RETIREMENT PLAN

OF

THE UNIVERSITY OF THE SOUTH

Amended and Restated as of January 1, 2013
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ARTICLE 1

DECLARATION

1.1 Declaration. The University of the South, organized under the laws of the State of Tennessee, has previously established the Retirement Plan of the University of the South (the “Plan”) for the benefit of certain of its employees and their beneficiaries. This plan document contains the provisions of the Plan as amended and restated as of January 1, 2009.

ARTICLE 2

DEFINITIONS

As used herein, the words and phrases defined in this Article shall have the following meanings:

2.1 Account. “Account” means the separate account(s) established for each Participant with a Vendor. The value of a Participant’s Account includes all contributions, less any expense charges, and shall reflect investment experience.

2.2 Annual Additions. “Annual Additions” means the total contributions credited to a Participant’s Account for the taxable year and shall not exceed the limitation under Code Section 415(c)(1). For purposes of this limitation, a Participant’s compensation means “ includible compensation” as determined under Code Section 403(b)(3) and Treas. Reg. Section 1.403(b)-2(b)(11), and a former employee is deemed to have monthly includible compensation for the period through the end of the taxable year of the former employee in which he or she ceases to be an employee and through the end of each of the next five (5) taxable years. The amount of monthly includible compensation is equal to one-twelfth of the former employee’s includible compensation during his most recent year of service.

2.3 Beneficiary. “Beneficiary” means the individual, institution, trustee, or estate designated by the Participant to receive the Participant’s benefits at his or her death. If a person is so designated and is not living at the time of death of the Participant, and there is no alternative Beneficiary named, the Beneficiary shall be the deceased Participant’s estate.

2.4 Board. “Board” means Board of Regents.


2.6 Elective Contribution. “Elective Contribution” means an Elective Contribution Participant’s voluntary, pre-tax salary deferral made under a Salary Reduction
Agreement. Elective Contributions shall be maintained in a separate account from other contributions made by or on behalf of the Participant.

2.7 **Elective Contribution Participant.** "Elective Contribution Participant" means any Eligible Employee of the University who enters into a Salary Reduction Agreement pursuant to Article 8.

2.8 **Eligible Employee.** "Eligible Employee" means an employee of the University who is a regular full-time employee, a regular part-time employee who is normally scheduled to work at least 1,000 hours per year (20 hours per week), a head resident, or a full-time employee who has a term appointment in excess of two (2) consecutive years and is not an Excluded Employee.

2.9 **Excluded Employee.** "Excluded Employee" means an employee of the University who is normally scheduled to work less than 1,000 hours per year (20 hours per week), a student employee, a nonresident alien, an employee eligible to participate in another retirement plan, or any person the University does not classify as an employee.

2.10 **Funding Vehicle.** "Funding Vehicle" means the investments approved under Article 5 in which the University's Nonelective Contributions may be invested for the purpose of funding accrued benefits under this Plan.

2.11 **Nonelective Contribution.** "Nonelective Contribution" means a fixed or discretionary contribution by the University to the Participant's Account.

2.12 **Nonelective Contribution Participant.** "Nonelective Contribution Participant" means any Eligible Employee of the University who is eligible to receive Nonelective Contributions pursuant to Article 3.

2.13 **Normal Retirement Date.** "Normal Retirement Date" is the first day of the month in which a Participant reaches age 65.

2.14 **Participant.** "Participant" means any Eligible Employee of the University who is an "Elective Contribution Participant" and/or a "Nonelective Contribution Participant."

2.15 **Plan.** "Plan" means the Retirement Plan of The University of the South.

2.16 **Plan Year.** "Plan Year" is January 1 through December 31.

2.17 **Retirement.** "Retirement" means with respect to a Participant (a) his or her Normal Retirement Date, (b) the attainment of age 62 or more and his or her combined age and Years of Continuous Service equals 80, (c) the attainment of age 62 and his or her retirement is approved by the University, (d) the attainment of age 50 and his or her combined age and Years of Continuous Service equals 80 and his or her retirement is approved by the University, or (e) the effective date of his or her participation in any approved phased retirement program or arrangement offered by the University from time to time. For purposes of this Section 2.17, the term "Years of Continuous Service" shall
be defined as Years of Employment with no break in employment in excess of six months.

2.18 **Salary.** “Salary” means the amount paid by the University to a Participant which is designated by the University as budgeted or base salary, whichever the case may be, and shall not include any additions or supplements (except the supplement for faculty members teaching in the University’s summer school). In no event will the Salary taken into account under the Plan exceed the limits of Code Section 401(a)(17), as adjusted from time to time, regarding the amount of a Participant’s compensation that may be taken into account.

2.19 **Salary Reduction Agreement.** “Salary Reduction Agreement” means a Participant’s written election to make Elective Contributions to the Plan which is made on the form provided by the University for this purpose.

2.20 **University.** “University” means The University of the South.

2.21 **Vendor.** “Vendor” means the provider of a Funding Vehicle that holds all or part of a Participant’s Account.

2.22 **Year of Employment.** “Year of Employment” means a 12 consecutive month period starting with the Eligible Employee’s date of commencement of employment. If an Eligible Employee terminates employment and is thereafter reemployed, then a Year of Employment means a 12 consecutive month period starting with the Eligible Employee’s date of commencement of reemployment.

Words used herein shall be deemed to include the masculine or feminine, or the singular or plural, as the context reasonably requires or permits.

**ARTICLE 3**

**PARTICIPATION IN NONELECTIVE CONTRIBUTIONS**

3.1 **Participation.** An Eligible Employee will begin receiving Nonelective Contributions to this Plan on the first day of the month following the completion of one Year of Employment at the University, and completion of all required Plan enrollment forms. Notwithstanding the foregoing, the requirement of one Year of Employment shall not apply if the employee was previously employed full time at a four-year college or university for the twelve month period immediately prior to the date of commencement of employment at the University.

3.2 **Notification.** The University will notify an Eligible Employee when he or she is eligible to receive Nonelective Contributions. Upon completion of the required enrollment forms and satisfaction of all other requirements necessary to receive Nonelective Contributions, the Eligible Employee will be considered a Nonelective Contribution Participant and shall be bound by all of the terms, provisions, and conditions of this Plan and the terms,
provisions and conditions of any Vendor or Funding Vehicle(s) to which Plan contributions for the Nonelective Contribution Participant are made.

3.3 *Termination of Participation.* A Nonelective Contribution Participant will continue to receive Nonelective Contributions until he or she ceases to be a Nonelective Contribution Participant, or until the Plan is terminated, whichever occurs first.

**ARTICLE 4**

**NONELECTIVE CONTRIBUTIONS**

4.1 *Contributions.* Once an Eligible Employee becomes a Nonelective Contribution Participant, the University will make Nonelective Contributions on a monthly basis to the Participant’s Account according to the following schedule:

A. Salaried exempt and salaried non-exempt employees other than head residents.

   Each year 10% of Salary.

   Notwithstanding the foregoing for each salaried exempt and salaried non-exempt employee who was hired by the University prior to June 1, 1992, and the Vice Chancellor, the Nonelective Contribution each year shall be 15% of Salary.

B. Hourly non-exempt employees and head residents.

   First year of participation 2% of Salary
   Second year of participation 4% of Salary
   Third year of participation 6% of Salary
   Fourth year of participation 8% of Salary
   Fifth year of participation and thereafter 10% of Salary

   Notwithstanding the foregoing, for each hourly non-exempt employee and head resident who enrolled in the Plan prior to 1988 the Nonelective Contribution shall be on a graded schedule in effect at such time which has a maximum contribution of 15% of Salary.

C. Employees Participating in a Phased Retirement Program.

   In the event a Nonelective Contribution Participant is participating in an approved phased retirement program or arrangement offered by the University, the amount of the Nonelective Contribution during the phased retirement will be as stated in the phased retirement program policy or the Participant’s phased retirement agreement.

D. Employees on Sabbatical Leave or Subject to Contract.
Notwithstanding the provisions of this Section 4.1, Nonelective Contributions may be increased in the sole discretion of the University above the levels set forth in paragraphs A. and B. for a Nonelective Contribution Participant who is a faculty member on approved full-year sabbatical leave and may be decreased in the sole discretion of the University below the levels set forth in paragraph C. (but not below the levels set forth in paragraphs A. and B.) for a Nonelective Contribution Participant participating in any approved phased retirement program or arrangement offered by the University from time to time if the contributions for these individuals are designated in a written agreement; provided, however, that the designated level of contributions shall not exceed the maximum contribution limits under the Code as set forth in Section 4.2.

4.2 Maximum Plan Contributions. Notwithstanding anything to the contrary contained in this Plan, the total Annual Additions made on behalf of a Participant for any Plan Year will not exceed the limits imposed by Code Section 415, as may be adjusted from time to time. The amount of contributions will also be subject to the limitations of Code Sections 402(g) and 403(b), as applicable and adjusted from time to time. For purposes of determining the limits imposed by Code Section 415, the terms of Section 2.2 above relating to former employees shall apply in the event that this Plan is ever amended to provide for Nonelective Contributions on behalf of former employees; provided, however, that a contribution is not deemed made for a former employee if the contribution is with respect to compensation that would be paid for a payroll period beginning before the former employee's severance from employment.

In the event that total Annual Additions made on behalf of the Participant exceed the limits imposed by Code Section 415, the University will follow the rules of any Employee Plans Compliance Resolution System (EPCRS) for correction of such excess amounts.

4.3 Timing of Contributions. Nonelective Contributions will begin when the University has determined that the Nonelective Contribution Participant has met the requirements for participation (including without limitation completion of all required enrollment forms). Nonelective Contributions will be forwarded to the Funding Vehicles in accordance with the procedures and timing established by the University and the Code but, in any case, within a period that is not longer than reasonable for the proper administration of the Plan.

4.4 Allocation of Contributions. A Nonelective Contribution Participant may allocate contributions made on his or her behalf to a Vendor and, within such Vendor, to Funding Vehicles in any whole-number percentages that total 100 percent. A Nonelective Contribution Participant may change his or her allocation of future contributions to another Vendor no more frequently than once every six months.

4.5 No Reversion. Except as otherwise permitted by applicable law, under no circumstances or conditions will any Nonelective Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the University.
ARTICLE 5

INVESTMENT OF NONELECTIVE CONTRIBUTIONS

5.1 Investments. Nonelective Contributions are invested in one or more of the Funding Vehicles available through Vendors and approved under this Plan. The approved Vendors are Teachers Insurance and Annuity Association (TIAA), College Retirement Equities Fund (CREF), and Fidelity Investments. The approved Funding Vehicles are set forth in the Plan’s administrative services agreements with the Vendors, as amended from time to time.

The University’s current selection of Vendors and Funding Vehicles is not intended to limit future additions or deletions of Vendors or Funding Vehicles. In the event fund exchanges are ever allowed to a funding vehicle with whose vendor the University does not have an administrative service agreement, then such exchanges shall be allowed subject to the requirements of Section 5.2 below and only if the University and the vendor enter into an agreement providing that they will provide each other with the following information: (i) information necessary for the resulting transferee contract, or any other contract to which contributions have been made, to satisfy Code Section 403(b), including information concerning the Participant’s employment and information that takes into account other Code Section 403(b) contracts or qualified employer plans (such as whether a severance from employment has occurred for purposes of the distribution restrictions in Treas. Reg. Section 1.403(b)-6 and whether the hardship withdrawal rules therein are satisfied); and (ii) information necessary for the resulting contract, or any other contract to which contributions have been made by the University, to satisfy other tax requirements (such as whether a plan loan satisfies the conditions in Code Section 72(p)(2)).

5.2 Fund Exchanges. A Nonelective Contribution Participant may exchange contracts (vehicles) maintained for his or her benefit between Funding Vehicles in accordance with the procedures established by the Vendors, including completion of properly executed request forms, provided that:

A. the Participant has an accumulated benefit immediately after the exchange that is at least equal to his or her accumulated benefit immediately before the exchange; and

B. the vehicle to which funds are transferred is subject to distribution restrictions with respect to the Participant that are not less stringent than those imposed on the vehicle from which funds are being transferred.

ARTICLE 6

VESTING

6.1 Vesting. Each Nonelective Contribution Participant shall be fully and immediately vested in Nonelective Contributions made on his or her behalf when such contributions are made and forwarded to the Funding Vehicles. Elective Contribution
Participants are always 100% vested in their Elective Contributions. Participants are always 100% vested in their rollover contributions made under Section 8.6.

ARTICLE 7
DISTRIBUTIONS

7.1 Retirement Distribution. A Participant may elect to receive distribution from his or her Account upon Retirement or during phased retirement under any option permitted by the Vendor holding the Participant’s Account. Notwithstanding the foregoing or anything else in this Plan to the contrary:

A. distributions from custodial accounts that are not attributable to Elective Contributions shall not be distributed before the earliest of the Participant’s: (i) severance from employment (as defined in 1.403(b)-6(h)), (ii) death; (iii) disability (within the meaning of Code Section 72(m)(7)); or (iv) attainment of age 59½; provided, however, the foregoing sentence shall not limit any earlier distributions made in order to correct excess deferrals (as provided in 1.403(b)-4(f)) or upon termination of the Plan (as provided in 1.403(b)-10(a));

B. distributions that are not attributable to Elective Contributions and are from annuity contracts issued by an insurance company on or after January 1, 2009 shall not be distributed before the Participant’s severance from employment (as defined in 1.403(b)-6(h)) or upon the prior occurrence of an event stated in this Plan or the annuity contract, such as passage of a fixed number of years, phased retirement, the Participant’s attainment of a stated age, layoff, illness, disability, retirement, death, or severance from employment (as defined in 1.403(b)-6(h)); provided, however, the foregoing sentence shall not limit any earlier distributions made in order to correct excess deferrals (as provided in 1.403(b)-4(f)) or upon termination of the Plan (as provided in 1.403(b)-10(a)) and distributions from annuity contracts issued by an insurance company before January 1, 2009 shall be subject to the distribution restrictions imposed by the Vendor holding such amounts; and

C. distributions of amounts attributable to Elective Contributions shall not be distributed to a Participant before the earliest of the Participant’s (i) severance from employment; (ii) death; (iii) disability (within the meaning of Code Section 72(m)(7)); (iv) attainment of age 59½; or (v) financial hardship pursuant to Section 7.4 below. The foregoing sentence does not prevent any earlier distribution of Elective Contributions to correct excess Elective Contributions, any distribution made on account of the Plan’s termination, or any distribution of Elective Contributions made to an annuity contract prior to January 1, 1989 for which the Plan separately accounts.

7.2 Severance Distribution. Subject to Section 7.1, a Participant who incurs a severance from employment (as defined in 1.403(b)-6(h)) prior to reaching his or her Normal
Retirement Date may elect to receive distribution of the Participant’s Account provided that such distributions are consistent with the requirements of the Vendor and with restrictions imposed by the Code or other applicable laws or regulations.

7.3 **Retirement Transition Benefit.** In addition to cash withdrawals or other methods of distribution, a Participant may use the Retirement Transition Benefit. The Retirement Transition Benefit permits a Participant to receive a one-time lump-sum payment of up to 10 percent of his or her Account(s) in TIAA and/or CREF at the time annuity income begins, provided that the lump-sum payment from TIAA and/or CREF does not exceed 10 percent of the respective Account(s) then being converted to retirement income.

7.4 **In-Service Distributions.** Subject to Section 7.1, a Participant, prior to severance of employment, may elect to receive one of the following in-service distributions per Plan Year by completing a form provided by the Plan or the Vendor holding the Participant’s Account:

A. A Participant who has attained age 59½ may elect an in-service distribution in accordance with the Code.

B. An Elective Contribution Participant may make a written request for a hardship withdrawal to the extent permitted under the Code, in the manner prescribed by the Plan and the Vendor in whose funding vehicle the subject Elective Contributions are held. Hardship withdrawals may only be made from the Participant’s Elective Contributions (excluding earnings thereon), and no Elective Contributions to this Plan or any other plan of the University shall be allowed during the six-month period beginning on the date the Participant receives a hardship withdrawal.

Acceptable reasons for a hardship withdrawal include:

1. Expenses for (or necessary to obtain) medical care that would be deductible under Code Section 213(d).

2. Costs directly related to the purchase of a principal residence for the Participant, excluding mortgage payments.

3. Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant or his/her spouse or dependents as defined by the Code.

4. Payments necessary to prevent the eviction of the Participant from his/her principal residence or foreclosure on the mortgage on that residence.

5. Payments for burial or funeral expenses for the Participant’s deceased parent, spouse or dependents (as defined in Code Section 152(d)(1)(B)).
6. Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

As used in this paragraph (B), references to a “Participant” mean an Elective Contribution Participant. Distributions on account of hardship shall be limited to the amount necessary to satisfy the hardship and shall be subject to the other rules and restrictions governing hardship distributions set forth in Treas. Reg. Section 1.401(k)-1(d)(3). Without limiting the foregoing, the Elective Contribution Participant must have obtained all distributions (other than hardship distributions) and all nontaxable loans available under this Plan and any other retirement plans maintained by the University before he/she will be permitted to receive a hardship distribution.

C. A Participant may elect an in-service distribution of any rollover contribution made under Section 8.6.

7.5 Distribution upon Death. In the event of Participant’s death prior to the commencement of retirement benefit payments, the Vendor will distribute to Participant’s Beneficiary the Participant’s Account balance remaining in any Funding Vehicle. In the event of Participant’s death after the commencement of retirement benefit payments, any remaining amounts payable to the Beneficiary shall be governed by the form of benefit election made by Participant provided that any payment term elected by Participant does not exceed the provisions of the Code.

7.6 Application for Distributions. Procedures for receipt of distributions are initiated by Participant writing directly to the Vendor. Distributions will be payable by the Vendors upon receipt of a satisfactorily completed application for distribution and supporting documents. The necessary forms will be provided to the Participant or the Beneficiary by the Vendor.

7.7 Minimum Distribution Requirements. The requirements of this Section shall apply to any distribution of a Participant’s vested Account(s) and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder and in accordance with Treas. Reg. Section 1.403(b)-6 regarding timing of distributions, including without limitation the provision therein that for purposes of applying the distribution rules of Code Section 401(a)(9) to Code Section 403(b) contracts, certain minimum distribution rules applicable to individual retirement annuities described in Code Section 408(b) and individual retirement accounts described in Code Section 408(a) apply, and the additional provision that the distribution rules of Code Section 401(a)(9) need not apply to the undistributed portion of the 403(b) account balance valued as of December 31, 1986 (exclusive of subsequent earnings) if sufficient records are kept to distinguish such amounts.
For the purposes of this section, the following definitions apply:

A. Definitions

1. Designated Beneficiary. The individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Code Section 401(a)(9) and Treas. Reg. Section 1.401(a)(9)-1, Q&A-4.

2. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant’s death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant’s Required Beginning Date. For distributions beginning after the Participant’s death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (D)(2). The required minimum distribution for the Participant’s first distribution calendar year shall be made on or before the Participant’s Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant’s Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.


4. Participant’s Account Balance. The Participant’s account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Participant’s account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Participant’s account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

5. Required Beginning Date. The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70½ or if later, April 1 following the calendar year in which the Participant retires.

B. Time and Manner of Distribution.

1. Required Beginning Date. The Participant’s entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant’s Required Beginning Date.
2. Forms of Distribution. Unless the Participant’s interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions shall be made in accordance with subsections (C) and (D) of this Section. If the Participant’s interest is distributed in the form of an annuity purchased from an insurance company, distributions there under will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

C. Required Minimum Distributions During Participant’s Lifetime.

1. Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant’s lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

   a. the quotient obtained by dividing the Participant’s account balance by the distribution period in the Uniform Lifetime Table set forth in Treas. Reg. Section 1.401(a)(9)-9, using the Participant’s age as of the Participant’s birthday in the distribution calendar year; provided, if the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Treas. Reg. Section 1.401(a)(9)-9 plus the excess of 70 over the age of the Participant as of the Participant’s birthday in the year that contains the annuity starting date; or

   b. if the Participant’s sole designated Beneficiary for the distribution calendar year is the Participant’s spouse, the quotient obtained by dividing the Participant’s account balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. Section 1.401(a)(9)-9, using the Participant’s and spouse’s attained ages as of the Participant’s and spouse’s birthdays in the distribution calendar year.

2. Lifetime Required Minimum Distribution Through Year of Participant’s Death. Required minimum distributions will be determined under this subsection (C) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant’s date of death.

D. Required Minimum Distributions After Participant’s Death

1. Death On or After Date Distributions Begin.

   a. Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be
distributed for each distribution calendar year after year of the Participant’s death is the quotient obtained by dividing the Participant’s account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant’s designated beneficiary, determined as follows:

(i) The Participant’s remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant’s surviving spouse is the Participant’s sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant’s death using the surviving spouse’s age as of the spouse’s birthday in that year. For distribution calendar years after the year of the surviving spouse’s death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse’s birthday in the calendar year of the spouse’s death, reduced by one for each subsequent calendar year.

(iii) If the Participant’s surviving spouse is not the Participant’s sole designated beneficiary, the designated beneficiary’s remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant’s death, reduced by one for each subsequent year.

b. No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant’s death, minimum amount that shall be distributed for each distribution calendar year after the year of the Participant’s death is the quotient obtained by dividing the Participant’s account balance by the Participant’s remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

2. Death Before Date Distributions Begin

a. Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant’s death is the quotient obtained by dividing the Participant’s account balance by the remaining life expectancy of the Participant’s designated
beneficiary, determined as provided in subsection (D)(1). If the Participant’s surviving spouse is the Participant’s sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later. If the Participant’s surviving spouse is not the Participant’s sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

b. No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant’s death, distribution of the Participant’s entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant’s death.

c. Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin. If the Participant dies before the date distributions begin, the Participant’s surviving spouse is the Participant’s sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (D)(2)(a), this subsection (D)(2) shall apply as if the surviving spouse were the Participant, provided, however, that the time by which distributions must begin will be determined without regard to the second to last sentence of subsection (D)(2)(a) above.

E. Election to Allow Participants, Former Participants or Beneficiaries to Elect 5-Year Rule.

Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in subsections (D)(2) applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Subsection (A)(2), or by September 30 of the calendar year which contains the fifth anniversary of the Participant’s (or, if applicable, surviving spouse’s) death. If neither the Participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with subsection (D)(2).

F. Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.
A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

7.8 Repurchase. TIAA-CREF Retirement Annuities’ Account(s) may be received in a single sum through “repurchase” if certain conditions are met. In the event a Participant in this Plan terminates employment with the University and requests that TIAA-CREF repurchase his or her Retirement Annuities, the University will approve such repurchase if, at the time of the request:

A. For Participants whose oldest TIAA or CREF Retirement Annuity was issued on or after January 1, 1992:

1. The total accumulation in all TIAA Retirement Annuities owned by the Participant is not over $2,000.

2. The Participant does not have a TIAA Transfer Payout Annuity (TPA) in effect.

Upon repurchase, the Participant’s entire Account will be payable by TIAA-CREF to the Participant in a lump sum and will be in full satisfaction of the Participant’s rights to retirement or survivor benefits.

B. For Participants whose oldest TIAA or CREF Retirement Annuity was issued on or before December 31, 1991:

1. The conditions specified in (a) above are met, or

2. Annuity income has not begun, and the following conditions are met:

   (i) None of the TIAA or CREF Retirement Annuities owned by the Participant requesting repurchase were issued more than five years prior to the time of repurchase (this five-year requirement is waived if the total value of all TIAA and CREF Retirement Annuities owned is $2,000 or less), and

   (ii) The Participant is neither employed by nor moving to an institution having a TIAA-CREF funded retirement plan in which he or she will be eligible to participate (employment includes sabbaticals or other leaves of absence).

Upon repurchase, the Participant’s entire Account will be payable by TIAA-CREF to the Participant in a lump sum and will be in full satisfaction of the Participant’s rights to retirement or death benefits.

7.9 Direct Rollover of Eligible Rollover Distributions. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee’s election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to
have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

For the purposes of this Section, the following definitions apply:

A. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); any distribution made under Section 7.4 because of hardship; and the portion of any distribution that is not includible in gross income.

B. Eligible retirement plan: An eligible retirement plan is an individual retirement account or annuity described in Code Section 408(a) or 408(b) or an annuity contract described in Code Section 403(b) that accepts the distributee’s eligible rollover distribution. For eligible rollover distributions made after December 31, 2001, an eligible retirement plan shall also include a qualified retirement plan described in Code Section 401(a) or 403(a) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of an eligible retirement plan shall also apply in the case of an eligible rollover distribution by a surviving spouse, or a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), or any other distributee; except, however, the definition of eligible retirement plan shall only mean an individual retirement account or annuity described in Code Section 408(a) or 408(b) in the case of an eligible rollover distribution to a surviving spouse prior to January 1, 2002.

C. Distributee: A distributee includes a Participant or former Participant. In addition, the Participant’s or former Participant’s surviving spouse and the Participant’s or former Participant’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective January 1, 2009, the term “distributee” also includes a designated beneficiary (as defined in Code Section 401(a)(9)(E)) of a deceased Participant who is not the surviving spouse of the Participant but elects, at the time and in the manner prescribed by the Vendor and/or the Plan Administrator, to have any portion of a distribution made with respect to the Participant paid via a direct rollover to an individual retirement plan described in Code Section 402(c)(8)(B)(i) or 402(c)(8)(B)(ii) and established for the purpose of receiving the distribution.

D. Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan (or individual retirement plan described in Code Section
402(c)(8)(B)(i) or 402(c)(8)(B)(ii) that is established for the purpose of receiving the distribution) specified by the distributee.

E. Notwithstanding anything to the contrary in this Plan, plan-to-plan transfers shall only be made if the following additional requirements are satisfied (for this purpose, a “plan-to-plan transfer” is a transfer of assets directly from the Plan to another Code Section 403(b) plan):

(i) in the case of a transfer for a Participant, the Participant is an employee or former employee of the employer (or the business of the employer) sponsoring the receiving 403(b) plan;

(ii) in the case of a transfer for a beneficiary of a deceased Participant, the Participant was an employee or former employee of the employer (or business of the employer) sponsoring the receiving 403(b) plan;

(iii) the receiving 403(b) plan provides for the receipt of plan-to-plan transfers;

(iv) the Participant or beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit of that Participant or beneficiary immediately before the transfer;

(v) to the extent any amount transferred is subject to any distribution restrictions under 1.403(b)-6 (including after application of 1.403(b)-6(i)), the receiving plan imposes restrictions on distributions to the Participant or beneficiary whose assets are being transferred that are not less stringent than those imposed by the Plan; and

(vi) if a plan-to-plan transfer does not constitute a complete transfer of the Participant’s or beneficiary’s interest in the Plan, the receiving plan treats the amount transferred as a continuation of a pro rata portion of the Participant’s or beneficiary’s interest in the Plan (for example, a pro rata portion of the Participant’s or beneficiary’s interest in any after-tax employee contributions).

If an eligible rollover distribution in excess of $1,000 is made and the distributee does not elect to have the distribution paid directly to an eligible retirement plan in a direct rollover and does not elect to receive the distribution directly, the Plan Administrator shall transfer the eligible rollover distribution to an individual retirement plan of a designated trustee or issuer and shall notify the distributee in writing that the distribution may be transferred to another individual retirement plan. No distribution shall be made under this paragraph in excess of $5,000.

7.10 Loans. Loans are available for Participants who are actively employed by the University from any Funding Vehicles, but only as specifically permitted by the Funding Vehicles and in accordance with their rules for Participant loans and the requirements of the Code. A Participant may have no more than three (3) loans outstanding at any time. Without limiting the foregoing, the Code generally prohibits loans that exceed the lesser of $50,000.00 or 50% of the eligible account balances.
7.11 **Elective Contributions.** The distribution of Elective Contributions shall be governed by the terms of the fund(s) in which such amounts are invested, subject, however, to the requirements of Sections 7.1(C) and 7.7 above.

**ARTICLE 8**

**OPTIONAL CONTRIBUTIONS BY SALARY REDUCTION AGREEMENT OR DIRECT ROLLOVER**

8.1 **Employee Elective Contributions.** Notwithstanding the requirements for participation in the University's Nonelective Contributions, any Eligible Employee may become an Elective Contribution Participant by entering into a voluntary Salary Reduction Agreement immediately upon, or at any time following, employment by the University. Unless and until Vendors are added or deleted by the University, Elective Contributions under a Salary Reduction Agreement may be made to any investment funds that are provided by TIAA-CREF or Fidelity Investments.

An Elective Contribution Participant's Salary Reduction Agreement shall become effective on the first day of the first payroll period for which the University or Vendor, as applicable, can reasonably process the Agreement. The Elective Contribution Participant may elect to change or discontinue the amount by which his/her Salary is reduced by submitting a new Salary Reduction Agreement or other written notice as the University and/or Vendor(s) may require. A change in the amount of Salary reduction may be made as frequently as the University and/or Vendor allows but in any case no less frequently than once per Plan Year.

8.2 **Basic Annual Limitation.** Except as provided in section 8.3 and section 8.4, the maximum amount of the Elective Contributions for any calendar year shall not exceed the lesser of (a) the applicable dollar amount as established and adjusted by Code Section 402(g)(1)(B) or (b) the Participant's includible compensation, as defined by the Code, for the calendar year.

8.3 **Age 50 Catch-Up Deferrals.** An Elective Contribution Participant who has attained age 50 or who will attain age 50 before the end of the tax year in which he or she will make a deferral may make a contribution up to $5,500.00 (as adjusted pursuant to Code Section 414(v)(2)(C) for years after 2009) in excess of the basic annual limitation. The maximum amount of the Age 50 Catch-Up Deferral will be adjusted if that amount is changed by the Code.

8.4 **Excess Elective Contributions.** If in any calendar year an Elective Contribution Participant exceeds the limitations described above, then the amount of the excessive Elective Contributions, adjusted for any income or loss in value, if any, shall be distributed to the Elective Contribution Participant.

8.5 **Former Employees.** Former employees may only make Elective Contributions with respect to includible compensation (as determined under Code Section 403(b)(3) and Treas. Reg. Section 1.403(b)-2(b)(11)) paid after the employee's severance from
employment (as defined in 1.403(b)-6(h)), provided the includible compensation: (i) is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; (ii) would have been paid to the employee prior to a severance from employment if the employee had continued employment with the University; and (iii) is paid by the later of 2½ months of the severance from employment or the end of the limitation year that includes the date of severance from employment.

8.6 **Eligible Rollover Contributions.** A Participant who is entitled to receive an eligible rollover distribution from an eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Plan Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an eligible retirement plan. For the purposes of this Section, the following definitions apply:

A. An eligible rollover distribution means any distribution of all or any portion of a Participant’s benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant’s designated beneficiary, or for a specified period of 10 years or more, (2) any distribution made upon hardship, or (3) the portion of a distribution that is a required minimum distribution under Code Section 410(a)(9).

B. An eligible retirement plan means (1) a qualified trust described in Code Section 401(a), (2) an annuity plan described in Code Section 403(a), (3) an annuity contract described in Code Section 403(b), (4) an eligible plan under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, or (5) an individual retirement account or annuity described in Code Section 408(a) or 408(b).

**ARTICLE 9**

**NON-ALIENATION**

9.1 **Non-Alienation of Rights or Benefits.** To the fullest extent permitted by law, no benefit under the Plan may at any time be subject in any manner to alienation, encumbrance, the claims of creditors or legal process. No person will have the power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or
any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant’s benefit under this Plan to the extent that it is a “qualified domestic relations order” under Code Section 414(p).

ARTICLE 10

ADMINISTRATION

10.1 Plan Administrator. The University is the Administrator of this Plan. Among its administrative duties, the University is responsible for enrolling Participants, sending Plan contributions for each Participant to Vendors, and for performing other acts required for the operation of the Plan.

10.2 Authority of the University. The University has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any ambiguous terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination the University makes about the Plan shall be final and binding.

10.3 Delegation of Authority. The University, by action of its Board, may designate a person or persons other than the University, including individuals who are employed by the University, to carry out any of its powers, authority, or responsibilities. The University may employ agents, accountants, and attorneys as it finds necessary or advisable to assist it in carrying out its duties.

10.4 Indemnification. In addition to whatever rights of indemnification the members of the Board, Trustees, employees, or any other person to whom any power, authority, or responsibility of the University is delegated pursuant to Section 10.3 may be entitled under the governing instruments of the University (or under any provision of law or any other agreements), the University will satisfy any liability actually and reasonably incurred by any such person, including expenses, attorneys’ fees, judgment, fines, and amounts paid in settlement, in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise by the person of any of the powers, authority, responsibilities, or discretion provided under the Plan, or reasonably believed by the person to be provided there under, or any action taken by the person in connection with it. This Section 10.4 shall not apply to Vendors, whose relationship with the University, the Participants and others is governed by the terms of their Contracts or other written agreements.
ARTICLE 11
AMENDMENT AND TERMINATION

11.1 Amendment and Termination. The University reserves the right in its sole discretion at any time (and from time to time) to amend, modify, or terminate the Plan, or to discontinue any further contributions under the Plan, any such actions to be taken by resolution of its Board. The Plan is automatically amended whenever change in law requires change in Plan terms and such changes become effective on the date required by law. In the case of any Plan contract that is subject to the distribution restrictions in Treas. Reg. Section 1.403(b)-6(c) or (d) (relating to custodial accounts and section 403(b) elective deferrals), termination of the Plan and the distribution of accumulated benefits is permitted only if the University does not make contributions to any Code Section 403(b) contract that is not part of the Plan during the period beginning on the date of Plan termination and ending twelve (12) months after distribution of all assets from the Plan. However, if at all times during the period beginning twelve (12) months before the termination and ending twelve (12) months after distribution of all assets from the Plan, fewer than two percent (2%) of the employees who were eligible under the Plan as of the date of termination are eligible under the alternative Code Section 403(b) contract, any such alternative contract is disregarded.

ARTICLE 12
MISCELLANEOUS

12.1 Plan Non-Contractual. Nothing contained in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the University, and nothing contained in this Plan will be construed as a commitment on the part of the University to continue the employment or the rate of compensation of any person for any period, and all employees of the University will remain subject to discharge to the same extent as if the Plan had never been put into effect.

12.2 Claims of Other Persons. The provisions of the Plan will in no event be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right as against the University, its Regents, Trustees, officers, or employees, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

12.3 Incorporation by Reference. The terms of each Funding Vehicle to which contributions are made on behalf of a Participant are hereby made a part of the Plan as if fully set forth in the Plan document and the provisions of each are incorporated by reference into the Plan. The terms of each Funding Vehicle control in any case where there is any inconsistency or ambiguity between the terms of the Plan and the terms of the Funding Vehicle.
12.4 **Fiduciaries not Insurers.** Neither the Plan nor the University in any way guarantees the Funding Vehicles from loss or depreciation; nor do they guarantee the payment of any money which may be or becomes due to any person from a Funding Vehicle. The liability of the Plan, the University, and a Vendor to make any payment from a Funding Vehicle at any and all times is limited to the then available assets of the Account.

12.5 **Construction/Severability.** The Plan will be interpreted consistent with and to preserve tax qualification of the Plan under the Code and any other applicable law. Any provision of the Plan which a court or other entity with binding authority to interpret the Plan determines to be inconsistent with such construction and interpretation is deemed severed and is of no force or effect, and the remaining Plan terms will remain in full force and effect.

12.6 **Governing Law.** The laws of the State of Tennessee will determine all questions arising with respect to any Plan provision except to the extent such state law may be preempted or superseded by other law.

**THE UNIVERSITY OF THE SOUTH**

By: ____________________________

Title: ____________________________

Adopted as of January 1, 2013
Retirement Plan Amendment One

Definitions

**Base Pay.** “Base Pay” means the rate or amount of pay for a standard work period, job, or position exclusive of additional payments or allowances.

**Retirement Incentive Participant.** “Retirement Incentive Participant” means a formerly Eligible Employee of the University who participates in an approved retirement incentive program offered by the University and is eligible to receive Nonelective Contributions pursuant to Article 4.1B.

**Salary.** “Salary” means the amount paid by the University to a Participant which is designated by the University as eligible for a Nonelective or Elective Contribution which may include Base Pay and Supplemental Pay as determined solely by the University. In no event will the Salary taken into account under the Plan exceed the limits of Code Section 401(a)(17), as adjusted from time to time, regarding the amount of a Participant’s compensation that may be taken into account.

**Supplemental Pay.** “Supplemental Pay” means compensation in addition to Base Pay.

NONELECTIVE CONTRIBUTIONS

4.1 Contributions

A. Once an Eligible Employee becomes a Nonelective Contribution Participant, the University will make Nonelective Contributions on a monthly basis to the Participant’s Account according to the following schedule:

1. 10% of Base Pay. Notwithstanding the foregoing, for each salaried exempt and salaried non-exempt employee who was hired by the University prior to June 1, 1992, for each non-exempt employee and head resident who was enrolled in the Plan prior to 1988, and the Vice Chancellor, the Nonelective Contribution each year shall be 15% of Base Pay.

2. In addition to the Nonelective Contributions set forth in paragraph A.1, an amount based on Supplemental Pay as determined solely in the University’s discretion not to exceed the maximum contribution limits under the Code as set forth in Section 4.2.

3. Nonelective Contributions will be determined in the sole discretion of the University for employees on approved sabbatical leave; provided, however, that the designated level of contribution shall not exceed the maximum contribution limits under the Code as set forth in Section 4.2.

B. Nonelective Contributions for Retirement Incentive Participants.
The University may make Nonelective Contributions to a Retirement Incentive Participant’s Account. The amount of such Nonelective Contributions shall be set forth in the retirement incentive program, policy or the Participant’s retirement agreement; provided, however, that such Nonelective Contributions shall not exceed the maximum contribution limits under the Code as set forth in Section 4.2.