned subsidiary of TIAA, and/or SunGard Institutional Brokerage, Inc. ("SunGard").

## 2. NON- FIDUCIARY STATUS

Except with respect to its offering a Plan level service that delivers investment and savings advice to Plan participants as described in section 13 of Schedule A, herein, it is intended that the duties to be performed by TIAA under this Agreement be ministerial in nature and that nothing in this Agreement should be construed as granting any discretionary authority or discretionary responsibility to TIAA with respect to the Plans, the participants, or the investments under the Plans.



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48

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

## RECORDKEEPING SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the later of this 11th day of February, 2006, or the date the Employer Plans are migrated to the Teachers Insurance and Annuity Association of America ("TIAA") Open Plan Solutions record keeping platform, by and between TIAA, a corporation organized and existing under the laws of the State of New York, and **Eastern Michigan University** ("Employer"). TIAA and Employer are each a "Party" to this Agreement. There are no third party beneficiaries under this Agreement.

### WITNESSETH:

WHEREAS, Employer sponsors and maintains the Eastern Michigan University 403(b) Defined Contribution Retirement Plan, the Eastern Michigan University 403(b) Tax Deferred Annuity Plan, and the Eastern Michigan University 457(b) Deferred Compensation Plan (the "Plans"), for the benefit of eligible employees and their beneficiaries ("Participants");

WHEREAS, assets of such Plans are allocated to and invested in certain mutual funds and Teachers Insurance and Annuity Association of America-College Retirement Equities Fund ("TIAA-CREF") annuity contracts selected by Employer and made available by Employer under the terms of the Plans for the benefit of Participants;

WHEREAS, Employer and the administrators of the Plans appointed by Employer (the "Plan Administrators") seek the provision of certain record keeping services in connection with the operation and administration of the Plans; and

WHEREAS, TIAA desires to provide such services to Employer and the Plan Administrators in connection with the operation and administration of the Plans as set forth in more particularity in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants, representations and warranties set forth herein, TIAA and Employer agree, as follows:



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47

## APPENDIX A

The Custodial Agreement will detail your actual plan funding options, which may include both TIAA-CREF Mutual Funds and non-proprietary mutual funds.

### TIAA-CREF Mutual Funds

TIAA-CREF Lifecycle Funds 2010, 2015, 2020, 2025, 2030, 2035, 2040

TIAA-CREF Mid Cap Value Fund

TIAA-CREF Mid Cap Growth Fund

TIAA-CREF International Equity Index Fund

TIAA-CREF Large-Cap Value Index Fund

TIAA-CREF Small-Cap Blend Index Fund

### Non-Proprietary Mutual Funds

Vanguard Asset Allocation Fund Investor Shares

Vanguard Explorer Fund Admiral Shares

American Funds: Washington Mutual Investors Fund

American Funds: EuroPacific Growth Fund



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46

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date specified in Article I.

EASTERN MICHIGAN UNIVERSITY

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

Steven Holda

Interim Director of Finance

Date: \_\_\_\_\_

JPMORGAN CHASE BANK, N. A.

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

James Bartley

Vice President

Date: \_\_\_\_\_

The undersigned shall be bound by the terms of the foregoing Agreement with respect to the duties of the Record Keeper. The undersigned shall notify the Custodian of any material change in its duties as Record Keeper under its agreement with the Employer.

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

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

Doug Roggow

Director, Pension Products

Date: \_\_\_\_\_





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45

- 11.6 Notices required to be given by the parties hereunder shall be sufficiently given if made in writing to such address as each party shall from time to time specify in writing to the other party. Such notices shall be effective when received.
- 11.7 This Agreement is intended to comply with Section 457(b) of the Code and its terms shall be interpreted accordingly. Otherwise, the laws of the State of New York shall control the interpretation and performance of the terms of this Agreement. However, neither the Custodian, any of its subsidiaries or affiliates nor any mutual fund provider assumes any responsibility as to the efficacy or legal sufficiency of this Agreement under federal, state or local law. The United States District Court will have the sole and exclusive jurisdiction over any lawsuit or other judicial proceeding relating to or arising from this Agreement. The parties further hereby knowingly, voluntarily and intentionally waive, to the fullest extent permitted by Applicable Law, any right to a trial by jury with respect to any such lawsuit or judicial proceeding arising or relating to this Agreement or the transactions contemplated hereby. To the extent that in any jurisdiction the Employer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, the Employer shall not claim, and it hereby irrevocably waives, such immunity.
- 11.8 If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of this Agreement shall not be affected thereby.
- 11.9 This Agreement may be executed simultaneously in two or more counterparts, each of which taken together shall constitute one and the same instrument.





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section 401(f)(2); and (iii) it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement.

The Custodian and Employer may rely upon the representations made in this Section 11.1. The Employer shall indemnify the Custodian and the Custodian shall indemnify the Employer, against all losses, liability, claims, or demands arising directly or indirectly from any such representations.

- 11.2 At the time of mailing of notice of each annual or special stockholders' meeting of any Mutual Fund, the Record Keeper shall send a copy of the notice and all proxy solicitation materials to each participant or Beneficiary who has shares of such Mutual Funds credited to his or her individual account together with a voting direction form for return to the Custodian or its designee. These materials shall clearly explain to the participants and Beneficiaries that the Custodian will not vote shares for which it receives no voting directions. Each participant and Beneficiary shall have the right to send instructions to the Record Keeper directing the Custodian as to the manner in which the Custodian is to vote the shares credited to his or her accounts (both vested and unvested). The Custodian shall vote the shares as directed by the Record Keeper. The Custodian shall not vote shares for which it has received no directions. With respect to all rights other than the right to vote, the Custodian shall follow the directions of the Record Keeper. The Custodian shall have no duty to solicit direction from participants and Beneficiaries.
- 11.3 The Plan accounts shall be held for the exclusive benefit of all persons who shall be entitled to receive payments under the Plan. It shall be prohibited at any time for any part of the accounts (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan participants and their beneficiaries except as otherwise permitted under the Code.
- 11.4 The participant's or Beneficiary's benefits under the Plan held pursuant to this Custodial Agreement shall be provided solely from his or her Plan account, and neither the Employer nor the Custodian shall have any other liability therefore.
- 11.5 No right or interest of a Plan participant or Beneficiary in a Plan account under this Agreement shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a Qualified Domestic Relations Order or to a lien or levy on behalf of the Internal Revenue Service or as otherwise permitted with respect to garnishment orders issued pursuant to the Federal Debt Collection Procedures Act of 1990.



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43

may be amended from time to time. Such fees shall be paid from Plan assets and are subject to change upon advance written notice from the Record Keeper to the Employer as set forth in the Record Keeping Agreement.

## ARTICLE X. AMENDMENT AND TERMINATION

- 10.1 The parties shall have the right at any time to amend or terminate this Agreement by an instrument in writing and no change in the scope of the services hereunder shall be permitted or undertaken unless agreed to by the parties in such a written amendment.
- 10.2 No amendment shall authorize any part of a Plan participant or Beneficiary's account to be used for, or diverted to, purposes other than for the exclusive benefit of the participant or his or her beneficiaries except to the extent such amendment is permitted under the Code.
- 10.3 Termination of a participant's Plan account shall be effected by a distribution of all assets in the account as directed by the Record Keeper.
- 10.4 The Custodian's rights, protections, and remedies under this Agreement shall survive the termination of this Agreement.

## ARTICLE XI. MISCELLANEOUS PROVISIONS

- 11.1 (a) The Employer represents and warrants that (i) it has full authority and power, and has obtained all necessary authorizations and consents, to use the Custodian as its custodian in accordance with the terms of this Agreement; (ii) assuming execution and delivery of this Agreement by the Custodian, this Agreement is the Employer's legal, valid and binding obligation, enforceable in accordance with its terms and it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement; (iii) it has not relied on any oral or written representation made by the Custodian or any person on its behalf, and acknowledges that this Agreement sets out to the fullest extent the duties of the Custodian; and (iv) it is a resident of the United States and shall notify the Custodian of any changes in residency.
- (b) The Custodian represents and warrants that (i) assuming execution and delivery of this Agreement by the Employer, this Agreement is the Custodian's legal, valid and binding obligation, enforceable in accordance with its terms; (ii) Custodian is a bank eligible to serve as custodian in accordance with Code



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42

malfunction is attributable to the Custodian's negligence in maintaining the equipment or software), failure of or the effect of rules or operations of any external funds transfer system, inability to obtain or interruption of external communications facilities, or any cause beyond the reasonable control of the Custodian (including without limitation, the non-availability of appropriate foreign exchange).

## ARTICLE VIII. RESIGNATION AND REMOVAL OF CUSTODIAN

- 8.1 The Custodian may resign as custodian at any time upon sixty (60) days prior written notice to the Employer.
- 8.2 The Custodian may be removed as custodian at any time upon sixty (60) days prior written notice from the Employer.
- 8.3 Upon the resignation or removal of the Custodian, the Employer shall promptly appoint a successor, provided that in the event of resignation of the Custodian, the Custodian may appoint a successor in its notice of resignation. Any successor custodian appointed herein shall be a bank or other person eligible to serve as a custodian in accordance with Code Section 401(f)(2). Upon receipt by the Custodian of a written acceptance of such appointment by the successor, the Custodian shall promptly transfer and pay over to such successor the assets of the custodial account. The Custodian is authorized, however, to reserve from the assets to be transferred such sum of money or other property, as it may deem advisable, for the payment of all of its fees, compensation, costs and expenses under this Agreement as Custodian. The Custodian shall not be liable for the acts or omissions of the successor whether or not it appoints the successor.

## ARTICLE IX. FEES

- 9.1 The Employer understands and agrees that the Custodian may be compensated for its services under this Agreement by payments made by providers of Mutual Funds, or their affiliates, used under the Plan. This shall include sharing, on a periodic basis, in the revenue derived by such Mutual Fund providers. The Employer acknowledges that the Record Keeper has provided information relating to such fees and may obtain further information upon request by the Employer to the Record Keeper.
- 9.2 The Employer directs the Custodian, on instructions from and on behalf of the Record Keeper, to collect the administrative fees set forth in the Record Keeping Agreement between the Record Keeper and Employer, as sponsor of the Plan, as such agreement



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## ARTICLE VII. STANDARD OF CARE; PROTECTION OF CUSTODIAN

- 7.1 The Custodian shall use due care in providing the services hereunder. Responsibility for due care is limited solely to correcting processing errors resulting from malfunction of the Custodian's equipment, error by its staff, or error by its programs. The Custodian shall make a good faith effort to correct any error caused by its performance subject to the limitations herein set forth; provided that the Employer notifies the Record Keeper in writing of such error and furnishes all data necessary to make such correction within sixty (60) days following the date in which the Employer is furnished with a report in which the claimed error is contained. The Record Keeper shall promptly notify the Custodian of such claimed error. The Custodian Indemnitees shall in no event be liable, regardless of the form of the action, for loss of profit, goodwill, or other special or consequential damages suffered by the Employer, Plan representatives, the Record Keeper or Plan participants or Beneficiaries as a result of the services provided under this Agreement. The Custodian Indemnitees shall not be liable for any error or omission resulting, directly or indirectly, from failure of the Employer, or its agents, including, but not limited to, the Record Keeper (other than the Custodian and/or its affiliates or hired vendors), to properly perform any of its responsibilities under this Agreement or the Plan. The Employer shall indemnify the Custodian Indemnitees against, and hold them harmless from, any loss, claim or expense (including reasonable attorneys' fees) that may be imposed on, incurred by or asserted against the Custodian Indemnitees in connection with or arising out of the Custodian's performance under this Agreement, provided the Custodian has not acted with negligence or engaged in fraud or willful misconduct in connection with the liabilities in question. Additionally, the Employer shall indemnify and save harmless the Custodian for and from any loss, claim or expense (including reasonable attorneys' fees) arising by reason of any breach of any statutory or other duty owed to the Plan by the Employer or the Record Keeper, whether or not the Custodian may also be considered liable for the Employer's or Record Keeper's breach under the provision of Applicable Law.
- 7.2 The Custodian will maintain and update from time to time business continuation and disaster recovery procedures with respect to its custody business that it determines from time to time meet reasonable commercial standards. The Custodian will have no liability, however, for any damage, loss, expense or liability of any nature that the Employer, Record Keeper, participants or Beneficiaries may suffer or incur, caused by an act of God, fire, flood, civil or labor disturbance, war, act of any governmental authority or other act or threat of any authority (de jure or de facto), legal constraint, fraud or forgery, malfunction of equipment or software (except where such



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40

## ARTICLE VI. THE POWERS OF CUSTODIAN AS CUSTODIAN

6.1 The Custodian, in its capacity as custodian, shall have the following powers:

- (a) To vote in person, or in proxy, or to refrain from voting in respect to any Mutual Fund shares held in a participant's or Beneficiary's Plan account, in accordance with Section 11.2 of this Agreement, and to enter into any voting trust or similar agreement in respect thereto;
- (b) To exercise conversion and subscription rights pertaining to any property held in a Plan account;
- (c) With respect to any investment, to consent or object to any action or non-action of any corporation, or of the directors, officers or stockholders of any corporation;
- (d) To register securities in its name or in the name of any nominee with or without indication of the capacity in which the securities shall be held, or to hold securities in bearer form and to deposit any securities or other property in a depository or clearing corporation;
- (e) To employ as many agents and counsel as are reasonably necessary for the purpose of properly performing its duties under this Agreement, and, as part of its expenses under this Agreement, to pay their reasonable expenses and compensation; and
- (f) To make, execute and deliver, as custodian, any and all conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the powers listed in this Agreement.

6.2 The Custodian shall have no duties or responsibilities as custodian other than those specified in this Agreement or under Applicable Law and no implied covenant or obligation shall be read into this Agreement against the Custodian. Notwithstanding any reference herein to the Plan, or to the provisions thereof, it is expressly agreed that the Custodian is not a party to the Plan and shall have no responsibility to apply or administer the terms of the Plan.

6.3 The Custodian shall have no duty to advise any person of the investment, tax or other consequences resulting from that person's actions or inactions, or of its own actions in following the directions of such person, or its failing to act in the absence of such directions.



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26

## ARTICLE V. DUTIES OF THE EMPLOYER

5.1 The Employer shall be solely responsible for the following:

- (a) The tax and legal aspects of the Plan.
- (b) To select and periodically review the funding options for the Plan, it being understood that the Custodian has no authority or responsibility for choosing such funding options. The funding options under this Custodial Account shall consist of Mutual Fund Shares. The Custodial Account funding options initially chosen for the Plan are set forth in Appendix A to this Agreement. Such funding options may be changed from time to time by the parties attaching a new Appendix A hereto.
- (c) To evaluate the suitability of the Plan documents and maintain the Plan's conformance with applicable provisions of the Code and the regulations thereunder, including, if applicable, any filings required under Applicable Law.
- (d) To represent and defend the Plan in an Internal Revenue Service audit or examination and any appeals or litigation relating thereto and any other examinations, audits or legal proceedings relating to the Plan.
- (e) To provide the Custodian, in a timely manner, accurate data, as requested and in the form requested by Custodian, in order to establish and maintain the records necessary for the fulfillment of the Custodian's duties hereunder. The Custodian shall not be responsible in the event that such information is inaccurate. If the Custodian is required to repeat or reprocess any task as a result of incomplete or inaccurate information provided by the Employer, the Custodian may charge the Employer a reasonable reprocessing fee. In addition, if amounts are sent to the Custodian with incorrect Instructions, or in amounts that do not reconcile with the Instructions given, the Custodian may: (1) apply the amounts for which accurate Instructions are given and refund any excess amounts to the Employer; or (2) if amounts are less than the Instructions call for, refund the entire amount to the Employer.

5.2 The Employer shall review all reports and shall immediately notify the Record Keeper in writing of any claimed error with respect to any data or report. The Custodian assumes no responsibility for verification and any report not challenged in writing to the Record Keeper within sixty (60) days of receipt thereof shall be conclusively presumed accurate and complete. The Record Keeper shall promptly notify the Custodian of any claimed error by the Employer.





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38

Record Keeper and may decline to act upon an Instruction if it does not receive clarification or confirmation satisfactory to it. The Record Keeper may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the Employer and may decline to act on an Instruction if it does not receive clarification or confirmation satisfactory to it. The Custodian will not be liable for any loss arising from any delay while either it or the Record Keeper seeks such clarification or confirmation.

- (e) In executing or paying a payment order the Custodian may rely upon the identifying number (e.g., Fedwire routing number or account) of any party as instructed in the payment order. The Record Keeper assumes full responsibility for any inconsistency between the name and identifying number of any party in payment orders issued to the Custodian in Employer's name.
- 4.2 Any Instructions delivered to the Custodian by telephone will promptly thereafter be confirmed in writing by the Record Keeper. Each confirmation is to be clearly marked "Confirmation". The Custodian will not be liable for having followed such Instructions notwithstanding the failure of the Record Keeper to send such confirmation in writing or the failure of such confirmation to conform to the telephone Instructions received. Either party may record any of their telephonic communications. The Record Keeper will comply with any security procedures reasonably required by the Custodian from time to time with respect to verification of Instructions. The Record Keeper will be responsible for safeguarding any test keys, identification codes or other security devices that the Custodian will make available to the Record Keeper.
- 4.3 The Custodian need not act upon Instructions which it reasonably believes to be contrary to law, regulation or market practice and the Custodian will be under no duty to investigate whether any Instructions comply with Applicable Law or market practice.
- 4.4 The Custodian has established cut-off times for receipt of Instructions, which will be made available to the Employer and the Record Keeper. If the Custodian receives an Instruction after its established cut-off time, the Custodian will attempt to act upon the Instruction on the day requested if the Custodian deems it practicable to do so or otherwise as soon as practicable on the next business day.



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37

- 3.5 The services to be performed by the Custodian under this Agreement may be performed on the Custodian's behalf wholly or in part through subsidiaries or affiliates of the Custodian or through vendors designated by the Custodian. The Custodian will continue to be liable for the performance of its duties hereunder.

#### ARTICLE IV. INSTRUCTIONS

- 4.1 (a) The Employer authorizes the Custodian to accept and act upon any Instructions received by the Custodian from the Record Keeper without inquiry. The Record Keeper shall receive instructions from participants and Beneficiaries with respect to the investment of their Plan accounts. It shall aggregate such instructions and will provide Instructions to the Custodian to place net purchase and redemption orders with respect to each Mutual Fund investment option selected for the Plan as follows:
- (b) Each participant and Beneficiary shall submit investment directions and changes in investment directions with respect to his or her Plan account to the Record Keeper, which shall aggregate such directions placed each day with respect to the various investment alternatives in accordance with its agreement with the Employer. The Custodian shall invest the assets of the Plan accounts only when, if and in the manner directed by the Record Keeper and shall not be under any obligation to invest or otherwise manage any of such assets. It shall be the duty of the Custodian to act strictly in accordance with the Record Keeper's directions. In the event that the Custodian fails to receive a proper Instruction, the assets shall be invested in a money market Mutual Fund or in such other Mutual Fund investment option selected by the Employer or left uninvested, in any case as selected by the Employer, until the Custodian receives a proper Instruction from the Record Keeper. The Custodian shall, as directed by the Record Keeper, liquidate investments when necessary to: (i) comply with participants' and Beneficiaries' instructions or to change investments; (ii) make plan benefit payment distributions; (iii) disburse loan proceeds; (iv) make distributions on account of unforeseeable emergencies; (v) reallocate forfeitures under the Plan; or (vi) pay expenses, fees, or taxes. The Record Keeper shall be responsible for determining that such liquidation is permitted under the prospectuses for the Mutual Funds in the participant's or Beneficiary's Plan account.
- (c) Unless otherwise expressly provided, all Instructions will continue in full force and effect until canceled or superseded.
- (d) The Custodian may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the





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36

### ARTICLE III. SERVICES TO BE PROVIDED BY CUSTODIAN

- 3.1 The Custodian shall receive such sums of money or Mutual Fund Shares acceptable to the Custodian as shall from time to time be paid or delivered to the Custodian under this Agreement. The Custodian shall hold in Plan participant accounts all such assets, together with all the property purchased therewith and the proceeds thereof and the earnings and income thereon. The Custodian shall not be responsible for, or have any duty to enforce, the collection of any contributions or assets to be paid or transferred to it under the Plan or for verifying whether contributions or transfers to it are permissible under the Plan. The Custodian shall not be responsible for investment choices directed by the Employer or by Plan participants or Beneficiaries under the Plan.
- 3.2 The Custodian shall disburse Plan loan proceeds, distributions on account of unforeseeable emergency and other distributions as directed by the Record Keeper. The Custodian shall distribute Plan account balances in accordance with any Qualified Domestic Relations Order in accordance with the Instructions of the Record Keeper. No amounts may be paid or made available to any distributee before the time provided in Code section 457(d). The Record Keeper shall be responsible for determining that (a) each distribution satisfies the requirements of the Plan and Applicable Law, including Code section 457(d); (b) the disbursement of loan proceeds has been authorized in accordance with the Plan and Applicable Law; and (c) distributions pursuant to a domestic relations order have been authorized in accordance with the Plan and Applicable Law.
- 3.3 To the extent permitted under Applicable Law, the Custodian shall be the payer (within the meaning of applicable United States Treasury Department regulations) of benefits in the custodial account under the Plan held pursuant to this Agreement. As payer, it shall perform any required withholding of federal and state income tax from distributions and withdrawals and deposit the same with the appropriate tax authorities as and when directed by the Record Keeper. The Record Keeper shall be responsible for preparing and filing all reports of withheld taxes with the participant or Beneficiary and all applicable federal and state tax authorities.
- 3.4 The Custodian agrees that all records maintained by it for the Plan shall be open to inspection and audit at reasonable times by agents or representatives of the Employer and that such records will be preserved and maintained in accordance with Applicable Law. The Custodian may charge, and the Employer shall agree to pay, the reasonable cost of any services and materials used by the Custodian in supplying assistance in connection with any such inspection.



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35

## ARTICLE I. EFFECTIVE DATE

- 1.1 The effective date of this Agreement will be the later of February 11, 2006, or the date the Plan is migrated to the TIAA Open Plan Solutions record keeping platform. This agreement will remain in effect until terminated pursuant to Article X.

## ARTICLE II. DEFINITIONS

- 2.1 “APPLICABLE LAW” means any statute, whether national, state or local, applicable in the United States or any other country, any other law, rule, regulation or interpretation of any governmental entity, any applicable common law, and any decree, injunction, judgment, order, ruling, or writ of any governmental entity.
- 2.2 “BENEFICIARY” means the beneficiary(ies) of a deceased participant and an alternate payee of a participant pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) (“Qualified Domestic Relations Order”).
- 2.3 “CUSTODIAN INDEMNITEES” means the Custodian, and its nominees, directors, officers, employees and agents.
- 2.4 “INSTRUCTIONS” means instructions which: (i) contain all necessary information required by the Custodian to enable the Custodian to carry out the Instructions; (ii) are received by the Custodian in writing or via the Custodian’s electronic instruction system, SWIFT, telephone, facsimile or such other methods as are for the time being agreed by the Record Keeper and the Custodian; and (iii) the Custodian believes in good faith have been given by the Record Keeper or are transmitted by the Record Keeper with proper testing or authentication pursuant to terms and conditions which the Custodian may specify.
- 2.5 “MUTUAL FUND” means an open-end investment company registered under the Investment Company Act of 1940, as amended.
- 2.6 “MUTUAL FUND SHARES” means securities issued by a Mutual Fund.



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TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

## CUSTODIAL ACCOUNT AGREEMENT FOR A NON-TRUSTEED GOVERNMENTAL 457(b) PLAN

This Custodial Account Agreement ("Agreement") between JPMorgan Chase Bank, N.A. ("Custodian") and Eastern Michigan University ("Employer") as Sponsor of the **Eastern Michigan University 457(b) Deferred Compensation Plan** ("Plan"), a plan designed to meet the requirements of Section 457(b) of the Internal Revenue Code of 1986, as amended ("Code") as applicable to governmental sponsors (as defined in Code Section 457(g)(1)).

WHEREAS, in accordance with Code Section 457(g)(3), the Plan will be funded in part with annuity contracts issued by Teachers Insurance and Annuity Association of America and College Retirement Equities Fund ("TIAA-CREF"); and

WHEREAS, in accordance with Code Section 457(g)(3), the Plan will be funded in part with a custodial account designed to meet the requirements of Code sections 401(f)(2) and the assets in such custodial account shall be invested solely in Mutual Fund Shares, as defined in Article II below; and

WHEREAS, the Plan provides that the Plan's participants (and beneficiaries of deceased participants) have the right to direct the Employer as to the investment of amounts credited to their individual accounts under the Plan by selecting from among the Mutual Fund Shares made available to them under the Plan by the Employer;

WHEREAS, the Employer has appointed Teachers Insurance and Annuity Association of America as record keeper for the Plan ("Record Keeper") pursuant to which Record Keeper serves as Employer's agent for purposes of keeping Plan records; and

WHEREAS, the Employer has requested that the Custodian provide certain custodial services for the portion of the Plan's assets invested in Mutual Fund Shares described in Appendix A of this Agreement, which custodial services are required to satisfy the requirements of Code sections 401(f)(2) and 457(b) and the Custodian has agreed to provide such services as set forth herein. NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed as follows:



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33

## APPENDIX A

The Custodial Agreement will detail your actual plan funding options, which may include both TIAA-CREF Mutual Funds and non-proprietary mutual funds.

### TIAA-CREF Mutual Funds

TIAA-CREF Lifecycle Funds 2010, 2015, 2020, 2025, 2030, 2035, 2040

TIAA-CREF Mid Cap Value Fund

TIAA-CREF Mid Cap Growth Fund

TIAA-CREF International Equity Index Fund

TIAA-CREF Large-Cap Value Index Fund

TIAA-CREF Small-Cap Blend Index Fund

### Non-Proprietary Mutual Funds

Vanguard Asset Allocation Fund Investor Shares

Vanguard Explorer Fund Admiral Shares

American Funds: Washington Mutual Investors Fund

American Funds: EuroPacific Growth Fund



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32

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date specified in Article I.

EASTERN MICHIGAN UNIVERSITY

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

Steven Holda

Interim Director of Finance

Date: \_\_\_\_\_

JPMORGAN CHASE BANK, N. A.

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

James Bartley

Vice President

Date: \_\_\_\_\_

The undersigned shall be bound by the terms of the foregoing Agreement with respect to the duties of the Record Keeper. The undersigned shall notify the Custodian of any material change in its duties as Record Keeper under its agreement with the Employer.

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

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

Doug Roggow

Director, Pension Products

Date: \_\_\_\_\_



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31

permitted with respect to garnishments orders issued pursuant to the Federal Debt Collection Procedures Act of 1990.

- 11.6 Notices required to be given by the parties hereunder shall be sufficiently given if made in writing to such address as each party shall from time to time specify in writing to the other party. Such notices shall be effective when received.
- 11.7 This Agreement is intended to comply with Section 403(b) of the Code and its terms shall be interpreted accordingly. Otherwise, the laws of the State of New York shall control the interpretation and performance of the terms of this Agreement. However, neither the Custodian, any of its subsidiaries or affiliates nor any mutual fund provider assumes any responsibility as to the efficacy or legal sufficiency of this Agreement under federal, state or local law. The United States District Court will have the sole and exclusive jurisdiction over any lawsuit or other judicial proceeding relating to or arising from this Agreement. The parties further hereby knowingly, voluntarily and intentionally waive, to the fullest extent permitted by Applicable Law, any right to a trial by jury with respect to any such lawsuit or judicial proceeding arising or relating to this Agreement or the transactions contemplated hereby. To the extent that in any jurisdiction the Employer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, the Employer shall not claim, and it hereby irrevocably waives, such immunity.
- 11.8 If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of this Agreement shall not be affected thereby.
- 11.9 This Agreement may be executed simultaneously in two or more counterparts, each of which taken together shall constitute one and the same instrument.



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30

section 401(f)(2); and (iii) it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement.

The Custodian and Employer may rely upon the representations made in this Section 11.1. The Employer shall indemnify the Custodian and the Custodian shall indemnify the Employer, against all losses, liability, claims, or demands arising directly or indirectly from any such representations.

- 11.2 At the time of mailing of notice of each annual or special stockholders' meeting of any Mutual Fund, the Record Keeper shall send a copy of the notice and all proxy solicitation materials to each participant or Beneficiary who has shares of such Mutual Funds credited to his or her individual account together with a voting direction form for return to the Custodian or its designee. These materials shall clearly explain to the participants and Beneficiaries that the Custodian will not vote shares for which it receives no voting directions. Each participant and Beneficiary shall have the right to send instructions to the Record Keeper directing the Custodian as to the manner in which the Custodian is to vote the shares credited to his or her accounts (both vested and unvested). The Custodian shall vote the shares as directed by the Record Keeper. The Custodian shall not vote shares for which it has received no directions. With respect to all rights other than the right to vote, the Custodian shall follow the directions of the Record Keeper. The Custodian shall have no duty to solicit direction from participants and Beneficiaries.
- 11.3 The Plan accounts shall be held for the exclusive benefit of all persons who shall be entitled to receive payments under the Plan. It shall be prohibited at any time for any part of the accounts (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan participants and their beneficiaries except as otherwise permitted under the Code.
- 11.4 The participant's or Beneficiary's benefits under the Plan held pursuant to this Custodial Agreement shall be provided solely from his or her Plan account, and neither the Employer nor the Custodian shall have any other liability therefore.
- 11.5 No right or interest of a Plan participant or Beneficiary in a Plan account under this Agreement shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a Qualified Domestic Relations Order or to a lien or levy on behalf of the Internal Revenue Service or as otherwise





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29

subject to change upon advance written notice from the Record Keeper to the Employer as set forth in the Record Keeping Agreement.

## ARTICLE X. AMENDMENT AND TERMINATION

- 10.1 The parties shall have the right at any time to amend or terminate this Agreement by an instrument in writing and no change in the scope of the services hereunder shall be permitted or undertaken unless agreed to by the parties in such a written amendment.
- 10.2 No amendment shall authorize any part of a Plan participant or Beneficiary's account to be used for, or diverted to, purposes other than for the exclusive benefit of the participant or his or her beneficiaries except to the extent such amendment is permitted under the Code.
- 10.3 Termination of a participant's Plan account shall be effected by a distribution of all assets in the account as directed by the Record Keeper.
- 10.4 The Custodian's rights, protections, and remedies under this Agreement shall survive the termination of this Agreement.

## ARTICLE XI. MISCELLANEOUS PROVISIONS

- 11.1 (a) The Employer represents and warrants that (i) it has full authority and power, and has obtained all necessary authorizations and consents, to use the Custodian as its custodian in accordance with the terms of this Agreement; (ii) assuming execution and delivery of this Agreement by the Custodian, this Agreement is the Employer's legal, valid and binding obligation, enforceable in accordance with its terms and it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement; (iii) it has not relied on any oral or written representation made by the Custodian or any person on its behalf, and acknowledges that this Agreement sets out to the fullest extent the duties of the Custodian; and (iv) it is a resident of the United States and shall notify the Custodian of any changes in residency.
- (b) The Custodian represents and warrants that (i) assuming execution and delivery of this Agreement by the Employer, this Agreement is the Custodian's legal, valid and binding obligation, enforceable in accordance with its terms; (ii) Custodian is a bank eligible to serve as custodian in accordance with Code





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28

equipment or software), failure of or the effect of rules or operations of any external funds transfer system, inability to obtain or interruption of external communications facilities, or any cause beyond the reasonable control of the Custodian (including without limitation, the non-availability of appropriate foreign exchange).

## ARTICLE VIII. RESIGNATION AND REMOVAL OF CUSTODIAN

- 8.1 The Custodian may resign as custodian at any time upon sixty (60) days prior written notice to the Employer.
- 8.2 The Custodian may be removed as custodian at any time upon sixty (60) days prior written notice from the Employer.
- 8.3 Upon the resignation or removal of the Custodian, the Employer shall promptly appoint a successor, provided that in the event of resignation of the Custodian, the Custodian may appoint a successor in its notice of resignation. Any successor custodian appointed herein shall be a bank or other person eligible to serve as a custodian in accordance with Code Section 401(f)(2). Upon receipt by the Custodian of a written acceptance of such appointment by the successor, the Custodian shall promptly transfer and pay over to such successor the assets of the custodial account. The Custodian is authorized, however, to reserve from the assets to be transferred such sum of money or other property, as it may deem advisable, for the payment of all of its fees, compensation, costs and expenses under this Agreement as Custodian. The Custodian shall not be liable for the acts or omissions of the successor whether or not it appoints the successor.

## ARTICLE IX. FEES

- 9.1 The Employer understands and agrees that the Custodian may be compensated for its services under this Agreement by payments made by providers of Mutual Funds, or their affiliates, used under the Plan. This shall include sharing, on a periodic basis, in the revenue derived by such Mutual Fund providers. The Employer acknowledges that the Record Keeper has provided information relating to such fees and may obtain further information upon request by the Employer to the Record Keeper.
- 9.2 The Employer directs the Custodian, on instructions from and on behalf of the Record Keeper, to collect the administrative fees set forth in the Record Keeping Agreement between the Record Keeper and Employer, as sponsor of the Plan, as such agreement may be amended from time to time. Such fees shall be paid from Plan assets and are



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27

## ARTICLE VII. STANDARD OF CARE; PROTECTION OF CUSTODIAN

- 7.1 The Custodian shall use due care in providing the services hereunder. Responsibility for due care is limited solely to correcting processing errors resulting from malfunction of the Custodian's equipment, error by its staff, or error by its programs. The Custodian shall make a good faith effort to correct any error caused by its performance subject to the limitations herein set forth; provided that the Employer notifies the Record Keeper in writing of such error and furnishes all data necessary to make such correction within sixty (60) days following the date in which the Employer is furnished with a report in which the claimed error is contained. The Record Keeper shall promptly notify the Custodian of such claimed error. The Custodian Indemnitees shall in no event be liable, regardless of the form of the action, for loss of profit, goodwill, or other special or consequential damages suffered by the Employer, Plan representatives, the Record Keeper or Plan participants or Beneficiaries as a result of the services provided under this Agreement. The Custodian Indemnitees shall not be liable for any error or omission resulting, directly or indirectly, from failure of the Employer, or its agents, including, but not limited to, the Record Keeper (other than the Custodian and/or its affiliates or hired vendors), to properly perform any of its responsibilities under this Agreement or the Plan. The Employer shall indemnify the Custodian Indemnitees against, and hold them harmless from, any loss, claim or expense (including reasonable attorneys' fees) that may be imposed on, incurred by or asserted against the Custodian Indemnitees in connection with or arising out of the Custodian's performance under this Agreement, provided the Custodian has not acted with negligence or engaged in fraud or willful misconduct in connection with the liabilities in question. Additionally, the Employer shall indemnify and save harmless the Custodian for and from any loss, claim or expense (including reasonable attorneys' fees) arising by reason of any breach of any statutory or other duty owed to the Plan by the Employer or the Record Keeper, whether or not the Custodian may also be considered liable for the Employer's or Record Keeper's breach under the provision of Applicable Law.
- 7.2 The Custodian will maintain and update from time to time business continuation and disaster recovery procedures with respect to its custody business that it determines from time to time meet reasonable commercial standards. The Custodian will have no liability, however, for any damage, loss, expense or liability of any nature that the Employer, Record Keeper, participants or Beneficiaries may suffer or incur, caused by an act of God, fire, flood, civil or labor disturbance, war, act of any governmental authority or other act or threat of any authority (de jure or de facto), legal constraint, fraud or forgery, malfunction of equipment or software (except where such malfunction is attributable to the Custodian's negligence in maintaining the



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26

## ARTICLE VI. THE POWERS OF CUSTODIAN AS CUSTODIAN

6.1 The Custodian, in its capacity as custodian, shall have the following powers:

- (a) To vote in person, or in proxy, or to refrain from voting in respect to any Mutual Fund shares held in a participant's or Beneficiary's Plan account, in accordance with Section 11.2 of this Agreement, and to enter into any voting trust or similar agreement in respect thereto;
- (b) To exercise conversion and subscription rights pertaining to any property held in a Plan account;
- (c) With respect to any investment, to consent or object to any action or non-action of any corporation, or of the directors, officers or stockholders of any corporation;
- (d) To register securities in its name or in the name of any nominee with or without indication of the capacity in which the securities shall be held, or to hold securities in bearer form and to deposit any securities or other property in a depository or clearing corporation;
- (e) To employ as many agents and counsel as are reasonably necessary for the purpose of properly performing its duties under this Agreement, and, as part of its expenses under this Agreement, to pay their reasonable expenses and compensation; and
- (f) To make, execute and deliver, as custodian, any and all conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the powers listed in this Agreement.

6.2 The Custodian shall have no duties or responsibilities as custodian other than those specified in this Agreement or under Applicable Law and no implied covenant or obligation shall be read into this Agreement against the Custodian. Notwithstanding any reference herein to the Plan, or to the provisions thereof, it is expressly agreed that the Custodian is not a party to the Plan and shall have no responsibility to apply or administer the terms of the Plan.

6.3 The Custodian shall have no duty to advise any person of the investment, tax or other consequences resulting from that person's actions or inactions, or of its own actions in following the directions of such person, or its failing to act in the absence of such directions.



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25

## ARTICLE V. DUTIES OF THE EMPLOYER

- 5.1 The Employer shall be solely responsible for the following:
- (a) The tax and legal aspects of the Plan.
  - (b) To select and periodically review the funding options for the Plan, it being understood that the Custodian has no authority or responsibility for choosing such funding options. The funding options under this Custodial Account shall consist of Mutual Fund Shares. The Custodial Account funding options initially chosen for the Plan are set forth in Appendix A to this Agreement. Such funding options may be changed from time to time by the parties attaching a new Appendix A hereto.
  - (c) To evaluate the suitability of the Plan documents and maintain the Plan's conformance with applicable provisions of the Code and the regulations thereunder, including, if applicable, any filings required under Applicable Law.
  - (d) To represent and defend the Plan in an Internal Revenue Service or Department of Labor audit or examination and any appeals or litigation relating thereto and any other legal proceedings relating to the Plan.
  - (e) To provide the Custodian, in a timely manner, accurate data, as requested and in the form requested by Custodian, in order to establish and maintain the records necessary for the fulfillment of the Custodian's duties hereunder. The Custodian shall not be responsible in the event that such information is inaccurate. If the Custodian is required to repeat or reprocess any task as a result of incomplete or inaccurate information provided by the Employer, the Custodian may charge the Employer a reasonable reprocessing fee. In addition, if amounts are sent to the Custodian with incorrect Instructions, or in amounts that do not reconcile with the Instructions given, the Custodian may: (1) apply the amounts for which accurate Instructions are given and refund any excess amounts to the Employer; or (2) if amounts are less than the Instructions call for, refund the entire amount to the Employer.
- 5.2 The Employer shall review all reports and shall immediately notify the Record Keeper in writing of any claimed error with respect to any data or report. The Custodian assumes no responsibility for verification and any report not challenged in writing to the Record Keeper within sixty (60) days of receipt thereof shall be conclusively presumed accurate and complete. The Record Keeper shall promptly notify the Custodian of any claimed error by the Employer.



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24

Record Keeper and may decline to act upon an Instruction if it does not receive clarification or confirmation satisfactory to it. The Record Keeper may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the Employer and may decline to act on an Instruction if it does not receive clarification or confirmation satisfactory to it. The Custodian will not be liable for any loss arising from any delay while either it or the Record Keeper seeks such clarification or confirmation.

- (e) In executing or paying a payment order the Custodian may rely upon the identifying number (e.g., Fedwire routing number or account) of any party as instructed in the payment order. The Record Keeper assumes full responsibility for any inconsistency between the name and identifying number of any party in payment orders issued to the Custodian in Employer's name.
- 4.2 Any Instructions delivered to the Custodian by telephone will promptly thereafter be confirmed in writing by the Record Keeper. Each confirmation is to be clearly marked "Confirmation". The Custodian will not be liable for having followed such Instructions notwithstanding the failure of the Record Keeper to send such confirmation in writing or the failure of such confirmation to conform to the telephone Instructions received. Either party may record any of their telephonic communications. The Record Keeper will comply with any security procedures reasonably required by the Custodian from time to time with respect to verification of Instructions. The Record Keeper will be responsible for safeguarding any test keys, identification codes or other security devices that the Custodian will make available to the Record Keeper.
- 4.3 The Custodian need not act upon Instructions which it reasonably believes to be contrary to law, regulation or market practice and the Custodian will be under no duty to investigate whether any Instructions comply with Applicable Law or market practice.
- 4.4 The Custodian has established cut-off times for receipt of Instructions, which will be made available to the Employer and the Record Keeper. If the Custodian receives an Instruction after its established cut-off time, the Custodian will attempt to act upon the Instruction on the day requested if the Custodian deems it practicable to do so or otherwise as soon as practicable on the next business day.

- 3.5 The services to be performed by the Custodian under this Agreement may be performed on the Custodian's behalf wholly or in part through subsidiaries or affiliates of the Custodian or through vendors designated by the Custodian. The Custodian will continue to be liable for the performance of its duties hereunder.

#### ARTICLE IV. INSTRUCTIONS

- 4.1 (a) The Employer authorizes the Custodian to accept and act upon any Instructions received by the Custodian from Record Keeper without inquiry. The Record Keeper shall receive instructions from participants and Beneficiaries with respect to the investment of their Plan accounts. It shall aggregate such instructions and will provide Instructions to the Custodian to place net purchase and redemption orders with respect to each Mutual Fund investment option selected for the Plan as follows:
- (b) Each participant and Beneficiary shall submit investment directions and changes in investment directions with respect to his or her Plan account to the Record Keeper, which shall aggregate such directions placed each day with respect to the various investment alternatives in accordance with its agreement with the Employer. The Custodian shall invest the assets of the Plan accounts only when, if and in the manner, directed by the Record Keeper and shall not be under any obligation to invest or otherwise manage any of such assets. It shall be the duty of the Custodian to act strictly in accordance with the Record Keeper's directions. In the event that the Custodian fails to receive a proper Instruction, the assets shall be invested in a money market Mutual Fund or in such other Mutual Fund investment option selected by the Employer or left uninvested, in any case as selected by the Employer, until the Custodian receives a proper Instruction from the Record Keeper. The Custodian shall, as directed by the Record Keeper, liquidate investments when necessary to: (i) comply with participants' and Beneficiaries' instructions or to change investments; (ii) make plan benefit payment distributions; (iii) disburse loan proceeds; (iv) reallocate forfeitures under the Plan; or (v) pay expenses, fees, or taxes. The Record Keeper shall be responsible for determining that such liquidation is permitted under the prospectuses for the Mutual Funds in the participant's or Beneficiary's Plan account.
- (c) Unless otherwise expressly provided, all Instructions will continue in full force and effect until canceled or superseded.
- (d) The Custodian may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the





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22

### ARTICLE III. SERVICES TO BE PROVIDED BY CUSTODIAN

- 3.1 The Custodian shall receive such sums of money or Mutual Fund Shares acceptable to the Custodian as shall from time to time be paid or delivered to the Custodian under this Agreement. The Custodian shall hold in Plan participant accounts all such assets, together with all the property purchased therewith and the proceeds thereof and the earnings and income thereon. The Custodian shall not be responsible for, or have any duty to enforce, the collection of any contributions or assets to be paid or transferred to it under the Plan or for verifying whether contributions or transfers to it are permissible under the Plan. The Custodian shall not be responsible for investment choices directed by the Employer or by Plan participants or Beneficiaries under the Plan.
- 3.2 The Custodian shall disburse Plan loan proceeds, hardship and other distributions as directed by the Record Keeper. The Custodian shall distribute Plan account balances in accordance with any Qualified Domestic Relations Order in accordance with the Instructions of the Record Keeper. No amounts may be paid or made available to any distributee before the time provided in Code section 403(b)(7). The Record Keeper shall be responsible for determining that (a) each distribution satisfies the requirements of the Plan and Applicable Law, including Code section 403(b)(7)(A)(ii); (b) the disbursement of loan proceeds has been authorized in accordance with the Plan and Applicable Law; and (c) distributions pursuant to a domestic relations order have been authorized in accordance with the Plan and Applicable Law.
- 3.3 To the extent permitted under Applicable Law, the Custodian shall be the payer (within the meaning of applicable United States Treasury Department regulations) of benefits in the custodial account under the Plan held pursuant to this Agreement. As payer, it shall perform any required withholding of federal and state income tax from distributions and withdrawals and deposit the same with the appropriate tax authorities as and when directed by the Record Keeper. The Record Keeper shall be responsible for preparing and filing all reports of withheld taxes with the participant or Beneficiary and all applicable federal and state tax authorities.
- 3.4 The Custodian agrees that all records maintained by it for the Plan shall be open to inspection and audit at reasonable times by agents or representatives of the Employer and that such records will be preserved and maintained in accordance with Applicable Law. The Custodian may charge, and the Employer shall agree to pay, the reasonable cost of any services and materials used by the Custodian in supplying assistance in connection with any such inspection.





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21

## ARTICLE I. EFFECTIVE DATE

- 1.1 The effective date of this Agreement will be the later of February 11, 2006, or the date the Plan is migrated to the TIAA Open Plan Solutions record keeping platform. This agreement will remain in effect until terminated pursuant to Article X.

## ARTICLE II. DEFINITIONS

- 2.1 "APPLICABLE LAW" means any statute, whether national, state or local, applicable in the United States or any other country, any other law, rule, regulation or interpretation of any governmental entity, any applicable common law, and any decree, injunction, judgment, order, ruling, or writ of any governmental entity.
- 2.2 "BENEFICIARY" means the beneficiary(ies) of a deceased participant and an alternate payee of a participant pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) ("Qualified Domestic Relations Order").
- 2.3 "CUSTODIAN INDEMNITEES" means the Custodian, and its nominees, directors, officers, employees and agents.
- 2.4 "INSTRUCTIONS" means instructions which: (i) contain all necessary information required by the Custodian to enable the Custodian to carry out the Instructions; (ii) are received by the Custodian in writing or via the Custodian's electronic instruction system, SWIFT, telephone, facsimile or such other methods as are for the time being agreed by the Record Keeper and the Custodian; and (iii) the Custodian believes in good faith have been given by the Record Keeper or are transmitted by the Record Keeper with proper testing or authentication pursuant to terms and conditions which the Custodian may specify.
- 2.5 "MUTUAL FUND" means an open-end investment company registered under the Investment Company Act of 1940, as amended.
- 2.6 "MUTUAL FUND SHARES" means securities issued by a Mutual Fund, which constitute "regulated investment company stock" under Code section 403(b)(7)(A)(i).



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20

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

## CUSTODIAL ACCOUNT AGREEMENT FOR A 403(b) PLAN

This Custodial Account Agreement ("Agreement") between JPMorgan Chase Bank, N.A. ("Custodian") and Eastern Michigan University ("Employer") as Sponsor of the **Eastern Michigan University 403(b) Tax Deferred Annuity Plan** ("Plan"), a plan designed to meet the requirements of Section 403(b) of the Internal Revenue Code of 1986, as amended ("Code") and, to the extent applicable, the Employee Retirement Income Security Act of 1974, as amended, ("ERISA").

WHEREAS, in accordance with Code Section 403(b)(1), the Plan will be funded in part with annuity contracts issued by Teachers Insurance and Annuity Association of America and College Retirement Equities Fund ("TIAA-CREF"); and

WHEREAS, in accordance with Code Section 403(b)(7), the Plan will be funded in part with a custodial account designed to meet the requirements of Code sections 401(f)(2) and 403(b)(7) and the assets in such custodial account shall be invested solely in Mutual Fund Shares, as defined in Article II below; and

WHEREAS, the Plan provides that the Plan's participants (and beneficiaries of deceased participants) have the right to direct the Employer as to the investment of amounts credited to their individual accounts under the Plan by selecting from among the Mutual Fund Shares made available to them under the Plan by the Employer;

WHEREAS, the Employer has appointed Teachers Insurance and Annuity Association of America as record keeper for the Plan ("Record Keeper") pursuant to which Record Keeper serves as Employer's agent for purposes of keeping Plan records; and

WHEREAS, the Employer has requested that the Custodian provide certain custodial services for the portion of the Plan's assets invested in Mutual Fund Shares described in Appendix A of this Agreement, which custodial services are required to satisfy the requirements of Code sections 401(f)(2) and 403(b)(7) and the Custodian has agreed to provide such services as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed as follows:



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19

## APPENDIX A

The Custodial Agreement will detail your actual plan funding options, which may include both TIAA-CREF Mutual Funds and non-proprietary mutual funds.

### TIAA-CREF Mutual Funds

TIAA-CREF Lifecycle Funds 2010, 2015, 2020, 2025, 2030, 2035, 2040

TIAA-CREF Mid Cap Value Fund

TIAA-CREF Mid Cap Growth Fund

TIAA-CREF International Equity Index Fund

TIAA-CREF Large-Cap Value Index Fund

TIAA-CREF Small-Cap Blend Index Fund

### Non-Proprietary Mutual Funds

Vanguard Asset Allocation Fund Investor Shares

Vanguard Explorer Fund Admiral Shares

American Funds: Washington Mutual Investors Fund

American Funds: EuroPacific Growth Fund



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18

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date specified in Article I.

EASTERN MICHIGAN UNIVERSITY

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

Steven Holda

Interim Director of Finance

Date: \_\_\_\_\_

JPMORGAN CHASE BANK, N. A.

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

James Bartley

Vice President

Date: \_\_\_\_\_

The undersigned shall be bound by the terms of the foregoing Agreement with respect to the duties of the Record Keeper. The undersigned shall notify the Custodian of any material change in its duties as Record Keeper under its agreement with the Employer.

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

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

Doug Roggow

Director, Pension Products

Date: \_\_\_\_\_

17

permitted with respect to garnishments orders issued pursuant to the Federal Debt Collection Procedures Act of 1990.

- 11.6 Notices required to be given by the parties hereunder shall be sufficiently given if made in writing to such address as each party shall from time to time specify in writing to the other party. Such notices shall be effective when received.
- 11.7 This Agreement is intended to comply with Section 403(b) of the Code and its terms shall be interpreted accordingly. Otherwise, the laws of the State of New York shall control the interpretation and performance of the terms of this Agreement. However, neither the Custodian, any of its subsidiaries or affiliates nor any mutual fund provider assumes any responsibility as to the efficacy or legal sufficiency of this Agreement under federal, state or local law. The United States District Court will have the sole and exclusive jurisdiction over any lawsuit or other judicial proceeding relating to or arising from this Agreement. The parties further hereby knowingly, voluntarily and intentionally waive, to the fullest extent permitted by Applicable Law, any right to a trial by jury with respect to any such lawsuit or judicial proceeding arising or relating to this Agreement or the transactions contemplated hereby. To the extent that in any jurisdiction the Employer may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, the Employer shall not claim, and it hereby irrevocably waives, such immunity.
- 11.8 If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of this Agreement shall not be affected thereby.
- 11.9 This Agreement may be executed simultaneously in two or more counterparts, each of which taken together shall constitute one and the same instrument.



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16

section 401(f)(2); and (iii) it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement.

The Custodian and Employer may rely upon the representations made in this Section 11.1. The Employer shall indemnify the Custodian and the Custodian shall indemnify the Employer, against all losses, liability, claims, or demands arising directly or indirectly from any such representations.

- 11.2 At the time of mailing of notice of each annual or special stockholders' meeting of any Mutual Fund, the Record Keeper shall send a copy of the notice and all proxy solicitation materials to each participant or Beneficiary who has shares of such Mutual Funds credited to his or her individual account together with a voting direction form for return to the Custodian or its designee. These materials shall clearly explain to the participants and Beneficiaries that the Custodian will not vote shares for which it receives no voting directions. Each participant and Beneficiary shall have the right to send instructions to the Record Keeper directing the Custodian as to the manner in which the Custodian is to vote the shares credited to his or her accounts (both vested and unvested). The Custodian shall vote the shares as directed by the Record Keeper. The Custodian shall not vote shares for which it has received no directions. With respect to all rights other than the right to vote, the Custodian shall follow the directions of the Record Keeper. The Custodian shall have no duty to solicit direction from participants and Beneficiaries.
- 11.3 The Plan accounts shall be held for the exclusive benefit of all persons who shall be entitled to receive payments under the Plan. It shall be prohibited at any time for any part of the accounts (other than such amounts as are required or permitted to be used to pay Plan expenses) to be used for, or diverted to, purposes other than the exclusive benefit of Plan participants and their beneficiaries except as otherwise permitted under the Code.
- 11.4 The participant's or Beneficiary's benefits under the Plan held pursuant to this Custodial Agreement shall be provided solely from his or her Plan account, and neither the Employer nor the Custodian shall have any other liability therefore.
- 11.5 No right or interest of a Plan participant or Beneficiary in a Plan account under this Agreement shall be (a) assignable or transferable in any manner, (b) subject to any lien, or (c) liable for, or subject to any obligation or liability of any person except as otherwise permitted under the Code. The preceding sentence shall not apply to an assignment, transfer, or attachment pursuant to a Qualified Domestic Relations Order or to a lien or levy on behalf of the Internal Revenue Service or as otherwise



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15

subject to change upon advance written notice from the Record Keeper to the Employer as set forth in the Record Keeping Agreement.

## ARTICLE X. AMENDMENT AND TERMINATION

- 10.1 The parties shall have the right at any time to amend or terminate this Agreement by an instrument in writing and no change in the scope of the services hereunder shall be permitted or undertaken unless agreed to by the parties in such a written amendment.
- 10.2 No amendment shall authorize any part of a Plan participant or Beneficiary's account to be used for, or diverted to, purposes other than for the exclusive benefit of the participant or his or her beneficiaries except to the extent such amendment is permitted under the Code.
- 10.3 Termination of a participant's Plan account shall be effected by a distribution of all assets in the account as directed by the Record Keeper.
- 10.4 The Custodian's rights, protections, and remedies under this Agreement shall survive the termination of this Agreement.

## ARTICLE XI. MISCELLANEOUS PROVISIONS

- 11.1 (a) The Employer represents and warrants that (i) it has full authority and power, and has obtained all necessary authorizations and consents, to use the Custodian as its custodian in accordance with the terms of this Agreement; (ii) assuming execution and delivery of this Agreement by the Custodian, this Agreement is the Employer's legal, valid and binding obligation, enforceable in accordance with its terms and it has full power and authority to enter into and has taken all necessary corporate action to authorize the execution of this Agreement; (iii) it has not relied on any oral or written representation made by the Custodian or any person on its behalf, and acknowledges that this Agreement sets out to the fullest extent the duties of the Custodian; and (iv) it is a resident of the United States and shall notify the Custodian of any changes in residency.
- (b) The Custodian represents and warrants that (i) assuming execution and delivery of this Agreement by the Employer, this Agreement is the Custodian's legal, valid and binding obligation, enforceable in accordance with its terms; (ii) Custodian is a bank eligible to serve as custodian in accordance with Code





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14

equipment or software), failure of or the effect of rules or operations of any external funds transfer system, inability to obtain or interruption of external communications facilities, or any cause beyond the reasonable control of the Custodian (including without limitation, the non-availability of appropriate foreign exchange).

## ARTICLE VIII. RESIGNATION AND REMOVAL OF CUSTODIAN

- 8.1 The Custodian may resign as custodian at any time upon sixty (60) days prior written notice to the Employer.
- 8.2 The Custodian may be removed as custodian at any time upon sixty (60) days prior written notice from the Employer.
- 8.3 Upon the resignation or removal of the Custodian, the Employer shall promptly appoint a successor, provided that in the event of resignation of the Custodian, the Custodian may appoint a successor in its notice of resignation. Any successor custodian appointed herein shall be a bank or other person eligible to serve as a custodian in accordance with Code Section 401(f)(2). Upon receipt by the Custodian of a written acceptance of such appointment by the successor, the Custodian shall promptly transfer and pay over to such successor the assets of the custodial account. The Custodian is authorized, however, to reserve from the assets to be transferred such sum of money or other property, as it may deem advisable, for the payment of all of its fees, compensation, costs and expenses under this Agreement as Custodian. The Custodian shall not be liable for the acts or omissions of the successor whether or not it appoints the successor.

## ARTICLE IX. FEES

- 9.1 The Employer understands and agrees that the Custodian may be compensated for its services under this Agreement by payments made by providers of Mutual Funds, or their affiliates, used under the Plan. This shall include sharing, on a periodic basis, in the revenue derived by such Mutual Fund providers. The Employer acknowledges that the Record Keeper has provided information relating to such fees and may obtain further information upon request by the Employer to the Record Keeper.
- 9.2 The Employer directs the Custodian, on instructions from and on behalf of the Record Keeper, to collect the administrative fees set forth in the Record Keeping Agreement between the Record Keeper and Employer, as sponsor of the Plan, as such agreement may be amended from time to time. Such fees shall be paid from Plan assets and are

13

## ARTICLE VII. STANDARD OF CARE; PROTECTION OF CUSTODIAN

- 7.1 The Custodian shall use due care in providing the services hereunder. Responsibility for due care is limited solely to correcting processing errors resulting from malfunction of the Custodian's equipment, error by its staff, or error by its programs. The Custodian shall make a good faith effort to correct any error caused by its performance subject to the limitations herein set forth; provided that the Employer notifies the Record Keeper in writing of such error and furnishes all data necessary to make such correction within sixty (60) days following the date in which the Employer is furnished with a report in which the claimed error is contained. The Record Keeper shall promptly notify the Custodian of such claimed error. The Custodian Indemnitees shall in no event be liable, regardless of the form of the action, for loss of profit, goodwill, or other special or consequential damages suffered by the Employer, Plan representatives, the Record Keeper or Plan participants or Beneficiaries as a result of the services provided under this Agreement. The Custodian Indemnitees shall not be liable for any error or omission resulting, directly or indirectly, from failure of the Employer, or its agents, including, but not limited to, the Record Keeper (other than the Custodian and/or its affiliates or hired vendors), to properly perform any of its responsibilities under this Agreement or the Plan. The Employer shall indemnify the Custodian Indemnitees against, and hold them harmless from, any loss, claim or expense (including reasonable attorneys' fees) that may be imposed on, incurred by or asserted against the Custodian Indemnitees in connection with or arising out of the Custodian's performance under this Agreement, provided the Custodian has not acted with negligence or engaged in fraud or willful misconduct in connection with the liabilities in question. Additionally, the Employer shall indemnify and save harmless the Custodian for and from any loss, claim or expense (including reasonable attorneys' fees) arising by reason of any breach of any statutory or other duty owed to the Plan by the Employer or the Record Keeper, whether or not the Custodian may also be considered liable for the Employer's or Record Keeper's breach under the provision of Applicable Law.
- 7.2 The Custodian will maintain and update from time to time business continuation and disaster recovery procedures with respect to its custody business that it determines from time to time meet reasonable commercial standards. The Custodian will have no liability, however, for any damage, loss, expense or liability of any nature that the Employer, Record Keeper, participants or Beneficiaries may suffer or incur, caused by an act of God, fire, flood, civil or labor disturbance, war, act of any governmental authority or other act or threat of any authority (de jure or de facto), legal constraint, fraud or forgery, malfunction of equipment or software (except where such malfunction is attributable to the Custodian's negligence in maintaining the



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12

## ARTICLE VI. THE POWERS OF CUSTODIAN AS CUSTODIAN

6.1 The Custodian, in its capacity as custodian, shall have the following powers:

- (a) To vote in person, or in proxy, or to refrain from voting in respect to any Mutual Fund shares held in a participant's or Beneficiary's Plan account, in accordance with Section 11.2 of this Agreement, and to enter into any voting trust or similar agreement in respect thereto;
- (b) To exercise conversion and subscription rights pertaining to any property held in a Plan account;
- (c) With respect to any investment, to consent or object to any action or non-action of any corporation, or of the directors, officers or stockholders of any corporation;
- (d) To register securities in its name or in the name of any nominee with or without indication of the capacity in which the securities shall be held, or to hold securities in bearer form and to deposit any securities or other property in a depository or clearing corporation;
- (e) To employ as many agents and counsel as are reasonably necessary for the purpose of properly performing its duties under this Agreement, and, as part of its expenses under this Agreement, to pay their reasonable expenses and compensation; and
- (f) To make, execute and deliver, as custodian, any and all conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the powers listed in this Agreement.

6.2 The Custodian shall have no duties or responsibilities as custodian other than those specified in this Agreement or under Applicable Law and no implied covenant or obligation shall be read into this Agreement against the Custodian. Notwithstanding any reference herein to the Plan, or to the provisions thereof, it is expressly agreed that the Custodian is not a party to the Plan and shall have no responsibility to apply or administer the terms of the Plan.

6.3 The Custodian shall have no duty to advise any person of the investment, tax or other consequences resulting from that person's actions or inactions, or of its own actions in following the directions of such person, or its failing to act in the absence of such directions.

## ARTICLE V. DUTIES OF THE EMPLOYER

- 5.1 The Employer shall be solely responsible for the following:
- (a) The tax and legal aspects of the Plan.
  - (b) To select and periodically review the funding options for the Plan, it being understood that the Custodian has no authority or responsibility for choosing such funding options. The funding options under this Custodial Account shall consist of Mutual Fund Shares. The Custodial Account funding options initially chosen for the Plan are set forth in Appendix A to this Agreement. Such funding options may be changed from time to time by the parties attaching a new Appendix A hereto.
  - (c) To evaluate the suitability of the Plan documents and maintain the Plan's conformance with applicable provisions of the Code and the regulations thereunder, including, if applicable, any filings required under Applicable Law.
  - (d) To represent and defend the Plan in an Internal Revenue Service or Department of Labor audit or examination and any appeals or litigation relating thereto and any other legal proceedings relating to the Plan.
  - (e) To provide the Custodian, in a timely manner, accurate data, as requested and in the form requested by Custodian, in order to establish and maintain the records necessary for the fulfillment of the Custodian's duties hereunder. The Custodian shall not be responsible in the event that such information is inaccurate. If the Custodian is required to repeat or reprocess any task as a result of incomplete or inaccurate information provided by the Employer, the Custodian may charge the Employer a reasonable reprocessing fee. In addition, if amounts are sent to the Custodian with incorrect Instructions, or in amounts that do not reconcile with the Instructions given, the Custodian may: (1) apply the amounts for which accurate Instructions are given and refund any excess amounts to the Employer; or (2) if amounts are less than the Instructions call for, refund the entire amount to the Employer.
- 5.2 The Employer shall review all reports and shall immediately notify the Record Keeper in writing of any claimed error with respect to any data or report. The Custodian assumes no responsibility for verification and any report not challenged in writing to the Record Keeper within sixty (60) days of receipt thereof shall be conclusively presumed accurate and complete. The Record Keeper shall promptly notify the Custodian of any claimed error by the Employer.



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10

Record Keeper and may decline to act upon an Instruction if it does not receive clarification or confirmation satisfactory to it. The Record Keeper may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the Employer and may decline to act on an Instruction if it does not receive clarification or confirmation satisfactory to it. The Custodian will not be liable for any loss arising from any delay while either it or the Record Keeper seeks such clarification or confirmation.

- (e) In executing or paying a payment order the Custodian may rely upon the identifying number (e.g., Fedwire routing number or account) of any party as instructed in the payment order. The Record Keeper assumes full responsibility for any inconsistency between the name and identifying number of any party in payment orders issued to the Custodian in Employer's name.
- 4.2 Any instructions delivered to the Custodian by telephone will promptly thereafter be confirmed in writing by the Record Keeper. Each confirmation is to be clearly marked "Confirmation". The Custodian will not be liable for having followed such Instructions notwithstanding the failure of the Record Keeper to send such confirmation in writing or the failure of such confirmation to conform to the telephone Instructions received. Either party may record any of their telephonic communications. The Record Keeper will comply with any security procedures reasonably required by the Custodian from time to time with respect to verification of Instructions. The Record Keeper will be responsible for safeguarding any test keys, identification codes or other security devices that the Custodian will make available to the Record Keeper.
- 4.3 The Custodian need not act upon Instructions which it reasonably believes to be contrary to law, regulation or market practice and the Custodian will be under no duty to investigate whether any Instructions comply with Applicable Law or market practice.
- 4.4 The Custodian has established cut-off times for receipt of Instructions, which will be made available to the Employer and the Record Keeper. If the Custodian receives an Instruction after its established cut-off time, the Custodian will attempt to act upon the Instruction on the day requested if the Custodian deems it practicable to do so or otherwise as soon as practicable on the next business day.



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9

- 3.5 The services to be performed by the Custodian under this Agreement may be performed on the Custodian's behalf wholly or in part through subsidiaries or affiliates of the Custodian or through vendors designated by the Custodian. The Custodian will continue to be liable for the performance of its duties hereunder.

#### ARTICLE IV. INSTRUCTIONS

- 4.1 (a) The Employer authorizes the Custodian to accept and act upon any Instructions received by the Custodian from Record Keeper without inquiry. The Record Keeper shall receive instructions from participants and Beneficiaries with respect to the investment of their Plan accounts. It shall aggregate such instructions and will provide Instructions to the Custodian to place net purchase and redemption orders with respect to each Mutual Fund investment option selected for the Plan as follows:
- (b) Each participant and Beneficiary shall submit investment directions and changes in investment directions with respect to his or her Plan account to the Record Keeper, which shall aggregate such directions placed each day with respect to the various investment alternatives in accordance with its agreement with the Employer. The Custodian shall invest the assets of the Plan accounts only when, if and in the manner, directed by the Record Keeper and shall not be under any obligation to invest or otherwise manage any of such assets. It shall be the duty of the Custodian to act strictly in accordance with the Record Keeper's directions. In the event that the Custodian fails to receive a proper Instruction, the assets shall be invested in a money market Mutual Fund or in such other Mutual Fund investment option selected by the Employer or left uninvested, in any case as selected by the Employer, until the Custodian receives a proper Instruction from the Record Keeper. The Custodian shall, as directed by the Record Keeper, liquidate investments when necessary to: (i) comply with participants' and Beneficiaries' instructions or to change investments; (ii) make plan benefit payment distributions; (iii) disburse loan proceeds; (iv) reallocate forfeitures under the Plan; or (v) pay expenses, fees, or taxes. The Record Keeper shall be responsible for determining that such liquidation is permitted under the prospectuses for the Mutual Funds in the participant's or Beneficiary's Plan account.
- (c) Unless otherwise expressly provided, all Instructions will continue in full force and effect until canceled or superseded.
- (d) The Custodian may (in its sole discretion and without affecting any part of this Section 4.1) seek clarification or confirmation of an Instruction from the





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8

### ARTICLE III. SERVICES TO BE PROVIDED BY CUSTODIAN

- 3.1 The Custodian shall receive such sums of money or Mutual Fund Shares acceptable to the Custodian as shall from time to time be paid or delivered to the Custodian under this Agreement. The Custodian shall hold in Plan participant accounts all such assets, together with all the property purchased therewith and the proceeds thereof and the earnings and income thereon. The Custodian shall not be responsible for, or have any duty to enforce, the collection of any contributions or assets to be paid or transferred to it under the Plan or for verifying whether contributions or transfers to it are permissible under the Plan. The Custodian shall not be responsible for investment choices directed by the Employer or by Plan participants or Beneficiaries under the Plan.
- 3.2 The Custodian shall disburse Plan loan proceeds, hardship and other distributions as directed by the Record Keeper. The Custodian shall distribute Plan account balances in accordance with any Qualified Domestic Relations Order in accordance with the Instructions of the Record Keeper. No amounts may be paid or made available to any distributee before the time provided in Code section 403(b)(7). The Record Keeper shall be responsible for determining that (a) each distribution satisfies the requirements of the Plan and Applicable Law, including Code section 403(b)(7)(A)(ii); (b) the disbursement of loan proceeds has been authorized in accordance with the Plan and Applicable Law; and (c) distributions pursuant to a domestic relations order have been authorized in accordance with the Plan and Applicable Law.
- 3.3 To the extent permitted under Applicable Law, the Custodian shall be the payer (within the meaning of applicable United States Treasury Department regulations) of benefits in the custodial account under the Plan held pursuant to this Agreement. As payer, it shall perform any required withholding of federal and state income tax from distributions and withdrawals and deposit the same with the appropriate tax authorities as and when directed by the Record Keeper. The Record Keeper shall be responsible for preparing and filing all reports of withheld taxes with the participant or Beneficiary and all applicable federal and state tax authorities.
- 3.4 The Custodian agrees that all records maintained by it for the Plan shall be open to inspection and audit at reasonable times by agents or representatives of the Employer and that such records will be preserved and maintained in accordance with Applicable Law. The Custodian may charge, and the Employer shall agree to pay, the reasonable cost of any services and materials used by the Custodian in supplying assistance in connection with any such inspection.





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7

## ARTICLE I. EFFECTIVE DATE

- 1.1 The effective date of this Agreement will be the later of February 11, 2006, or the date the Plan is migrated to the TIAA Open Plan Solutions record keeping platform. This agreement will remain in effect until terminated pursuant to Article X.

## ARTICLE II. DEFINITIONS

- 2.1 “APPLICABLE LAW” means any statute, whether national, state or local, applicable in the United States or any other country, any other law, rule, regulation or interpretation of any governmental entity, any applicable common law, and any decree, injunction, judgment, order, ruling, or writ of any governmental entity.
- 2.2 “BENEFICIARY” means the beneficiary(ies) of a deceased participant and an alternate payee of a participant pursuant to a qualified domestic relations order (as defined in section 414(p) of the Code) (“Qualified Domestic Relations Order”).
- 2.3 “CUSTODIAN INDEMNITEES” means the Custodian, and its nominees, directors, officers, employees and agents.
- 2.4 “INSTRUCTIONS” means instructions which: (i) contain all necessary information required by the Custodian to enable the Custodian to carry out the Instructions; (ii) are received by the Custodian in writing or via the Custodian’s electronic instruction system, SWIFT, telephone, facsimile or such other methods as are for the time being agreed by the Record Keeper and the Custodian; and (iii) the Custodian believes in good faith have been given by the Record Keeper or are transmitted by the Record Keeper with proper testing or authentication pursuant to terms and conditions which the Custodian may specify.
- 2.5 “MUTUAL FUND” means an open-end investment company registered under the Investment Company Act of 1940, as amended.
- 2.6 “MUTUAL FUND SHARES” means securities issued by a Mutual Fund, which constitute “regulated investment company stock” under Code section 403(b)(7)(A)(i).



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6

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

## CUSTODIAL ACCOUNT AGREEMENT FOR A 403(b) PLAN

This Custodial Account Agreement ("Agreement") between JPMorgan Chase Bank, N.A. ("Custodian") and Eastern Michigan University ("Employer") as Sponsor of the **Eastern Michigan University 403(b) Defined Contribution Retirement Plan** ("Plan"), a plan designed to meet the requirements of Section 403(b) of the Internal Revenue Code of 1986, as amended ("Code") and, to the extent applicable, the Employee Retirement Income Security Act of 1974, as amended, ("ERISA").

WHEREAS, in accordance with Code Section 403(b)(1), the Plan will be funded in part with annuity contracts issued by Teachers Insurance and Annuity Association of America and College Retirement Equities Fund ("TIAA-CREF"); and

WHEREAS, in accordance with Code Section 403(b)(7), the Plan will be funded in part with a custodial account designed to meet the requirements of Code sections 401(f)(2) and 403(b)(7) and the assets in such custodial account shall be invested solely in Mutual Fund Shares, as defined in Article II below; and

WHEREAS, the Plan provides that the Plan's participants (and beneficiaries of deceased participants) have the right to direct the Employer as to the investment of amounts credited to their individual accounts under the Plan by selecting from among the Mutual Fund Shares made available to them under the Plan by the Employer;

WHEREAS, the Employer has appointed Teachers Insurance and Annuity Association of America as record keeper for the Plan ("Record Keeper") pursuant to which Record Keeper serves as Employer's agent for purposes of keeping Plan records; and

WHEREAS, the Employer has requested that the Custodian provide certain custodial services for the portion of the Plan's assets invested in Mutual Fund Shares described in Appendix A of this Agreement, which custodial services are required to satisfy the requirements of Code sections 401(f)(2) and 403(b)(7) and the Custodian has agreed to provide such services as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed as follows:

6

Encls: ~~Participant Minimum Distribution lists~~  
~~May 26, 2005~~ May 20, 2005

Sincerely,

Robert A. Kissel, Joe A. Consultant, ~~CEBS, CFP®~~  
~~Director, Client Services~~ Regional Vice President  
Midwest Region

some cases in order to keep your plan in compliance. Under the IRS' Self-Correction Program (SCP), you may be able to avoid plan disqualification even if you discover an error if you subsequently correct it.

Enclosed are four lists of individuals, participating in your qualified plan, who have not had a premium contributed to their contracts since December, 2004. The lists identify (1) individuals turning age 69½ in 2005, (2) individuals turning 70½ in 2005, (3) individuals age 71½ and older, and (4) deceased participants with remaining accumulations in the deferred annuity stage. Each of these individuals, or their beneficiaries, may need to begin distributions this year (or within the next couple of years).

Please be aware that the lists may include participants who:

- Have received distributions this year but may not have necessarily satisfied the minimum distribution requirements;
- Have requested or sent in forms but have not yet received a distribution; or
- Are currently employed and, therefore, may not have to receive a distribution this year.

Please review the information carefully to ensure that your plan remains in compliance with the Internal Revenue Code. If your employees do not meet any of the above listed exclusions, you might need to take some type of action. Also, if your institution has other pension carriers, keep in mind that some individuals may be satisfying the requirements from another contract under your qualified plan. In the meantime, we will continue to get the word out to participants through literature and personalized mailings.

If you have questions or concerns, please feel free to give me a call.

The first paragraph of the Recordkeeping Services Agreement and Section 1.1 of the Custodial Account Agreements have been edited to give us flexibility in the actual date of migration should something force a delay. Remember, however, that our migration schedule is very tight and a first quarter migration is necessary for maintaining the Vanguard funds.

Please have all of the Agreements appropriately signed and dated; and mail them to Chris Kelly at the following address:

Christopher Kelly  
Implementation Manager  
TIAA-CREF  
370 17<sup>th</sup> Street, Suite 200  
Denver, CO 80202

If there are any questions or concerns about the Agreements, do not hesitate to contact me.

Sincerely,

Nicholas C. Mattera  
Director, Institutional Client Services  
Midwest Region

Nicholas C. Mattera ~~Joe A.~~  
~~Consultant~~ Robert A. Kissel, CEBS,  
CFP, CEBS®  
Director, Institutional Client  
Services Regional Vice President  
Midwest Region

A Registered (Principal or Representative)  
of TIAA-CREF  
Individual & Institutional Services, LLC,  
Member NASD/SIPC

86600 842-2949 2005  
734 332 312-332-3501 2272  
734 312 996-332-0358 0731 (fax)

~~July 19~~ December 20, 2005

~~Steve Sindlinger~~ Jeanette Hassan  
Manager Director, Retirement Plans Benefits Program  
Eastern Michigan University of Michigan  
~~Wolverine Tower Low Rise G405~~  
3003 South State Street 235 Warner  
Ann Arbor, Michigan 48109-1278

Re: ~~Qualified Plan Status and Minimum Distribution~~ OPS Recordkeeping Services Agreement and Custodial  
Account Agreements

Dear ~~Steve~~ Jeanette:

Enclosed are two copies of the Recordkeeping Services Agreement and three copies of the Custodial Account  
Agreement for each of your plans:

- 408(b) Defined Contribution Retirement Plan
- 408(b) Tax Deferred Annuity Plan
- 457(b) Deferred Compensation Plan

~~To meet the requirements of the Internal Revenue Code, a retirement plan must conform to the minimum  
distribution rules. Under these rules, minimum distributions generally must begin by April 1 of the year following  
the calendar year the individual turns age 70½ or terminates employment, whichever is later.~~

~~It is important that minimum distribution requirements be taken because, under Section 401(a)(9) of the  
Code, an entire plan could be disqualified if there is a pattern or regular practice of one or more participants failing  
to meet the rules. At the very least, individuals who fail to meet the annual requirements will be subject to a  
penalty equal to 50 percent of the amount that should have been distributed.~~

~~We have sent this letter to you, as well as letters to participants that our records indicate may need to take  
additional distributions to meet minimum distribution requirements, to help avoid compliance problems or correct  
them if they exist.~~

~~A plan must have procedures in place to ensure compliance with the minimum distribution rules.  
Although TIAA-CREF notifies participants who must meet the requirements, you may need to get involved in~~

TIAA-CREF Individual & Institutional Services, LLC, and Teachers Personal Investors Services, Inc., distribute securities products. TIAA (Teachers Insurance and Annuity Association), New York, NY and TIAA-CREF Life Insurance Co., New York, NY issues insurance and annuities. TIAA-CREF Trust Company, FSB provides trust services. TIAA-CREF Tuition Financing Inc. (TFI) is the 529 college savings Program Manager. *Investment products are not FDIC insured, may lose value and are not bank guaranteed. You should consider the investment objectives, risks, charges and expenses carefully before investing. Please call 877-518-9161 or log on to [www.tiaa-cref.org](http://www.tiaa-cref.org) for a prospectus that contains this and other information. Please read the prospectus carefully before investing.*