The Evergreen State College Retirement Plan (TESCRP)

Amended and Restated, Effective January 1, 2009

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1. Establishment of Plan.

The Evergreen State College Board of Trustees established The Evergreen State College Retirement Plan as of January 1, 1971. This plan document sets forth the provisions of the Plan, as amended through January 1, 2009. This Plan is a governmental plan as defined in Internal Revenue Code Section 414(d), and is intended to satisfy the provisions of Section 403(b) of the Internal Revenue Code.

2. Definitions.

The terms and phrases defined in this Article have the following meanings throughout this plan document.

2.1. **Accumulation Account** means the separate account established for each Participant with a Fund Sponsor. The current value of a Participant's Accumulation Account includes all Plan Contributions to the Fund Sponsor, less expense charges, and reflecting investment experience.

2.2. **Annuity Contract** means a non-transferable contract described in Section 403(b)(1) of the Code, that is issued by an insurance company qualified to issue annuities in the State of Washington and that includes payment in the form of an annuity.

2.3. **Beneficiary** means (a) with the written consent of the Participant's spouse, if any, such person or persons who shall have been designated by the Participant in writing duly executed and filed with the Fund Sponsor(s) or (b) if no such person survives the Participant, the surviving spouse or domestic partner registered with the State of Washington of the Participant. A new designation may be made at any time before the Participant or Beneficiary has started to receive annuity payments under the Plan; any such new designation shall be subject to the conditions of this Section 2.3.

2.4. **Board** means the Board of Trustees of The Evergreen State College.

2.5. **Break in Service** means termination of all TESC employment and appointments for a full calendar month.

2.6. **Code** means the Internal Revenue Code of 1986, as amended (Title 26 of the United States Code).

2.7. **Compensation** means the amount paid by TESC to a Participant as regular pay for normally scheduled hours, including summer faculty contracts and any paid leave, but excluding leave cash-out payments, additional pays, and any settlement, severance or fringe benefit payments and any other amounts excluded by contract. Compensation shall be determined before taking into account any salary reduction under Code Section 125, 132, 403(b), or 457(a).

2.8. **Custodial Account** means the group or individual custodial account or accounts, described in Section 403(b)(7) of the Code, established for a Participant to hold assets of the Plan.

2.9. **Eligible Employee** means any employee of TESC who is employed in an Eligible Position other than an employee who has retired from a position which is covered by RCW 28B.10.400 et seq. and who is not yet contributing to the Plan during the Optional Period.

2.10. **Eligible Position** means a faculty, civil service exempt, or other salaried position designated by the Board that requires at least fifty percent of the normal full-time workload per month in at least six consecutive months. However, a position held by a person on a fee, retainer, or special contract basis, or as an incident to the private practice of a profession or to the employee's education, is not an Eligible Position.

2.11. **Fund Sponsor** means an insurance, variable annuity, or investment company that provides Funding Vehicles available to Participants under this Plan.

2.12. **Funding Vehicles** means the Annuity Contracts and Custodial Accounts available for investing contributions under this Plan, as specifically approved by TESC under Section 5.1.

2.13. **Optional Period** means the period beginning on an individual's first day as an Eligible Employee (or first day as an Eligible Employee following a Break in Service) and ending on the first day of the first pay period following the second anniversary of his or her date of employment in an eligible position, or, if earlier, upon termination of the individual's status as an Eligible Employee.

2.14. **Participant** means any Eligible Employee who participates in the Plan in accordance with Section 3.

2.15. **Plan** means The Evergreen State College Retirement Plan as set forth in this document as it may be amended from time to time in accordance with Section 10.1.

2.16. **Plan Contributions** means contributions by TESC and the Participant under this Plan.

2.17. **Plan Year** means the calendar year.

2.18. **Related Employer** means any entity that is under common control with TESC under Section 414(b) or (c) of the Code.

2.19. **Retirement Age**: normal retirement age means the last day of the calendar month in which age 65 is attained; early retirement age means the last day of the calendar month in which either (a) age 62 is attained or (b) age 55 is attained with ten or more Years of Service completed without a Break in Service.

2.20. **TESC** means The Evergreen State College.

2.21. **Washington State Retirement System** means any retirement system paid for by the State of Washington and administered by the State of Washington Department of Retirement Systems.

3. Eligibility and Participation.

3.1. **Participation.**

(a) An Eligible Employee is required to begin participation in this Plan on his or her date of employment in an Eligible Position, provided that an Eligible Employee who began employment in an Eligible Position before January 1, 2009 is required to begin participation in this Plan no later than the last day of the Optional Period. Once having begun participation in this Plan, a Participant cannot cease participation while employed in an Eligible Position.

(b) A participant in a Washington State Retirement System who is moved to or whose position is converted to an Eligible Position, may make an irrevocable election to participate in this Plan or remain in the Washington State Retirement System by making the election no later than thirty days following the date of the move or conversion or such later date as the TESC Benefits Office gives notice to the participant. If no timely election is made, the participant will remain in the Washington State Retirement System. Such election shall be made available only once in an individual’s unbroken service to TESC regardless of future changes of position, and enrollment in this Plan shall be irrevocable. For this purpose, “unbroken service” means service without a Break in Service.

(c) A Participant who has participated in this Plan for at least two years and who is moved to or whose position is converted to a position that qualifies for participation in a Washington State Retirement System, may make an irrevocable election to participate in the Washington State Retirement System or remain in this Plan by making the election no later than thirty days following the date of the move or conversion or such later date as the TESC Benefits Office gives notice to the participant, provided that the initial enrollment in this Plan was not irrevocable as provided above. If no timely election is made, the Participant will remain irrevocably in this Plan.

(d) A person who is hired by TESC in a position that is not an Eligible Position but is eligible for participation in the Washington State Public Employees Retirement System, and who, immediately prior to his or her hire date, has for at least two consecutive years made or benefited from contributions under a retirement plan underwritten by a Fund Sponsor with a public university or college in the State of Washington, may irrevocably elect to participate in this Plan if the election is made within thirty days after his or her hire. If no election is made, the person will become a participant in the Washington State Public Employees Retirement System from the first day of employment.

(e) Each Participant is entitled to the benefits of and is bound by this Plan, including all amendments that may be adopted.

3.2. **Enrollment in Plan**. An Eligible Employee must complete and return to the TESC Payroll & Benefits Office the appropriate TESCRP enrollment form(s). Forms for the Fund Sponsor(s)

and for the Funding Vehicle(s) selected must be returned to the Fund Sponsor(s) or as directed by the TESC Payroll & Benefits Office.

3.3. **Cessation of Participation**. An employee's participation in the Plan will cease if:

(a) he or she retires or otherwise severs from employment with TESC and all Related Employers; or

(b) the Plan is terminated in accordance with Section 10.1; or

(c) he or she is transferred or reclassified to a position that is not an Eligible Position, and he or she does not remain a Participant in this Plan under Section 3.1(c); or

(d) having remained a Participant under Section 3.1(c), or having become a Participant under Section 3.1(d), he or she is transferred or reclassified to a position that is not an Eligible Position and does not qualify for participation in another Washington State Retirement System.

4. Contributions.

4.1. **Plan Contributions**. A Participant must contribute five percent of Compensation from date of participation until the end of the pay period during which his or her 35th birthday occurs, seven and one-half percent from the first day of the pay period following the 35th birthday until the end of the pay period during which his or her 50th birthday occurs, and ten percent thereafter. TESC will make a matching contribution equal to each Participant contribution and will transmit all Plan Contributions to the Fund Sponsor.

4.2. **Income Tax Deferral**. Plan Contributions shall be made on a tax-deferred basis as authorized under Section 403(b) of the Code.

4.3. **Limit on Salary Taken into Account**. In addition to other applicable limitations stated in the Plan and notwithstanding any other provision of the Plan to the contrary, for employees who become Participants on or after July 1, 1996, the Compensation taken into account under Section 4.1 for any Plan Year may not exceed $230,000, as adjusted by the Commissioner of Internal Revenue from time to time for increases in the cost of living ($115,000 for the six-month Plan Year ending December 31, 2008).

4.4. **Leave of Absence**.

(a) During an authorized leave of absence with pay, Plan Contributions will continue to be made. Plan Contributions will be calculated based on the actual Compensation TESC pays to the Participant during the leave of absence.

(b) To the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994, Participants who are absent from employment by reason of service in the uniformed service of the United States shall be entitled to make up contributions that

they would have made had they remained in employment during the period of service and to benefit from TESC matching contributions.

(c) A Participant who returns to employment with TESC immediately following an authorized leave of absence, other than an absence described in (b) above, and remains employed by TESC for at least two years after such return, may contribute within five years after such return an amount equal to the total amount that would have been contributed had the Participant not been on leave (including any amount TESC would have contributed) less any contributions under (a) or (b) above with respect to the same leave. The contributions shall be based on the average of the Participant's Compensation at the time the leave of absence was authorized and the time the Participant resumes employment. TESC will not match such contributions.

4.5. **Rollovers or Transfers to the Plan**. Rollovers or transfers from other plans, accounts or annuities to the Plan will not be accepted.

4.6. **Allocation of Plan Contributions**. A Participant may allocate Plan Contributions among Funding Vehicles in any whole-number percentages that total 100 percent.

4.7. **Vesting of Contributions**. Each contract and certificate issued in accordance with the provisions of the Plan is the property of the Participant. Amounts attributable to Plan Contributions shall be nonforfeitable. However, Plan Contributions based on a mistake of fact, including Plan Contributions made for an employee who has not completed and returned the enrollment forms required by Section 3.2, shall be returned to TESC if TESC so requests as provided in Section 9.6.

4.8. **Annual Statement**. At least once a year a Fund Sponsor will send each Participant a report summarizing the status of his or her Accumulation Account. A Participant may obtain similar reports or illustrations upon termination of employment or at any other time by writing directly to the Fund Sponsor.

4.9. **No Reversion**. Under no circumstances will any Plan Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, TESC, except as provided in Section 4.7 or Section 4.10.

4.10. **Maximum Contribution**. Plan Contributions for a Participant for any calendar year, together with contributions for the Participant under any other plan subject to Section 402(g) or 403(b) of the Code, shall not exceed the limitations in Code Sections 402(g) and 415 of the Code, to the extent applicable, except as permitted by Code Section 414(v). The limitations of Code Sections 402(g), 414(v) and 415 are herein incorporated by reference. If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for the purposes of Code Sections 402(g), 414(v) or 415, and such other plan is maintained by TESC or a Related Employer, or TESC receives from the Participant sufficient information concerning his or her participation in such other plan, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by

TESC. If the reduction is under this Plan, TESC will advise the affected Participant of any limitations on his or her Plan Contributions required by this section. TESC may, in its sole discretion, cause any contribution in excess of the foregoing limitations, adjusted for income, gains, losses or expenses attributable to such excess contribution, to be returned to TESC or distributed to the Participant to the extent permitted by applicable law.

5. Fund Sponsors and Funding Vehicles.

5.1. **Fund Sponsors and Funding Vehicles**. Plan Contributions are invested in one or more Funding Vehicles made available by TESC to Participants under this Plan. TESC's current choice of Fund Sponsors and Funding Vehicles is not intended to limit future additions or deletions by TESC of Fund Sponsors and Funding Vehicles. The Administrator shall maintain a list of all Fund Sponsors under the Plan. Such list is hereby incorporated as part of the Plan. Each Fund Sponsor and TESC shall exchange such information as may be necessary to satisfy Section 403(b) of the Code or other requirements of applicable law. In the case of a Fund Sponsor which is not eligible to receive contributions under the Plan (including a Fund Sponsor which has ceased to be a Fund Sponsor eligible to receive contributions under the Plan, the Employer shall keep the Fund Sponsor informed of the name and contact information of the Plan administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

5.2. **Fund Transfers**. Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code governing the deferral of income tax with respect to Accumulation Accounts, a Participant may specify that a part or all of his or her Accumulation Account in one Funding Vehicle be transferred to another Funding Vehicle. However, an investment transfer that includes an investment with a Fund Sponsor that is not eligible to receive contributions under Section 4 (referred to below as an exchange) is not permitted.

5.3. **Third Party Trading**. The Participant may assign responsibility for investment elections and other transactions under the Plan to another party, in such manner as may be determined from time to time by the TESC Benefits Office.

6. Retirement.

6.1. **Retirement Because of Age**. On the first of any month after attaining Retirement Age, a Participant who is employed by TESC may elect to retire by submitting a written application to his or her administrator, with a copy to the TESC Payroll & Benefits Office.

6.2. **Retirement Because of Condition of Health**. A retirement because of condition of health may be approved by the Vice President of Finance and Administration or designee of TESC upon request by a Participant who is actively employed by TESC or by the administrative officer concerned. The basis for approval is whether continued service by the Participant is likely to seriously impair or endanger the Participant's health, or if the Participant is permanently unable to carry on his or her usual duties because of health. A request for retirement because of condition of health is referred to the Payroll and Benefits Manager, who will obtain recommendations to be presented to the Vice President of Finance and Administration or

designee of TESC. In addition to any recommendations submitted by the administrative officer concerned and by the individual's health care provider, TESC may require an opinion or second opinion at TESC's expense from a health care provider selected by TESC.

6.3. **Retiree Reemployment**. means the reemployment of a former Participant up to 40% of full time following the date of retirement under Section 6.1. Such reemployment shall be subject to all applicable TESC rules. A reemployed retiree is not a Participant under the Plan.

7. Benefits.

7.1. **Retirement Benefits**. After a Participant retires under the Plan or his or her employment with TESC and any related Employer earlier terminates, the Participant may access 100% of the retirement accumulations. The Participant should contact the Fund Sponsor to determine the variety of payment options offered. Any election hereunder requires the written consent of the Participant's spouse, if any, in accordance with Section 7.3.

7.2. **Death Benefits**. On the death of a Participant, the entire value of each Accumulation Account is payable to the Beneficiary or Beneficiaries named by the Participant under one of the options offered by the Fund Sponsor. However, to the extent that the account has been applied to purchase an annuity, payments shall be made only if and to the extent provided by the form of annuity.

7.3. **Application for Benefits; Spousal Consent**. To begin receiving benefits, the Participant or Beneficiary must write directly to the Fund Sponsor. The Fund Sponsor will provide the necessary forms to the Participant or the Beneficiary. The Fund Sponsor will pay benefits upon receipt of a satisfactorily completed application for benefits and supporting documents. In any case in which Section 2.2 or 7.1 requires the consent of the Participant's spouse, the consent must be in writing, must acknowledge the effect of the election or action to which the consent applies, and must be witnessed by a notary public. Unless the consent expressly provides that the Participant may make further elections without further consent of the spouse, the consent will be effective only with respect to the specific election of form of benefit, or Beneficiary, or both, to which the consent relates. Spousal consent will be effective only with respect to that spouse. Spousal consent will not be required if it is established to the satisfaction of the TESC Benefits Office that the spouse cannot be located.

7.4. **Minimum Distribution Requirements.**

(a) All distributions under this Plan will be made in accordance with Code sections 403(b)(10) and 401(a)(9), as each is amended and in effect from time to time, and regulations thereunder. The entire Accumulation Account of each Participant will be distributed over a period not to exceed the life (or life expectancy) of the Participant or over the lives (or life expectancies) of the Participant and a designated Beneficiary. Minimum distributions must begin no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2, or, if later, April 1 following the calendar year in which the Participant retires from TESC. Notwithstanding the above, the Accumulation Account of each Participant as of December 31, 1986 will be

distributed in accordance with IRS Regulation 1.403(b)-6(e)(6). The Participant (or Beneficiary, after the Participant's death) may elect whether to use the permissive recalculation rule for life expectancies under Code Section 401(a)(9)(D). Upon the Participant's death after the time benefits are required to begin hereunder, any remaining benefits will be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(b) If the Participant dies before benefit payments are required to begin under the preceding paragraph, any benefits payable to (or for the benefit of) a designated Beneficiary will be paid by the end of the fifth full calendar year after the Participant's death, or will be paid beginning no later than the end of the first full calendar year after the Participant's death over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. If the designated Beneficiary is the surviving spouse, payment may be delayed until the date the Participant would have attained age 70 1/2.

(c) In applying the foregoing rules, each Annuity Contract or Custodial Account shall be treated as an individual retirement account (IRA) and distribution shall be made in accordance with the provisions of Section 1.408-8 of the IRS regulations, except as provided in Section 1.403(b)-6(e) of the Regulations.

7.5. **Withdrawals, Loans, Benefit Distributions**. Withdrawals and/or benefit distributions are not available prior to severance from employment with TESC and all Related Employers. Loans are not available.

7.6. **Rollover Distributions.**

(a) A Participant or the Beneficiary of a deceased Participant (or a Participant’s spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan may elect to have any portion of that distribution paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant’s death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

(b) Each Fund Sponsor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

8. Administration.

8.1. **Plan Administration**. TESC is the administrator of this Plan and has designated the TESC Payroll & Benefits Office to be responsible for the day to day administration of the Plan.

8.2. **Authority of TESC**. TESC shall have final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret all terms of the Plan, including any uncertain terms, and to decide any disputes arising under and all questions concerning administration of the Plan. Any determination made by TESC shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary and capricious.

9. Miscellaneous.

9.1. **Non-Alienation of Benefits**. Except as provided in this section, 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 participant will have 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. This Plan will comply with any judgment, decree or order that 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 treated as a qualified domestic relations order under Code Section 414(p). Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. TESC shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

9.2. **Plan Does Not Affect Employment**. Nothing in this Plan is a commitment or agreement by any person to continue his or her employment with TESC, and nothing in this Plan is a commitment on the part of TESC to continue the employment or the rate of compensation of any person for any period. All employees of TESC will remain subject to nonrenewal, discharge or discipline to the same extent as if the Plan had never been put into effect.

9.3. **Claims of Other Persons**. The Plan does not give any Participant or any other person, firm, or corporation any legal or equitable right against TESC, or its officers, employees, or Trustees, except for the rights that are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

9.4. **Contracts and Certificates**. In the event there is any inconsistency or ambiguity between the terms of the Plan and the terms of the contracts between the Fund Sponsor and TESC and/or the Participants and any contracts and/or certificates issued to a Participant under the Plan, the terms of the Plan control.

9.5. **Requests for Information**. Any request for information concerning eligibility, participation, contributions, or other aspects of the operation of the Plan should be in writing and directed to the TESC Benefits Office. Requests for information concerning the Fund Sponsor, the Funding Vehicle(s), their terms, conditions and interpretations thereof, claims thereunder, any requests for review of such claims, and service of legal process may be directed in writing to the Fund Sponsor.

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

9.7. **Governing Law**. The provisions of the Plan are governed by and construed in accordance with the laws of the State of Washington.

10. Amendment and Termination.

10.1. **Amendment and Termination**. The Board reserves the right at any time to amend or terminate the Plan, in whole or in part, or to discontinue any further contributions or payments under the Plan. If the Plan is terminated or if Plan Contributions are completely discontinued, TESC will notify all Participants. As of the date of complete or partial termination, all Accumulation Accounts will remain nonforfeitable.

10.2. **Distribution Upon Termination of the Plan**. TESC may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Annuity Contracts and Custodial Account agreements, all Accumulation Accounts will be distributed, provided that TESC and any Related Employer on the date of termination do not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by IRS regulations.

10.3. **Limitation**. Notwithstanding the provisions of Section 10.1, the Board shall not make any amendment to the Plan that operates to recapture for TESC any contributions previously made under this Plan except to the extent permitted by Section 4.7 or 4.10.