

**RETIREMENT PROGRAM**

**Plan "B"**

**for Non-U.S. Citizen or Resident Alien Employees**

**of the**

**American University of Beirut**

**Amended and Restated**

**As Of**

**October 1, 2009**

## **PROGRAM PURPOSE:**

The purpose of this Retirement Program is to encourage Employees (as defined in the Program) to make and continue careers with the American University of Beirut. This Program is intended to provide retirement benefits solely for those non-U.S. citizen or resident alien Employees of the University who are not covered by or subject to any social security, labor law, end-of-service indemnity, death benefit, disability, retirement, termination or similar such program, maintained directly or indirectly by the Government of Lebanon. If an Employee who is participating in this Program becomes covered, as of any date, under a social security, labor law, end-of-service indemnity, death benefit, disability, retirement, termination or similar such program, maintained directly or indirectly by the Government of Lebanon, such Employee's participation in this Program shall terminate as of the date such coverage commences, and in such event the University shall not be required to credit any further benefit under this Program to the Employee in respect of service with the University after such date, and the benefits otherwise payable under this Program reflecting amounts credited to an Employee's Memorandum Account shall be offset and/or reduced by the amounts to which the University is or may be obligated to pay or contribute under such social security, labor law, end-of-service indemnity, death benefit, disability, retirement, termination or other similar such program. Effective October 1, 2009, the Program is hereby amended and restated, including certain provisions effective at later dates.

## **SECTION 1. DEFINITIONS**

As used herein:

1.1 "Beneficiary" means the beneficiary or beneficiaries designated pursuant to applicable law to receive the amount, if any, payable under this Program upon his or her death.

1.2 "Board of Trustees" means the Board of Trustees of the University.

1.3 "Committee" means the Employee Benefits Committee provided for in Section 6.1. The Committee shall be the administrator of this Program.

1.4 "Compensation" means, for Employees who are not members of the Faculty of Medicine of the University, the basic salary, as determined in the Employee's letter of appointment, received by an Employee for services to the University for any period under consideration. For Employees who are members of the Faculty of Medicine of the University, "Compensation" means the sum of the amount received by the Employee as basic salary, as determined in the Employee's letter of appointment, unless the Employee participates in the Medical Practice Plan, in which event "Compensation" means the sum of the amounts received by the Employee as Teaching and Administrative Salary, plus any administrative supplement and monthly MPP payments on account, for any period of consideration. In all events, however, Compensation for all Employees is determined before reduction for employee contributions hereunder, but does not include (i) any amounts paid from or contributed to any other group insurance or employee benefit program or plans established or maintained by the University; or (ii) any other benefit, incentive payment or allowance, including housing, education or travel allowance, or (except

with respect to administrative supplement or monthly MPP payments on account, where applicable) any other amount paid by the University relating to the performance of extra duties by an Employee. Notwithstanding the foregoing, Compensation for any calendar year shall not exceed \$245,000 (or such other amount that would apply under Section 401(a)(17) of the United States Internal Revenue Code of 1986, were that section to apply to this Retirement Program), with such limit pro-rated where participation is only for a portion of a calendar year and where, for any or all of the same calendar year, the Employee actively participated in the Retirement Program for U.S. Citizen and Resident Alien Employees of the American University of Beirut.

1.5 "Effective Date" means January 1, 1981.

1.6 "Employee" means any regular full-time faculty member of the University (including for these purposes a member of the Faculty of Medicine of the University with an Unmodified or Suffixed-Track appointment but not a member of the Faculty of Medicine of the University with a Prefixed-Track appointment), or other academic employee of the University, based outside of the United States, as determined by the Committee (or, solely to the extent directed by the Committee a non-academic employee) who receives Compensation and who is not covered by or subject to a social security, labor law, end of service indemnity, death benefit, disability, retirement, termination or similar such program maintained directly or indirectly by the Government of Lebanon, and who is not a U.S. Citizen or resident alien.

1.7 "Funding Agent" means any insurance carrier or entity maintaining a trust or other funding vehicle pursuant to which certain Program assets are invested or a custodian maintaining custody of certain assets under the Program. Each Funding Agent shall be solely responsible with respect to the matters for which it is made responsible under each Funding Vehicle issued by it.

1.8 "Funding Vehicle" means any insurance or trust or custodial or other funding vehicle contract purchased or entered into by the University on behalf of Employees to provide applicable benefits under this Program, together with any certificates of insurance which may be issued thereunder.

1.9 "Memorandum Account" means the unfunded bookkeeping memorandum record denominated in United States dollars and maintained by the University in respect of each Employee in order to determine the amount of the Employee's benefit, if any, under Section 5.1 of the Program. For purposes of this Section Compensation paid in Lebanese pounds shall be converted into U.S. dollars at rates prevailing at the time paid and all entries into the Employee's Memorandum Account, including such conversion of Lebanese pounds into dollars, represent simply bookkeeping transactions for the purpose stated and do not connote actual transfers of cash.

1.10 "Salary Deferral Agreement" means an agreement executed by the Employee and the University authorizing contribution of a designated amount of the Employee's salary to the Program.

1.11 "University" means the American University of Beirut, a non-profit corporation organized under the laws of the State of New York and exempt from Federal income tax as an organization described in Section 501 (c) (3) of the United States Internal Revenue Code of 1986.

## **SECTION 2. ELIGIBILITY**

2.1 Subject to the provisions of Section 3 and except as otherwise provided by the Committee, Employees shall be eligible to participate in this Program as follows:

(a) Each Employee in the active service of the University on the Effective Date shall be eligible to participate in this Program as of such date if the Employee has then attained age 21.

(b) Each other Employee shall be eligible to participate in this Program on the first day of October coincident with or next following the date of employment or the date on which such Employee attains age 21, whichever is later, or such other date or dates permitted by the Committee.

(c) Contributions by the University toward the future service benefit of an Employee who does not choose to participate on the date the Employee first becomes eligible shall commence at the end of the first month following the date on which the Employee opted to participate. Past service benefits shall not accrue to an Employee who opts not to join the Program on the Effective Date.

2.2 Notwithstanding Sections 2.1 and 3.2, and subject to Section 7.1(a), the Committee may modify the conditions upon which participation is authorized or the terms of participation for any person or class of persons.

## **SECTION 3. PARTICIPATION**

3.1 As a condition of participation in this Program, each Employee who is eligible to participate in accordance with Section 2 shall execute and file with the Committee any enrollment form, waiver, Salary Deferral Agreement, and other document or pertinent information concerning such Employee and such Employee's Beneficiary which the Committee or a Funding Agent may require and each non-Lebanese citizen Employee shall authorize the University to obtain on his/her behalf an exemption from making payments into the Lebanese National Social Security Fund where appropriate. If the participation of an eligible Employee in this Program does not commence on the date the Employee first becomes eligible under Section 2, then, regardless of the reason for such delay, and within the same calendar year, such Employee's participation may, if the Employee so elects and to the extent practicable, permitted by the Committee and permitted by law, be commenced retroactively by the Employee paying as a premium or other payment to the Funding Vehicle maintained for such purpose, the aggregate amount of contributions that the Employee would have paid had his/her participation not been delayed.

3.2 Active participation in the Program shall terminate (i) upon termination of service with the University, or, if earlier, upon a Participant's ceasing to be an Employee as defined in Section

1.3, and (ii) upon termination of each Salary Deferral Agreement required by the Committee, in which case active participation may be resumed only upon such terms and conditions as the Committee may decide. In the event a former participant again becomes eligible to participate in the Program, to the extent directed by the Committee, active participation may recommence as soon as practicable after such renewed eligibility. No further contributions or record entries under Section 4 shall be made on behalf of an employee whose participation in the Program shall terminate, except upon such terms and conditions as the Committee may decide.

#### **SECTION 4. CONTRIBUTIONS AND FUNDING**

4.1 (a) The University shall record in each participating Employee's Memorandum Account a future service benefit in an amount equal to 12 ½ percent of the Compensation of such Employee for each month in which such Employee contributes a total of 5 percent of his/her Compensation under this Program (pursuant to a Salary Deferral Agreement).

(b) The University shall also record in the Memorandum Account of each Employee who became a participant in the Program as of the Effective Date a past service benefit in an amount equal to the lump sum value of the greatest of the following amounts as computed by the Committee:

- (i) in an amount equal to the Employee's Compensation for the month ending December 31, 1980 multiplied by the Employee's active and continuous years of service with the University in respect of the Employee as of such date;
- (ii) the Employee's aggregate "Retirement Annuity", if any, determined under the provisions of the University's Plan for Pensions and Death Benefits as in effect on December 31, 1980; or
- (iii) 12 ½ percent of the Employee's Compensation for each year of service with the University commencing prior to January 1, 1981 plus an amount of interest thereon calculated at the rates of interest from time to time credited by the Teachers Insurance and Annuity Association of America in respect of its annuity contracts generally in force during the period of such years of service.

(c) For each month of active participation, each Employee shall contribute 5 percent of his/her Compensation for such month, and may elect to contribute a greater portion of his/her Compensation. Employee contributions shall in each case be withheld by payroll deductions pursuant to a Salary Deferral Agreement.

(d) In addition to the amount recorded in Section 4.1(a), effective prior to January 1, 2010, each Employee's Memorandum Account shall be increased annually with an amount of interest calculated at the rate of interest credited by the Teachers Insurance and Annuity Association of America in respect of its annuity contracts generally in force during the applicable year. Effective on and after January 1, 2010, each Employee's Memorandum Account shall be deemed invested in a "moderate portfolio" comprised of the following deemed investments: 14% Vanguard Euro Government Bond Index, 26% Vanguard U.S. Government Bond Index, and 60% Vanguard Global Stock Index, or such other portfolio allocation approved by the Board of Trustees or a duly authorized committee thereof.

(e) The University may withhold from any contributions made in accordance with this Section 4.1, or may reduce amounts recorded in an Employee's Memorandum Account, for all taxes and contributions (including but not limited to payments by the University of United States social security taxes or Lebanese social security contributions, if any) as shall be required pursuant to any law or governmental regulation or ruling as determined by the University. Amounts in excess of the portion of a Participant's account balances representing Employee contributions pursuant to Section 4.1(c) (as adjusted by earnings and losses) as calculated pursuant to the terms of the Program that are held by the Funding Agent(s) shall be returned to the University as and to the extent directed by the Board of Trustees or a duly authorized committee thereof or by the Committee.

4.2 (a) All Employee contributions made in accordance with Section 4.1(c) shall be remitted to a Funding Agent or to a trust or other funding vehicle (as determined by the Committee) by the University, as directed by the Employee in a Salary Deferral Agreement, during the month in which the contribution is made or during the month next following, to be managed, invested, reinvested and distributed in accordance with the terms of this Program and the Funding Vehicle, as applicable; provided, however, that effective January 1, 2010, the employee contributions and related earnings, if any, of any participating Employee who is a U.S. citizen or resident alien shall not be remitted to a Funding Agent or Funding Vehicle but shall be recorded and allocated to the Employee's Memorandum Account and maintained as a separate subaccount of such Memorandum Account, and if previously so remitted, if a participating Employee becomes a U.S. citizen or resident alien after January 1, 2010, shall, at the direction of the Committee, be transferred from such Funding Agent or Funding Vehicle to be recorded and allocated to the Employee's Memorandum Account and maintained in a separate subaccount of such Memorandum Account.

(b) The Committee may, at any time and from time to time, direct that Employee contributions, and earnings thereon, be transferred from one Funding Vehicle to another Funding Vehicle in accordance with such terms as are determined by the Committee.

4.3 (a) Except as provided in Section (b) below, the expenses of administering the Program, including (i) the expenses incurred by the members of the Committee in the performance of their duties hereunder (including reasonable compensation for any legal counsel, certified public accountants, consultants, and agents and cost of services rendered in respect of Program) and (ii) all other proper charges and disbursements of the members of the Committee (including settlements of claims or legal actions approved by counsel) shall be paid by the University.

(b) Any commissions, fees, taxes, or other expenses incident to the purchase of any insurance contract or annuities thereunder, or the payment of premiums under any insurance contract, or incident to the investment of employee contributions in any trust or other funding vehicle (including any reasonable enrollment or investment fees, sales charges and commissions, administrative charges or fees, trustee fees, bank charges, investment management fees, custodial fees, transfer or other fees, and any premium taxes), shall, unless otherwise directed by the Committee, be deducted by the University or Funding Agent from the gross amount paid as premiums or contributions or from account balances reflecting such contributions and earnings thereon in the manner determined by the Committee.

4.4 Solely to the extent permitted by the Committee, a participating Employee (or as appropriate, his beneficiary or heirs) may direct the investment of employee contributions and earnings on such contributions among such alternatives as are provided by the Committee, in such manner and with such frequency as is determined by the Committee; provided that effective on and after January 1, 2010, only participating Employees who are not U.S. citizens or resident aliens may direct such investment. The Committee may provide that expenses will be charged to the relevant participant's account with respect to any such investments and investment changes.

## **SECTION 5. BENEFITS**

5.1 (a) Except as otherwise provided in Section 5.3, an Employee, Beneficiary or other person (including heirs) shall be entitled upon termination of service (including resignation) to receive a benefit under the Program in an amount equal to the greater of:

- (i) with respect to Employees hired prior to January 1, 1981, the end of service indemnity, if any, payable in accordance with the terms of Vote T6862 of the Board of Trustees and the regulations issued by the University, thereunder, or
  - (ii) the balance of the Employee's Memorandum Account as of the date of the Employee's termination of service.
- (b) (i) Any benefit payable under Section 5.1(a) shall be in the form of a single lump sum cash distribution or in such other form directed by the Committee. Subject to Section 5.1(b)(ii) any benefit payable under section 5.1(a)(i) shall be payable in the same currency as the Employee's Compensation is paid, as specified in such Employee's letter of appointment, and any benefit payable under Section 5.1(a)(ii) shall be payable in U.S. dollars.
- (ii) The Employee, upon written request to and under procedures adopted by the Committee, may elect to have the amount of the benefit under Section 5.1(a), if any, payable in a currency different from that specified under Section 5.1(b)(i). If the Employee makes such an election he/she will bear the full cost of conversion to such other currency and will be given a written notice indicating the amount of such cost.
  - (iii) Any benefit payable under Section 5.1(a) shall be payable in the manner specified in Sections 5.1(b)(i). Notwithstanding the forgoing, upon written request of the Employee, the Committee shall authorize the transfer of payment of such benefit to another location outside of Beirut, which the Employee requests and the Committee approves if the Employee makes such a request, he/she will bear the full cost of the transfer of the payment of his benefit to another location and will be given a written notice indicating the amount of such cost.

(c) Contributions made to the Program under Section 4.1(c) and remitted to a Funding Vehicle (including earnings and less losses and expenses, if any), and allocated to the account of an Employee, shall be payable upon the Employee's termination of service (including resignation), shall be subject to the conditions of payment, if any, contained in the contract issued by such insurance carrier, or, as applicable, the terms of the relevant trust or other funding

vehicle, and shall be in the form of a single lump sum cash distribution unless the Employee (or if applicable, his Beneficiary or other person including heirs) elects, within 60 days after the date of his/her termination of service, to receive a different form of benefit, if any, offered by the insurance carrier, trustee or other investment fund provider as applicable and approved by the Committee. Any amount required for payment of withholding or other taxes or for Lebanese social security contributions, shall, if directed by the University, serve to reduce the amount of payment hereunder to an Employee or Beneficiary, and shall instead be applied (either by direct payment or by payment to the University to be so applied) to satisfaction of such withholding, contribution or other tax obligation.

(d) To the extent that any amounts held under the Program are subject to Section 409A of the United States Internal Revenue Code of 1986, as amended (“Section 409A”), and with respect to those amount, a “termination of service” means a separation from service within the meaning of Section 409A (a “Separation from Service”), and notwithstanding any other provision of Section 5.1(a), (b) or (c) above, any amounts otherwise payable hereunder due to such a Separation from Service shall be paid to the Employee or Beneficiary, as applicable, in a single lump sum payment, during the month following such Separation from Service.

5.2 (a) Any claim for benefits under a Funding Vehicle shall be submitted to the appropriate Funding Agent on a form supplied by such Funding Agent, its delegatee, on a form acceptable to such Funding Agent. Except to the extent that the appropriate Funding Agent has sole access to information determinative to the claim, the Committee shall be responsible for deciding such claim, for providing full and fair review of the decision on such claim and for defending any legal action arising out of the denial in whole or in part of such claim. If so directed by the Committee, amounts may be withheld from any payments hereunder, or paid to the University, to satisfy or to enable the University to satisfy any requirements for withholding of any taxes or contributions.

(b) Any disputed claim relating solely to participation, amount of Compensation, time, amount or manner of payment of contributions or other matter of fact relating to this Program with respect to which the Committee or the University would be the sole source of information (other than the claimant) shall be submitted to, and within a reasonable period of time decided by, one member of the Committee designated in writing by the Chairman. Written notice of the decision on each such claim shall be furnished reasonably promptly to the claimant. If the claim is wholly or partially denied, such written notice shall set forth an explanation of the specific findings and conclusions on which such denial is based. A claimant may review all pertinent documents and may request a review by the Committee of such a decision denying the claim. Such a request shall be made in writing and filed with the Committee within a reasonable period of time, as specified by the Committee in writing from time to time, after delivery to said claimant of written notice of said decision. Such written request for review shall contain all additional information which the claimant wishes the Committee to consider. The Committee may hold any hearing or conduct any independent investigation which it deems necessary to render its decision, and the decision on review shall be made as soon as practicable after the Committee's receipt of the request for review. Written notice of the decision on review shall be promptly furnished to the claimant and shall include specific reasons for such decision. Such decisions on claims (where no review is requested) and decisions on review (where review is

requested), subject to the approval of the President of the University, shall be final, binding and conclusive on all interested persons for all purposes.

5.3 A future, past service or death benefit, if any payable to an Employee, a Beneficiary or other person (including heirs) under the Program shall be paid to the Employee, such Beneficiary or other person (including heirs), (i) in lieu of any benefit due or payable to the Employee under the University's Plan for Pensions and Death Benefits, as established on October 1, 1958 and as amended from time to time, and (ii) in lieu of any end of service indemnity (ex-gratia), retirement, disability, termination, severance pay benefit or other payment which the University may make to an employee, his or her beneficiary or other person (including heirs) pursuant to any labor, pension, social security or similar such law, governmental decree, court award contract or personnel policy or regulation maintained by the University, and (iii) in lieu of any contributions or other payments which the University is required to make towards the cost of any old age, retirement, severance pay, disability, and/or death benefit payable to or in respect of such employee under any statutory social insurance or like program. If, notwithstanding any provisions hereunder to the contrary, any payment is required to be made by the University to or with respect to an Employee pursuant to any labor, pension, social security or similar such law providing end of service, retirement, disability, termination, severance pay, old age, social security, death or other similar benefits under any program maintained directly or indirectly by the Government of Lebanon, and all or any portion of such payment is calculated with reference to a period with respect to which amounts were recorded in the Employee's Memorandum Account pursuant to Section 4.1(a) or (b) (the "Program Period"), then the benefits that would otherwise be funded and paid by the University under this Program to or with respect to such Employee shall be offset and/or reduced by the amounts that the University is or may be obligated to pay or contribute under such governmental program, and that the University determines relation to the Program Period. Amounts payable under an Employee's Memorandum Account shall also be offset and/or reduced by amounts otherwise owed by the Employee to the University.

## **SECTION 6. THE COMMITTEE**

6.1 The Board of Trustees has delegated to the Employee Benefit Committee, subject to those powers which the Board has reserved as described in Section 7, general authority over and responsibility for the administration and interpretation of the Program, including, recommending contractual relationships, reviewing the performance of any Funding Agent, and recommending the appointment, removal or substitution of, a Funding Agent or Funding Vehicle. If the Committee deems it necessary or advisable, it shall arrange for the engagement of legal counsel, certified public accountants, and consultants to provide expert analysis and advice regarding the Program and make use of agents and clerical or other personnel, for purposes of the Program. All recommendations concerning contracts are subject to the University's standing policy on Contracting for Outside Services. The Committee shall submit an annual report to the President and to the Compensation Committee of the Board of Trustees in time for the November meeting of the Board of Trustees and covering the preceding fiscal year of the University. The Committee shall consist of at least six members, at least two of whom shall be participants in the Program. Upon recommendation of the President each member of the Committee shall he

appointed by, and serve at the pleasure of the Board of Trustees. Any member of the Committee may resign at any time. No member of the Committee shall be entitled to act on or decide any matters relating solely to her/his rights or benefits under this Program. Any action that may be taken by the Committee hereunder may be taken by the Board of Trustees.

6.2 The Committee shall elect or designate its own Chairperson, establish its own procedures, the time and place for its meetings (which may be held telephonically or through other means), and provide for the keeping of minutes of all meetings. Any action of the Committee may be taken upon the affirmative vote of a majority of the members at the meeting provided that all of the members of the Committee are informed in writing of the vote.

6.3 To the maximum extent permitted by law, no member of the Committee shall be personally liable by reason of any contract or other instrument executed by the Committee or in her/his capacity as a member of the Committee, nor for any mistake of judgment made in good faith. The University shall indemnify and hold harmless each member of the Committee, and each other officer, employee or Trustee of the University to whom any duty or power with respect to this Program may be delegated or allocated, against any cost or expense (including counsel fees) and liability (including any sum paid in settlement of a claim or legal action with the approval of the University) arising out of anything done or omitted to be done in connection with the Program unless arising out of such person's own fraud or bad faith.

## **SECTION 7. AMENDMENT OR TERMINATION**

7.1 (a) The Board of Trustees reserves the right at any time to amend, suspend or terminate this Program and to suspend or discontinue any contributions to the Funding Vehicles, in whole or in part and for any reason, including the passing of any social legislation made mandatorily applicable to Employees, and without the consent of any Employee, Beneficiary, Committee, or other person; and the Committee may adopt amendments which do not significantly affect the then currently estimated costs of this Program and which may be necessary or desirable to meet any requirements of applicable law or otherwise to facilitate the administration of the Program.

(b) Any amendment, suspension or termination of this Program may be made retroactively if necessary or appropriate to meet any requirements of applicable law but not otherwise.

## **SECTION 8. GENERAL LIMITATIONS AND PROVISIONS**

8.1 Each Employee, former Employee, Beneficiary and other person (including heirs), shall assume all risk in connection with any decrease in the value of the assets held by a Funding Agent under the Funding Vehicles and neither the University nor the Committee shall be liable or responsible therefor.

8.2 Nothing contained herein shall give any employee the right to be retained in the employment of the University or affect the right of the University to dismiss any employee. The adoption and maintenance of this Program shall not constitute a contract between the University and any employee or consideration for, or an inducement to or condition of, the employment of any employee.

8.3 The captions preceding the Sections hereof have been inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provisions hereof.

8.4 The Program and all rights thereunder shall be governed by and construed in accordance with the laws of Lebanon.