

# HIGHER EDUCATION

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Agreement Between the

**SOUTH DAKOTA BOARD OF REGENTS**

And the

**COUNCIL OF HIGHER EDUCATION**

An Affiliate of South Dakota Education Association  
and the National Education Association



July 1, 2013 – June 30, 2016

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## **PREFACE**

It is recognized and agreed to by and between the parties that the inclusion of the articles regarding

- (a) Contract year (Section 8.4)
- (b) Contract fulfillment: liquidated damages (Section 8.7)
- (c) Unit member responsibilities (Section 9.1)
- (d) Workload and Technological Course Delivery (Section 9.2)
- (e) Repeal of System Workload Committee (Section 9.3)
- (f) Annual Evaluation Procedure: Response time (Section 11.3)
- (g) Those portions of Sections 12.1 and 12.5 that relate to the five year promotion rules
- (h) Performance based retention priorities (Section 16.2)

in the contract IS DUE TO LANGUAGE BEING IMPOSED BY THE BOR AND NOT AGREED TO BY COHE and does not mean that COHE accepts the validity of any or all of these provisions or otherwise waives the right to challenge any of all of these articles in the future by whatever legal means may be available to COHE or its bargaining unit members.

## I. DEFINITIONS

For the purpose of this agreement:

- 1.1 "Academic governance" means all senates, academic councils, or similar entities at system institutions, as presently constituted or subsequently modified and approved by the faculty, recommended to the Board and approved by the Board.
- 1.2 "Academic year" means a period of approximately twelve months beginning with the fall term and including the successive spring and summer terms. Ordinarily, a faculty unit member on a nine-month contract will be assigned duties in no more than two terms per academic year.
- 1.3 "Administration" or "administrator" means non-bargaining unit personnel employed at the institutions and the executive office of the Board who have supervisory or managerial responsibilities.
- 1.4 "Adjunct faculty" refers to a person who is not employed by the university in a regular position, but who is given a temporary appointment without benefits, or who is given a courtesy appointment with or without a specific teaching/research assignment.
- 1.5 "Board" means the South Dakota Board of Regents.
- 1.6 "COHE" means the Council of Higher Education.
- 1.7 "Day" means calendar day, unless otherwise indicated.
- 1.8 "Department" or "division" means the smallest grouping of disciplines which are administratively organized.
- 1.9 "Department head" includes any supervisor designated by the president to perform the functions that this agreement describes as being discharged by the department head.
- 1.10 "Executive director" means the executive director of the Board as established by SDCL § 13-49-10, or designee.
- 1.11 "Faculty unit member" means an employee of the Board included in the collective bargaining unit as defined in Appendix A.
- 1.12 Gender--any reference to gender is all inclusive.

- 1.13 “Lecturer rank” designates any of a series of ranks, comprising instructor, lecturer and senior lecturer, in which faculty unit members assume undergraduate instructional activities and serve on term contracts.
- 1.14 “Librarian rank” designates any of a series of ranks comprising, assistant librarian, associate librarian and librarian, in which faculty unit members assume responsibility for library programs or functions supporting instruction or research and serve on term contracts.
- 1.15 Number--the singular includes the plural.
- 1.16 "Peer group" or "peer faculty committee" refers to such groups or committees drawn from the faculty unit membership as may be convened from time to time to review administrative action.
- 1.17 "Policy manual" means the compilation of rules, regulations and policies of the Board.
- 1.18 “Professorial rank” designates any of a series of ranks, comprising assistant professor, associate professor and professor, or the corresponding librarian titles, in which faculty unit members assume traditional faculty roles embracing teaching, research and service and may serve on term, tenure track or, at the associate professor and professor ranks, tenure contracts.
- 1.19 "Will" is a verb having the mandatory sense of "will" or "must." It is a word of certainty, while the word "may" is one allowing discretion.
- 1.20 "Working days" means those days when the offices of the institution or Board are open for business.
- 1.21 “Working file” includes any material, document, recorded observation, report, letter, message, note, professional correspondence or other information in any form (digitized or otherwise) collected and stored by any administrator in order to document the performance of a faculty unit member.



## **II. RECOGNITION**

### **2.1 RECOGNITION STATEMENT**

The Board recognizes COHE as the exclusive representative of the collective bargaining unit, as determined by the Division of Labor and Management Document No. 12E 1976/77, dated the 11th day of August, 1978, or as may be modified by this agreement, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, grievance procedures and other conditions of employment. The bargaining unit composition is referenced in Appendix A.

### **2.2 MEMBERSHIP UNIT LISTS**

The executive director will furnish COHE a list of names and residential addresses of bargaining unit members, compiled as of each October 1 and February 15. Lists will be forwarded by the executive director to the UniServ director of COHE on or before the 15th of the following month. The executive director and COHE will discuss any disputes of names included or not included on the list, in order to resolve their status. In the event that the executive director and COHE cannot resolve a dispute regarding membership in the bargaining unit within forty (40) working days, the name(s) in the dispute will be submitted to the Division of Labor and Management for determination of the status of the person(s) in dispute.

### **2.3 CHANGES IN UNIT MEMBERSHIP**

Each institution will furnish the president of the local COHE chapter a list of changes in the bargaining unit membership at the institution within fifteen (15) working days of the date those changes are approved by the Board.

### **2.4 EXCLUSIVITY**

The Board agrees not to recognize or negotiate with unit members or with organizations, other than COHE, claiming to represent the faculty unit on matters reserved to COHE by § 2.1.

### **III. ACADEMIC FREEDOM**

#### **3.1 STATEMENT**

The parties agree and declare that academic freedom is guaranteed to faculty unit members subject only to accepted standards of professional responsibility including, but not limited to, those herein set forth:

1. The parties to this agreement recognize and accept the importance of academic freedom to teaching and learning. Academic freedom includes the right to study, discuss, investigate, teach and publish. Academic freedom applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of students to freedom in learning. It includes the freedom to perform one's professional duties and to present differing and sometimes controversial points of view, free from reprisal. The faculty unit member is entitled to freedom in research and in the publication of the results, subject to the performing of other assigned academic duties.
2. Faculty unit members are entitled to freedom in the discussion and presentation of their subject and are privileged to introduce various scholarly views. Further, they may provide counsel and recommendation in the administration's determination of class size and matters of classroom space.
3. The concept of freedom is accompanied by an equally demanding concept of responsibility. The faculty unit members are members of a learned profession. When they speak or write as citizens, they must be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As learned people and as educators, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should indicate that they are speaking only for themselves.

This provision is intended to guarantee those rights which are recognized as flowing from the first amendment to the United States Constitution.

## **IV. MANAGEMENT RIGHTS**

### **4.1 STATEMENT**

Nothing in this agreement will derogate or remove any power, right or prerogative possessed by the Board or its administrative staff except where such power, right or prerogative is legally and specifically limited by this agreement.

### **4.2 SPECIFIC MANAGEMENT PREROGATIVES**

These management rights include but are not limited to the following:

1. To utilize personnel, methods, and means in the most appropriate and efficient manner possible.
2. To manage and direct the employees of the Board.
3. To hire, promote, transfer, assign, reassign or retain employees in positions under the jurisdiction of the Board.
4. To establish standards of conduct and performance for unit members, including policies regulating conflicts of interest and conflicts of commitment, together with reasonable work rules of conduct.
5. To establish policies regulating intellectual property, except for matters related to sharing net royalty revenue.
6. To suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause.
7. To determine the sizes and composition of the institutions in its charge and to lay off faculty unit members as provided for under Article XVI.
8. To interpret the mission of each institution and the methods and means necessary to efficiently fulfill that mission, including the contracting out for or the transfer, alteration, curtailment or discontinuance of any services.

### **4.3    *LIMITATIONS***

The exercise of management rights will not be used for the purpose of undermining COHE or discriminating against any employee.

### **4.4    *INCORPORATION BY REFERENCE***

The parties acknowledge that the discretion of the Board or its administrators in matters involving terms and conditions of employment may be limited by statute, regulation or Board policy. The provisions of this agreement are intended to be consistent with such binding limitations. Such extra-contractual requirements may change from time to time through legislative, executive, judicial or Board action and the parties agree that where such changes prevent the operation of a term or condition of this agreement, the provisions of this agreement shall be deemed to have been overridden.

### **4.5    *GENERAL BENEFITS***

Employee benefits provided by applicable laws, executive orders and regulations will not be denied because of exclusion from this agreement.

## **V. COHE STATUS**

### **5.1    *MEETING FACILITIES***

Upon request to the president, COHE meetings will be permitted at the institution without charge, if appropriate facilities are available. If special services are required, a charge may be made for such service.

### **5.2    *BULLETIN BOARDS***

COHE may post notices on a shared basis with campus groups on existing bulletin Boards customarily used for general notices to the faculty. If prior approval of notices appearing on these bulletin Boards is needed, this prior approval must also be obtained for COHE notices.

### **5.3 *CAMPUS COURIER SERVICE***

To the extent legally permissible, COHE may use the intra-campus courier service. Special courier service fees will be charged for such services used by COHE at each institution on the same basis as any other recognized institutional organization.

### **5.4 *CAMPUS NEWSLETTERS***

COHE may place an announcement in the institutional faculty newsletter, when published, stating the date, time, place and agenda of any COHE meeting. The format of the announcement will be determined in accordance with regular editorial policy.

### **5.5 *BOARD MEETINGS AND ACCESS TO INFORMATION***

The president and UniServ director of COHE each will be supplied a copy of the agenda of the regular Board meetings by the executive director at the same time as copies are supplied to the institutions. If the agenda supplied does not include all public reports and recommendations, they will be made available at the meeting. One (1) copy of the minutes of the meeting will be furnished to the UniServ director of COHE. COHE may request to be placed on the tentative agenda and heard by any committee or the Board at a regularly scheduled meeting, provided that such request and the content to be discussed is made known to the executive director ten (10) working days prior to the meeting.

Upon request of COHE, the executive director will, within ten (10) working days, make available one (1) copy of any public document published by the Board or an institution.

### **5.6 *COHE BUSINESS***

Authorized representatives of COHE may transact official business on institutional property provided that this does not interfere with or interrupt normal institutional operations or other institutional personnel in the performance of their duties, or conflict with other articles of this agreement. No faculty unit member will knowingly engage in COHE activities or the preparation of litigation or grievances against the institution or the Board during the time for performing scheduled teaching or other assigned institutional duties.

### **5.7 *COHE LEADERSHIP LEAVE***

The statewide officers or alternative designees of COHE or SDEA/NEA may be given time off for the purpose of serving a leadership capacity, subject to the following provisions:

1. That the request for time off be approved by the member's immediate supervisor. The president may deny such leave if it will significantly detract from the normal operations of the institution. If any such request is denied, the reasons for such denial will be stated in writing.
2. That the request for time off be submitted to the president no fewer than thirty (30) calendar days prior to the beginning of the semester for which the time off is applicable.
3. That COHE reimburse the unit member's institution for the amount of salary, fringe benefits and other direct costs corresponding to the time off.

COHE members granted such leave will receive credit towards salary and fringe benefit increases as if they were not on leave.

### **5.8 COHE RESPONSIBILITIES**

COHE will designate the membership of an institutional peer group as soon as practical after the unit membership list is received. The membership will continue until replacements have been named. Where specific peer groups are required under the contract, the institutional COHE president will select the members of the group or committee; provided that no person may be assigned to a group or committee convened to review an administrative action involving the department or division to which the individual is assigned.

Should the Board charge that a member or members of the bargaining unit are engaged in illegal activities as per SDCL ch 3-18, notification will be sent to the COHE director by registered mail. COHE will immediately, by registered letter, so notify such member or members of the receipt of the Board charge and will advise such member or members that their actions are governed by SDCL ch 3-18. If it will be objectively established that such Board charges have substance, COHE will notify in writing such member or members of the opinion. Copies of such correspondence will be forwarded to the Board's executive director.

### **5.9 ATTENDANCE AT MEETINGS**

The president of COHE may attend each meeting of the Board and speak on faculty issues. The COHE president will not be charged leave without pay, but will arrange compensation time, rearrange classes or pay a substitute, if the preceding options are not possible.

## **VI. ACADEMIC GOVERNANCE**

### **6.1 GENERAL STATEMENT**

Academic governance at each institution will exercise all the rights, powers and prerogatives heretofore possessed, except to the extent that such rights, powers and prerogatives are in conflict with the rights, powers and prerogatives provided to COHE by this agreement.

## **VII. NONDISCRIMINATION, CIVIL RIGHTS AND AFFIRMATIVE ACTION**

### **7.1 STATEMENT**

The parties reaffirm that their commitment to the objectives of affirmative action, equal opportunity and nondiscrimination is in accordance with state and federal law. Redress for alleged violations of those laws by either party may be pursued at law or through the procedures recognized under this agreement. Further, the parties recognize that plenary jurisdiction for enforcement of civil rights and antidiscrimination laws is vested solely in the various state and federal agencies and the courts.

In those cases where the grievance rests in whole or in part on allegations that an institutional action involved prohibited discrimination, the grievance will be pursued using the procedures stipulated in Board Policy No. 1:18, attached as Appendix J. The local COHE president will receive notice where required under Articles VIII or XV. Board Policy No. 1:18 has been incorporated into this agreement in order to reduce the likelihood that grievants and parties charged will be subject to multiple hearings and to provide for orderly, consistent mechanisms to achieve a timely resolution to discrimination claims that may involve allegations of conduct by administrators, students, unit or nonunit faculty members or other persons employed or involved in institutional activities.

## **VIII. CONTRACT DISPUTES**

### **PART A--FACULTY GRIEVANCE RIGHTS**

### **8.1 PURPOSE**

The parties agree that all problems should be resolved, whenever possible, before the filing of a grievance. They encourage open communication between administrators and faculty unit members so that resorting to the formal grievance procedure will not be necessary. The purpose of this article is to promote prompt and efficient procedures for investigating and resolving grievances.

## **8.2 GRIEVANCE RIGHTS**

Any individual faculty unit member or group of faculty unit members may at any time present and have grievances adjusted. When the grievance is processed by an individual faculty unit member or a group of faculty unit members, they may process the grievance without the involvement of the COHE representative, providing the adjustment is not inconsistent with the terms of this agreement or any settlement between COHE and the Board, and providing that the COHE representative has been given an opportunity to be present at such adjustment. It is the responsibility of the administration to provide the local COHE president with a copy of any such grievance and to notify its representatives of the times and places of meetings at which they might be present. The institution will provide COHE with a written statement of any resolution.

## **8.3 DEFINITIONS**

For the purpose of this article:

1. The term "grievance" means an alleged misinterpretation, misapplication or violation of a specific term or provision of this agreement; provided that allegations supporting the claimed grievance assert a specific factual basis for the complaint that, if proven, would establish that an action attributable to the administration deprived the individual employee of a right arising under such term or provision. A faculty unit member may not rely upon mere conclusions, general allegations and speculative statements to establish a factual ground for the claim that a provision has been misinterpreted, misapplied or a violation. Faculty unit members must cite specific facts and circumstances known to them first hand or to another first hand who is willing to testify to their existence or established through official governmental publications or other published documents whose authenticity and reliability cannot reasonably be doubted, together with such factual inferences as may be drawn from such facts. The term "grievance" does not include claims for damages or other general relief based upon allegations that sound in tort, claims for damages or other contract relief available solely through the judiciary, or claims alleging that provisions of this agreement, or incorporated statutes, rules or policies, violate constitutional or legal restrictions unrelated to terms and conditions of employment.



2. The term "grievant" means a named faculty unit member or a group of named faculty unit members. The term "grievant" may also refer to COHE where the organization brings a grievance to vindicate a right guaranteed to COHE by a specific term or condition of this agreement.
3. "Working days" means those days when the offices of the institution or Board are open for business - Monday through Friday - exclusive of legal holidays. Working days will not be counted under special circumstances where the unit member is unavailable to process his or her grievance by reason of travel or absence necessitated for continuing education, professional conferences or scholarly activities, in special cases of emergency, during holiday or vacation periods when classes are not in session (in the case of 12-month faculty, during annual leave, or during a noncontract period), all excepting where a grievance has already been filed and where an extension of time has not been made the subject of a written agreement.

#### **8.4 REPRESENTATION**

Faculty unit members, in processing grievances, may represent themselves or be represented by someone of their choice. Beginning at Step 1, COHE and the administration will have the right to have an observer present at all meetings between the parties called for the purpose of discussing grievances. The president of the institutional COHE chapter will be informed in writing at least two (2) working days in advance of any such meeting. No resolution of any individually processed grievance may be inconsistent with the terms of this agreement.

#### **8.5 CONFIDENTIALITY**

The grievance proceedings will be confidential. No meeting or hearing conducted pursuant to § 8.7 will be open to the public and witnesses will be directed not to disclose the substance of any matter disclosed to them in the course of a meeting or hearing. Notwithstanding the foregoing assurances of confidentiality, where a grievant, a grievant's representative, COHE or a third party causes or acquiesces to publication, whether in the press or otherwise, of information about the grievance or grievance proceedings, the administration or the Board shall have the power, but not the obligation, at its sole discretion to make such disclosures as it deems necessary to assure the public or interested parties of the regularity of proceedings or to correct misstatements of fact or otherwise misleading statements. If the Board elects to issue a written statement to the public, it will provide the local COHE president with a copy of the statement.

## **8.6 TIME LIMITATION**

When any action which is required to be taken within a specified time period is not taken in time, the following will apply:

1. If the grievant fails to act within the time limits provided herein, the administration will have no obligation to process the grievance and it will be deemed withdrawn.
2. In the case where the administration fails to act in time, the grievant may proceed to the next review level and any subsequently issued decision on the matter at the bypassed level will be void.

## **8.7 STEPS FOR PROCESSING A GRIEVANCE**

### **Step 1: Written Statement of Grievance.**

A grievance is initiated by filing a formal written statement of grievance to afford an initial opportunity to review the concerns raised.

A grievant must first present a grievance, identified as such, in writing, personally executed by an individual grievant, or by a duly authorized COHE officer where COHE has brought the grievance to vindicate rights guaranteed to COHE under this agreement, and informally, in accordance with the prescribed grievance form [Appendix B--Grievance Form--Step 1], at the lowest administrative level having authority to dispose of the grievance and with the COHE chapter president. The grievance must be filed within fifteen (15) working days of the date on which the grievant knew or should have known of the action or condition which occasioned the grievance. The administrator, upon learning of the grievance, will investigate the grievance as deemed appropriate and will respond to the grievant in writing within seven (7) working days; such investigation may include a private meeting with the grievant. Notwithstanding the foregoing, if the office of the president represents the lowest administrative level having authority to dispose of the grievance, then the grievance will be filed in the first instance at Step 2; in this circumstance, the applicable filing period remains fifteen (15) working days.

### **Step 2: Preliminary Review of the Grievance at the Presidential Level.**

All grievances submitted for action at the presidential level will be subjected to a preliminary review to determine whether they are subject to dismissal for failure to comply with procedural requirements or for failure to state a grievance or whether they are subject to summary disposition for failure to allege sufficiently well grounded facts to warrant a hearing.

If the grievance is not resolved in Step 1, the grievant may formalize the grievance in accordance with the prescribed grievance form [Appendix C--Grievance Form--Step 2] and file it with the

president of the institution and the local president of COHE within seven (7) working days of the Step 1 decision. This form requires the legal name and personal signature of the individual grievant, or of a duly authorized COHE officer where COHE has brought the grievance to vindicate rights guaranteed to COHE under this agreement, a statement of the specific provision(s) of this agreement alleged to have been violated, the relief requested, and evidence that the grievant attempted an informal adjustment of the grievance, as required in Step 1, and a copy of the written response to the grievance by the administrator who considered the grievance.

Where a submission is untimely or where a faculty unit member fails to satisfy the requirements of § 8.3 (1), the administration will have no obligation to treat the complaint as a grievance hereunder.

To determine whether a grievance should be dismissed on such grounds, the president, or designee, will review the record developed at Step 1, plus any supporting allegations or materials that the unit member may provide.

If the president, or designee, concludes that the submission is untimely, the president, or designee, will notify that the grievance has been deemed withdrawn and no further proceedings will be required at Step 2 or Step 3.

If the president, or designee, concludes that the filing fails to satisfy the requirements of § 8.3 (1), the president, or designee, will notify the grievant of the specific deficiencies within five working days after receipt of the Step 2 filing.

The grievant will then have ten working days in which to supplement the materials previously filed.

If no additional materials are filed within the time allotted, the grievance will be deemed to have been withdrawn and no further proceedings will be required at Step 2 or Step 3.

If additional materials are filed, the president, or designee, will have five working days from their receipt to determine whether the new materials cure the defects in the original filing.

For the purposes of determining whether a grievance may be terminated at Step 2, a president or designee may decide to investigate further the allegations raised by the grievant. The decision to investigate further neither waives any defects that would justify termination of untimely or insufficient grievances nor extends the time limitations that apply to Step 2.

Likewise, the president may reserve resolution of preliminary matters pending further investigation pursuant to Step 3A or hearings pursuant to Step 3B. The decision to reserve such matters does not operate to waive the right to dismiss a grievance on the basis of procedural or substantive defects.

If the president, or designee, concludes that the grievant has satisfied the preliminary requirements and is entitled to a full investigation or that it is appropriate to reserve determination of preliminary requirements until the matter has been investigated further, president, or designee, will notify the grievant that the grievance will proceed to Step 3, and the time limitations set forth thereunder will

begin to run from the time that the president, or designee, transmits such notice.

If the president, or designee, concludes that the defect has not been cured, the president, or designee, will notify the grievant of that conclusion and its basis. No further proceedings will be required at Step 2, Step 3A or Step 3B.

### **Step 3: Investigation and Decision at the Presidential Level.**

With the sole exception of individual grievances brought to challenge termination for cause or pursuant to reductions in force, grievances will be investigated by or on behalf of the president pursuant to the provisions of Step 3A, below.

An optional special procedure exists for faculty unit members terminated for cause or pursuant to reductions in force. They may choose to appear before a faculty hearing panel, whose recommendations will be submitted to the president for review and decision. Procedures involving this optional faculty hearing panel are set forth in Step 3B, below.

### **Step 3A: General Procedures for the Investigation and Resolution of Grievances.**

Where a filed grievance complies with the requirements of this Article, or where the president or designee otherwise believes it prudent to do so, the president, or designee, will conduct an investigation, which may include the services of a nonunit investigative panel, for the purpose of arriving at an ultimate decision on the merits.

Grievants may invoke the assistance of a standing peer faculty committee, designated and constituted by COHE. In order to preserve the right for the assistance of a peer faculty committee, grievants must indicate their choice to do so on the Step 2 Grievance form. Failure to record that choice on the form waives the right.

Based on the investigative results of such investigation, the requirements of the bargaining agreement or Board policy and the recommendations that may be generated by the investigative process employed, the president or designee will prepare a proposed decision on the grievance.

In the proposed decision, under circumstances where all, or even a part of, the requested relief is to be denied grievant, the president will schedule a conference with the grievant, which will be held no sooner than four (4) working days after the president provides notice, pursuant to § 22.9, of the proposed decision. At the time of the delivery of the proposed decision, grievant will also receive all material and documentation generated by the investigative process employed. Further, the president of the local COHE chapter will be informed of the scheduled conference, as required in § 8.4, and will further be given, at such time, a copy of the proposed decision.

At the time of the conference, grievant is entitled to present his or her position on the matter in issue, which may include investigative materials and recommendations of the peer faculty committee, if such was noticed as above provided. In any case, the president will issue a written

decision to the grievant and local COHE president within twenty (20) working days after the grievance was advanced to Step 3. The decision will include a statement of the findings and conclusions supporting the decision.

Except as otherwise agreed, all meetings in regard to Step 3 grievances will be held on the campus where the grievance occurs.

### **Step 3B: Special Optional Procedures for the Investigation and Resolution of Grievances Concerning Termination for Cause or Pursuant to Reductions in Force.**

Faculty unit members who have been terminated for cause or pursuant to reductions in force may challenge the factual basis for the termination before a faculty hearing panel. Faculty unit members who wish to bring such challenges must indicate that intention on the grievance form filed at Step 2 or the right will be waived.

If the grievant waives the right to a faculty hearing panel, grievance procedures and timeline will be those outlined at Step 3A.

If the grievant elects to have a faculty hearing panel review the matter, the following will apply:

- a. Within ten days after filing a notice, the president of the institution will formally appoint the faculty hearing panel comprising those individuals selected pursuant to paragraph (b) below and charge it to conduct a grievance hearing on the record. The grievant and the party responding on behalf of the administrative decision maker will have the right to call and examine witnesses and to introduce evidence. The panel will make written findings and conclusions based upon the record taken as a whole and will forward its recommended disposition of the matter to the president. In reaching its conclusions, the panel should consider that the administration has the burden to prove by a preponderance of evidence the factual basis for its determination as set out in § 8.8(7). The grievant will have the burden of proof on any allegations of fact raised by way of defense. The panel may request legal advice in determining applicable standards of proof or admissibility of evidence in the matter before it. The institution will be responsible for necessary arrangements to retain competent, disinterested legal advice.
- b. The hearing panel will be made up of three disinterested faculty members who are not members of the grievant's department. The president will select one member; the local COHE president will select a second; and the first two members will select a third. If either party disputes whether a nominee is disinterested, the president and the local COHE president will outline the circumstances and evidence supporting their positions in writing and the dispute will be forwarded to the executive director for resolution. In the event that the persons designated by the parties cannot agree upon a third member, the lists of candidates and recommendations will be forwarded to the executive director who will select a third member. This process will be completed within seven working days and will extend the deadlines for all subsequent proceedings by seven working days.

- c. The three panel members will select a chairperson. The chair of the faculty hearing panel, in consultation with the grievant and other necessary parties, will fix a date for a hearing, which must be held no later than forty-five (45) days after the filing of the Step 2 grievance.
- d. All testimony will be under oath and transcribed by a court reporter. The institution will retain a reporter and prepare one transcript of the hearing, an official copy for the record to be held by the institution; the parties will share equally in the cost of providing a second copy for the grievant.
- e. Within ten working days of the date of hearing, a panel will issue written findings and conclusions and will forward them, a hearing transcript and an advisory recommendation to the president.

Within ten (10) working days after receiving the recommendation from the faculty hearing panel, the president will render his decision in writing to the affected faculty unit member, the local COHE president and the members of the hearing panel. The decision will include a statement of the president's findings and conclusions in support of the decision if these differ from those of the faculty hearing panel.

Except as otherwise agreed, all meetings in regard to the Step 3 grievance will be held on the campus where the grievance occurs.

#### **Step 4: Opportunity for Informal Resolution of the Grievance by the Executive Director.**

If a grievance has not been resolved in Step 3, the grievant may submit the grievance to the Board on the prescribed form [Appendix D--Grievance form--Step 4]. The grievance must be accompanied by copies of Step 1 and Step 2 grievance forms, together with copies of all decisions rendered at Step 1, Step 2 and Step 3A. In the event that a grievance was heard at Step 3B, it must also be accompanied by the recommendations of the faculty hearing panel, the hearing transcript and the decision of the president. The Step 4 form will be filed with the executive director within ten (10) working days following receipt of the Step 3 decision. A copy of the Step 4 form will be sent by the grievant to the president of the institution and the COHE chapter president.

The executive director will have fifteen (15) working days within which to attempt, at his discretion, a resolution through informal means.

#### **Step 5: Procedures for the Resolution or further Investigation and Resolution of Grievances.**

- a. If no resolution is achieved within the time herein last provided, the executive director will within ten (10) working days determine whether the grievance presents any contested questions of fact or whether the contested matters may properly be determined as matters of law. The executive director may require the grievant and the institution to submit argument and authorities to identify the considerations that weigh in favor of their respective positions

on the merits of the grievance, on the necessity of a full hearing or such other relevant matters as the executive director may request. The executive director may refer the controversy to a hearing officer to determine whether the dispute can be settled on legal grounds or whether it requires a hearing. If a matter has been referred to a hearing examiner under this subparagraph (a), the hearing examiner may require the grievant and the institution to submit argument and authorities as provided above. In charging the hearing officer under this paragraph, the executive director may direct the hearing officer to proceed under subparagraph (b) or (c) of this subsection as is appropriate to the hearing examiner's conclusions about the necessity of a hearing.

- b. If a matter presents contested questions of fact, the executive director will, within the ten working day period allowed for making this determination, refer the formal grievance to a hearing examiner who, within ten (10) working days after his designation and appointment, will set the matter down for full hearing to be held no earlier than seven (7) working days and no later than fifteen (15) working days after his notice of appointment has been postmarked to COHE; provided that, where a hearing record was developed pursuant to Step 3B, a full hearing will not be provided, and the hearing will be limited to argument and authorities, unless a party offers proof of new evidence that is both relevant and material and that could not have been acquired at the time of the original hearing through the exercise of reasonable diligence, or unless a party offers proof that the original record was tainted by fraud or misconduct of the other party.

Such hearing will be conducted in a confidential setting and all parties to the grievance will make no public statements about the case during the pendency of the proceedings. Both COHE and Board representatives are entitled to be present at the hearing.

All parties to the grievance have the right to obtain witnesses and present evidence. The institution(s) will cooperate with the hearing examiner in securing witnesses and in making available specifically identified and relevant documentary and other evidence requested by the grievant(s); provided that the evidence is in the possession of the administration and that the administration relied upon the evidence when undertaking the challenged action. The institution has no obligation to secure evidence if its disclosure is limited by contract or law or if disclosure would subject the institution, witnesses or third parties to annoyance, embarrassment, oppression or undue burden or expense. If disclosure is requested of a third party or witness's information, the third party or witness will be informed prior to the disclosure and will have the opportunity to be heard with respect to the disclosure. Faculty unit members will respond to requests to give testimony under oath, incidental to the processing of any grievance under this article. The parties to the grievance will have the right to cross-examine witnesses. Where a witness cannot or will not appear, but the hearing examiner determines that the interest of justice requires admission of their statement, then the hearing examiner will arrange for a deposition. The hearing examiner may grant continuances when requested by either party to enable either party to investigate evidence, or for any other reason deemed appropriate. The hearing examiner will keep a record of the proceedings.

The hearing will not be conducted under strict rules of legal evidence and is not a contested case. Every possible effort will be made to obtain the most reliable evidence.

The hearing examiner will make a recommendation to the Board which will take the form of findings, conclusions and an order of disposition and will be issued within fifteen (15) working days of the hearing or of the expiration of any briefing schedule established by the hearing examiner. A copy of the recommendation will be provided to COHE, the grievant(s) and the president. The recommendation must be based solely on the record, pertinent institutional and Board policies, this agreement and the law of the land. Whenever the recommendation reverses or modifies the Step 3 decision, it must be accompanied by a statement of reasons and referred, along with the record, to the central office of the Board.

- c. If the executive director determines that there are no contested facts requiring referral to a hearing examiner, the executive director will, within the ten (10) working day period allowed for making this determination, notify the grievant that a hearing will not be convened. The executive director may then prepare findings and conclusions to assist the Board to determine how to resolve the controversy as a matter of law, or the executive director may call upon the assistance of an outside party to review the submissions and to prepare suitable findings and conclusions for consideration by the Board. A copy of the executive director's draft recommendation will be provided to COHE, the grievant(s) and the president. The recommendation must be based solely upon the record, pertinent institutional and Board policies, this agreement and the law of the land.
- d. The Board will make a final decision based upon the recommendation of the hearing examiner or the executive director where a matter is to be resolved as a matter of law. In addition, it may review the record pertinent to the issues and may hear testimony from individuals as it deems appropriate. Such decision will be made at the next regularly scheduled Board meeting following receipt of the recommendation, provided the recommendation is received not less than ten (10) working days prior to the Board meeting. If not received in time, the recommendation will be acted upon at the subsequent meeting. COHE may discuss the grievance with the executive director of the Board prior to a final decision. If the Board rejects or modifies the recommendation of the hearing examiner or the executive director, the Board will provide COHE and the grievant with the reasons for rejecting or modifying the recommendation. Appeals from the decision of the Board will be governed by SDCL § 3-18-15.2, and other laws in such cases made and provided.

## **8.8 MISCELLANEOUS PROVISIONS**

1. No offer of settlement of a grievance by either party to the grievance will be admissible as evidence in later grievance proceedings, or elsewhere. No settlement of a grievance will constitute a binding precedent in the settlement of similar grievances, unless



otherwise agreed.

2. If the grievance concerns nonrenewal, denial of promotion or change in rank, or denial of tenure, the grievance review will be limited to determining whether the decision was the result of failure to follow procedures, unless otherwise provided in this agreement. The burden of proof, in such cases, rests with the grievant.
3. Neither COHE nor its members nor the Board nor its administrators will retaliate or effect reprisals against any faculty unit member for processing or participating in a grievance.
4. In the event a grievance is filed near the end of an academic year and strict adherence to time limits will result in hardship to any party, the parties will do everything reasonable to allow the grievance to be processed in an expeditious manner.
5. Grievance records will not be maintained in any faculty unit member's institutional personnel file.
6. The parties to the grievance may, in their discretion, waive any of the time limitations provided for herein; provided, however, that such waiver must be in writing and signed by both parties involved at the particular level or step of the grievance machinery. A request for an extension of time to a date certain will not unreasonably be denied, provided that the request was made prior to the running of the limitation period.
7. In the case of a grievance concerning a discipline pursuant to Article XV or a termination pursuant to Article XVI, Faculty Unit Member Reduction Procedures, the burden to prove the conduct charged or the factual basis for a reduction in force will rest upon the administration to the extent required by law. Grievants bear the burden of production. Grievants also bear the burden of persuasion by a preponderance of evidence for affirmative defenses to actions involving discipline, termination or reduction in force and for all claims that an administrative action misinterprets, misapplies or violates a specific right protected under this agreement or Board policy.
8. Parties to the grievance will bear their own expense in a grievance proceeding. The institution or the Board will bear the expense of providing the hearing examiner and all attendant costs thereto.
9. By written notice, a grievant may, at any time prior to the time the hearing examiner sets the matter down for hearing, advance further allegations to supplement those that formed the original basis for his or her claim that specified terms or provisions had been misinterpreted, misapplied or violated. The filing of such amendments will not act to extend any time constraints. In particular, grievants may only increase the numbers of terms or provisions allegedly violated if such additional specifications are filed within the time allowed for filing the original grievance.

## PART B--DECLARATORY RESOLUTIONS

### **8.9 CONTRACT CONSTRUCTION AND PROCEDURAL STEPS**

In any case where COHE or the administration of an institution disputes the interpretation, application or contract compliance with this agreement, either party may notify the other in the form of a demand for a conference resolution of the disputed issues. Such conference will be scheduled and held within fifteen (15) days of the notice. If the dispute involves primarily one institution, the conference will be held on the campus of the involved institution. If no accord or resolution is reached within fifteen (15) days after the conference, or if either party will refuse to attend such a conference, either party may serve upon the other a notice of irreconcilability. Within ten (10) days thereafter, the parties serving the notice may seek the intervention of the executive director and the issue will be processed in the same manner and with the same effect as provided for in Part A under the Step 3 procedures at the executive director level and all procedures that follow thereafter. Nothing provided by this section will preclude individual faculty unit members from processing their individual grievances under Part A.

## **IX. INDIVIDUAL CONTRACTS**

### **9.1 TYPES OF APPOINTMENT**

An appointment extended to a faculty unit member at a higher education institution will be one of the following: term, tenure track or tenure.

### **9.2 TERM CONTRACTS**

A term contract may be either part-time or full-time and will be of a definite term not to exceed one year or overlap two (2) fiscal years, unless the contract is for a spring-summer or a summer-fall appointment or is otherwise approved by the Board. A term contract will terminate automatically at the end of the term, unless the Board expressly renews the contract. Reasonable effort will be made to notify such faculty unit members, more than thirty (30) days prior to the end of their term, that they will have no further term appointment contract. Failure to so notify will not result in the extension of the appointment. As used in this agreement, “consecutive full-time contracts” include any combination of contracts for nine or more months, so long as no more than five months lapse between the end date of one contract and the start date of a subsequent contract.

The parties recognize that faculty unit members who have received several consecutive full-time contracts will come subjectively to expect continued employment on the same basis. Under this agreement, in the absence of an award of tenure, such unilateral expectations, however natural they may be, can never become constitutionally protected property interests.

### **9.3 TENURE TRACK CONTRACT**

A tenure track contract is a qualifying appointment offered to a full-time faculty unit member who may be considered for a tenure contract at a later time and will be of a definite term, not to exceed one fiscal year. Effective July 1, 2012, eligibility to receive a tenure track contract will be limited to faculty unit members with professorial rank who hold doctoral degrees, or postgraduate degrees, other than a doctorate, recognized by the Board as permitted terminal degrees for the faculty unit members' discipline at the institution, or for whom the Board has granted an exception to degree requirements for admission to professorial rank. A tenure track contract may be renewed by the Board, subject to procedures for nonrenewal of tenure track contracts set forth in § 9.6. If a faculty unit member is offered a tenure track contract, the number of years the faculty unit member has served under term contracts may be credited by the Board toward fulfillment of the period necessary for consideration for promotion or for a tenure contract.

The Board may approve extension of the maximum periods of time allowed for progress towards promotion to associate professor and the award of tenure under articles XII and XIII, or as modified as stated therein, by one year. Good cause for granting such an extension will include, without limitation,

1. On the occasion of the birth or adoption of that faculty member's child or adoptive or placement of a foster child with that faculty member; or
2. When the faculty member is a major caregiver for an immediate family member who has an extended serious illness, injury, or debilitating condition; or
3. When the faculty member has an extended serious illness, injury, or debilitating condition.

The request for extension must be made in writing to the vice president for academic administration within one year of the events giving rise to the claim and no later than May 31 preceding the year a final decision would otherwise be made on an appointment with indefinite tenure for that faculty member. If approved by the institution, the request will be forwarded to the Board for review at its June meeting.

A faculty member may use this provision no more than two times.

For purposes of this policy, "immediate family" includes a spouse, a common law spouse, or any

other adult with whom the faculty unit member lives and commingles assets, unemancipated natural, adopted or foster children, or persons over whose affairs the faculty unit member exercises the responsibilities of guardian.

#### **9.4 CONTRACT YEAR**

The nine-month individual appointment contract period for faculty unit members will extend from August 22 to May 21, from May 22 to January 21, or from December 22 to September 21, inclusive. The date on which faculty unit members will be required to report for assigned duties will be no earlier than five (5) working days prior to the date of registration for the first academic term of their contracts. Faculty unit members will be released from duties incidental to their assigned courses no later than five (5) working days after the last day of final examinations in the last academic term of their appointments.

With the exception of (1) faculty unit members during final examination periods as established by the academic calendar, (2) librarians, (3) other faculty unit members whose duties customarily require them to work on Sundays, and (4) all faculty unit members, for the purpose of participating in commencement exercises, no faculty unit member will have assigned duties on Sundays, or on days during breaks in the academic calendar when classes are not in session. Attendance at scheduled activities on those days will be voluntary, with the exceptions noted, and there will be no reprisals for nonattendance.

Faculty unit members will have no assigned responsibilities on legal state holidays.

The Board will retain its discretion on a year-to-year basis to employ faculty unit members for contract periods in excess of nine (9) months with proration of compensation.

#### **9.5 INDIVIDUAL APPOINTMENT CONTRACTS**

Faculty unit members shall receive written notice of appointment signed by the president, or an authorized representative, for each year they are employed by the Board. The faculty member shall have twenty (20) calendar days from receipt of a notice to accept the employment offer, and the employment contract shall not become binding until the notice of appointment is executed by both the faculty member and the appointing authority, and returned by the faculty member to the institution. Each notice of appointment shall contain at least the following elements:

1. Date offered to the faculty unit member;
2. Rank, title, or classification;
3. Employment unit;
4. Beginning and ending dates of the employment contract;
5. Type of contract;
6. Any specific and special conditions and responsibilities of employment beyond the general responsibilities of the appointment;
7. A statement that the contract is subject to the constitution and laws of the state of South Dakota, policies and regulations of the Board, insofar as these may govern terms and conditions of employment, and the provisions of this agreement;
8. Tenure status;
9. Prior service credited for promotion or tenure; and
10. Salary.

#### **9.6 NONRENEWAL OF TENURE TRACK CONTRACTS**

Nonrenewal ordinarily terminates employment at the end of an annual contract term. Nonrenewal is not a disciplinary action. It does not terminate rights under an existing annual contract. The decision not to renew a faculty unit member's appointment is discretionary with the administration, provided that it is not based upon reasons expressly forbidden by this agreement. Nonrenewal is subject only to those procedural limitations expressly set forth in this section.

Prior to the issuance of a final written notice of nonrenewal, the institutional administration will provide the opportunity for a meeting with the faculty unit member to apprise the faculty unit member of the proposed nonrenewal, together with reasons for the action. The faculty unit member will be given at least five (5) working days' written notice of such meeting so that both the faculty unit member and the administration may arrange to have present a witness or a representative.

No later than five working days after the personal meeting, the administration will provide the faculty unit member with final written notification whether the appointment will not be renewed, and, if the decision is made not to renew the appointment, the reasons for the decision.

Deadlines to bring any grievance arising from the decision, under this section, not to renew a tenure track appointment will run from the time that the administration provides notice, pursuant to § 22.9, of the final written notice of nonrenewal.

The final written notice will be given in accordance with the following schedule:

1. If a faculty unit member has completed less than two (2) academic years of service under a tenure track contract, the administration will provide the faculty unit member a final written notice of nonrenewal from the institution before March 15 of the current year of appointment for persons serving under fall-spring appointments, before July 15 for persons serving under spring-summer appointments, or before November 30 for persons serving under summer-fall appointments. As a matter of professional courtesy, the administration will make a reasonable effort to notify faculty unit members by December 15 for persons serving under fall-spring appointments, by April 15 for persons serving under spring-summer appointments, or before August 31 for persons serving under summer-fall appointments when the administration is considering the possibility of non-renewal; provided that the lack of such courtesy notice will not prevent the institution from proceeding with an otherwise timely non-renewal.
2. If a faculty unit member has completed more than two (2) but less than four (4) years of service under a tenure track contract, the administration will provide the faculty unit member with final written notice of nonrenewal before December 15 of the current year of employment for persons serving under fall-spring appointments, by April 15 for persons serving under spring-summer appointments, or before August 31 for persons serving under summer-fall appointments. However, if the faculty unit member is currently subject to the provisions of a constructive plan imposed prior to December 15 for persons serving under fall-spring appointments, by April 15 for persons serving under spring-summer appointments, or before August 31 for persons serving under summer-fall appointments, the institution will provide the faculty unit member final written notice of nonrenewal prior to March 1 for persons serving under fall-spring appointments, by July 1 for persons serving under spring-summer appointments, or before November 1 for persons serving under summer-fall appointments.
3. If a faculty unit member has completed at least four (4) years of service under a tenure track contract, the institution will provide the faculty unit member with final written notice of nonrenewal before April 1 of the current year of employment for persons serving under fall-spring appointments, by November 15 for persons serving under spring-summer appointments, or before June 30 for persons serving under summer-fall appointments. Such faculty unit member having received final written notice of nonrenewal will receive a term contract for the term of one (1) academic year, effective the subsequent academic year.
4. Faculty unit members employed on tenure track contracts whose appointments are not renewed may be granted no more than one subsequent term contract. Nothing in this article is intended to modify the rights and limitations contained in § 8.8(2) hereof.
5. If the administration is late in providing the final written notice stipulated in ¶¶ 1 or 2 above, the faculty unit member will be entitled to receive, at the election of the administration,

either (1) an additional term contract for a period of time equal to twice the number of working days by which the notice is late; or (2) a payment equal to twice the number of working days by which the notice is late times the faculty unit member's monthly salary divided by twenty-two (22). If the administration is late in providing the final written notice stipulated in ¶3 above, the faculty unit member will be entitled to receive, at the election of the administration, either (1) an additional term contract for the following academic year, or (2) a payment equal to the base salary for the current academic year.

The years of service required for the above notice provisions will not be affected by any reduction of the tenure track period granted by the Board pursuant to the fourth paragraph of § 14.2.

6. A faculty unit member whose employment on a tenure track contract is subject to a condition that an academic degree be completed by a time certain, but who does not complete the degree as originally agreed is subject to nonrenewal. If the completion date is earlier than the nonrenewal dates specified in §§ 9.6(1) through 9.6(4), nonrenewal of the appointment may proceed as provided therein. If the completion date is later than the nonrenewal dates specified in §§ 9.6(1) through 9.6(4), the faculty unit member may be given a notice of nonrenewal at any time prior to the beginning of the nine-month appointment, in which case, notwithstanding any other provision herein, the employment will end upon completion of such nine-month appointment.

## **9.7 CONTRACT FULFILLMENT**

Full-time faculty unit members who after their second year of employment resign their individual contract and leave institutional employment prior to the end of the contract term for the purpose of receiving employment outside the regental system without the consent of the Board thereby consent to liquidated damage compensation to the Board for the additional expense caused by said breach of contract. However, any faculty unit member who so resigns and breaches this contract may request a waiver of the deduction of said liquidated damages, in lump sum, from any pay owed to the unit member by the Board. Upon good cause, the Board will not unreasonably withhold its waiver of said liquidated damages and the deduction thereof from allowances owed. Consent to resignation and breach of an individual contract will be deemed given by the Board if written notice is given to the institution thirty (30) or more days prior to the date when unit members are scheduled to report to the institution at the beginning of the annual appointment.

When a resignation is received less than thirty days prior to the date when unit members are scheduled to report to the institution at the beginning of the annual appointment, liquidated damages will be assessed in the amount of \$2,400. If a replacement is hired before the date when unit members are scheduled to report to the institution at the beginning of the annual appointment, the liquidated damages will be reduced. The damages will be reduced at the rate \$80 dollars for each

day between the hire date of the replacement and the date when unit members are scheduled to report to the institution at the beginning of the annual appointment.

### **9.8 TRANSITIONS AMONG TRADITIONAL AND NONTRADITIONAL NINE MONTH CONTRACTS**

Faculty unit members who are asked to switch from fall-spring, spring-summer or summer-fall contracts will not be expected to go for more than one term without assigned responsibilities and commensurate income. To the extent that the terms of any two nine month contracts may overlap, the term of the second contract will be deemed to begin on the day following the lapse of the first contract. This change will not affect reporting dates, evaluation dates or any other contractually specified timeline, all of which will be determined according to the negotiated timelines.

Where it becomes necessary to shift assignments for programmatic or other administrative reasons, the administration will make every reasonable effort to provide faculty unit members with at least one term's advance notice of a prospective shift in term assignment.

### **9.9 TWELVE MONTH SALARY PAYOUT**

Beginning July 1, 2012, and subject to the exceptions provided herein, base salary earned by all faculty unit members serving on full-time appointments will be scheduled for payout over twelve months irrespective of the length of the base appointment. Voluntary deductions from base salary, payroll taxes, retirement system contributions and employee benefit payments will be prorated over the full twelve month period. Salary payments to faculty unit members serving on less than nine-month full-time contracts will be prorated over the stated term of the appointment.

The payment of base salary over a twelve month period does not change the period when unit members are under active contract for service, nor does it permit the assignment of additional duties outside the dates of the base appointment, except as otherwise provided in this agreement.

Payments for additional service, e.g., overload or summer session contracts or research grant summer stipends, will be paid as earned, and required payroll taxes and retirement system contributions based on the additional salary will be withheld from such payments.

Unit members who will satisfy the rule of 85 or who otherwise will be or will become eligible for retirement between July 1, 2012 and June 30, 2015, may elect to continue to receive salary payments as earned during that time period, subject to proration of elected benefit premium payments. To exercise this election, such unit members must provide the institutional chief academic officer and the institutional human resources director written notice no later than May 1, 2012, that they will continue to receive salary as earned. If a unit member who makes the election provided under this paragraph accepts a full-time appointment for a term beginning on



or after July 1, 2015, payments under the new appointment will be paid out over twelve months. If a unit member who is eligible to make the election provided in this paragraph fails to do so on or before May 1, 2012, the right to make the election shall terminate and the unit member's salary will be paid out over twelve months. Eligible unit members who initially elect to continue to receive base salary as earned, may rescind their election on or before July 1, 2013 or July 1, 2014.

## **X. UNIT MEMBER RESPONSIBILITIES**

### ***10.1 RESPONSIBILITIES OF FACULTY UNIT MEMBERS HOLDING PROFESSORIAL RANK***

Upon accepting an appointment, a faculty unit member holding professorial rank may be assigned responsibility in any of three (3) areas: teaching, research and scholarship, service or in other areas of responsibility as specified under item 6 of § 9.5. All faculty unit members holding professorial rank will be subject to shared-governance service obligations that are normally incidental to any full-time faculty appointment, including, without limitation, participation in curriculum review, faculty or student qualifications and expectations or academic unit programming or operations. Faculty unit members holding lecturer rank are not subject to the foregoing shared-governance service obligations, although they may be directed to assist the professorate informally in matters involving curricula and course delivery. A representative list of duties within these areas is found in Board Policy No. 4:38. In addition, a faculty unit member is expected to perform assigned responsibilities in accordance with recognized standards of professional ethics and departmental policy. Specific assignments will be made as provided in Article XI.

## **10.2 RESPONSIBILITIES FOR UNIT MEMBERS HOLDING LIBRARIAN RANK**

Faculty unit members holding librarian rank engage in a variety of duties including but not limited to managing library programs or functions under the direction of a library administrator, provide library services to students, staff or the public and represent the library as consultants to other libraries, faculty, administrators or the public. Faculty unit members holding librarian rank may be expected to maintain familiarity with evolving professional standards for librarianship and library practice and to conduct research and to formulate recommendations to help align South Dakota university libraries with best practices for academic libraries. In addition, they may engage in publication and presentation that enhance the profession and comport with their positions and assigned responsibilities. Representative duties may include but are not limited to administrative or professional responsibility for a library program or function such as reference and research, information literacy, government documents, serials collections, collection development or original or copy cataloging, and supervision of employees serving in Career Service Act classifications or students. Faculty unit members holding librarian rank may be assigned to explain library resources and their use to students and other patrons, through programs sponsored by the library, as invited speakers in classes, through other outreach activities or in publications. Faculty unit members holding librarian rank may be subject to shared-governance service obligations that are normally incidental to any full-time faculty appointment, including, without limitation, participation in curriculum review, faculty or student qualifications and expectations or academic unit programming or operations.

## **10.3 WORKLOAD**

COHE and the Board recognize the value of workload policies which regulate workload based on credit hours, contact hours, preparation, clinical work, research, service and other factors deemed appropriate by the parties. The standard two-term workload for the professorial ranks may emphasize teaching, research or service responsibilities. The workload for the lecturer ranks will be based solely upon undergraduate instructional responsibilities, including such administrative responsibilities as are reasonably incidental thereto; provided that the equivalent of three credit hours per year may be assigned to service functions and provided further that the administration reserves the prerogative to make other assignments in exceptional circumstances, as approved by the institutional president.

Faculty unit members whose primary responsibilities are instructional will be expected to undertake an effort equivalent to that needed to deliver thirty credit hours of undergraduate instruction per academic year. Faculty unit members holding to professorial rank whose primary responsibilities involve delivery of instruction will be assigned reasonable time to support active research, scholarship or creative artistic activity or active discipline-related professional service; ordinarily such time for faculty unit members for whom teaching is the primary assignment will involve six credit hours of undergraduate instruction, or its equivalent, per academic year. Faculty unit members holding lecturer rank will be expected to deliver thirty credit hours of undergraduate

instruction per year.

Faculty unit members whose primary responsibilities are research will be expected to undertake the effort needed to maintain a research program recognized nationally for its excellence. Faculty unit members whose primary responsibilities involve research or professional service will be expected to engage in instructional activities consistent with their primary assignments.

The workload policy for each institution will be in Appendix H to this agreement and is hereby incorporated by reference as are any changes thereto. Such changes will be provided to the COHE chapter presidents within ten (10) days of approval.

Telecommunicated course delivery, by whatever means now known or to be developed in the future, will be treated as part of faculty unit member course load for all purposes, including assignment and evaluation. Likewise, base course load will include the effort needed to adapt courses to assure that all students taught, regardless of field of study, will make active use of the full array of technological resources provided at levels expected for them to function effectively as citizens as well as in their chosen career.

An institutional workload committee will be established if either COHE or the president identifies a need for change in the policies. Any changes agreed upon by such committee will be recommended to the president for approval. If agreement cannot be reached by the Institutional Workload Committee or their recommendations are not approved by the president, the issues may be submitted by either party to the Board for its decision. In such case the previously established workload policies, with agreed upon changes, will remain in effect until the Board's decision. This will not preclude either party from introducing such issues into negotiations.

The institutional Workload Committee will be composed of three (3) members appointed by the president and three (3) members appointed by COHE. The Committee will meet within ten (10) days of a written request by either COHE or the president.

#### ***10.4 WORKLOAD--LIBRARIANS***

Faculty unit members assigned to positions in the various institutional libraries will normally not be required to work on more than five (5) calendar days per work week unless the assignment is mutually agreed to by the administration and the faculty unit member. A faculty unit member will not be required to work more than seven (7) consecutive days, unless mutually agreed to by the administration and the faculty unit member. Where faculty unit members holding librarian ranks serve on split appointments and also hold lecturer or professorial rank, workload expectations for the librarian positions will be adjusted to accommodate teaching or research responsibilities. Nothing in this section precludes library administrators from adjusting workload expectations to accommodate assignments to teach such credit-bearing courses as the library may offer from time to time or to permit librarians who have been awarded externally

funded research grants and wish to use portions of the grant proceeds to obtain release time from their primary assignments. Irrespective of formal research assignments or accommodations, librarians enjoy the same prerogatives as other unit members to use of university resources, including incidental use of assigned office equipment, for research purposes; provided only that such use not conflict with the performance of other assigned duties.

## **10.5 PRIVATE PRACTICE AND CONSULTATION**

The Board encourages faculty members to participate in outside professional activities that contribute to their professions, to the broader community, to the expansion of South Dakota's economic and cultural resources and generally to the system's public service mission. Engagement with the outside community is also an important component of the academic enterprise and one way in which faculty members and other researchers maintain contact with research directions and priorities that exist in the private sector. This knowledge also guides faculty members in preparing students for careers in the private sector.

Although consulting may enhance faculty member service in their instructional and research roles, the consulting process also harbors the potential for diversion of faculty member effort from primary activities and responsibilities. Consequently, the prerogative of engaging in consulting activities is subject to checks and balances to assure that authorized consulting serves the larger goals of the State, its institutions of higher education, including faculty development, without compromising the timely, effective performance of primary responsibilities.

1. For purposes of this Policy, consulting is defined as professional activity related to the faculty member's field or discipline, where a fee-for-service or equivalent relationship with a third party exists.

There are many types of consulting relations and fee arrangements. The principle is that, in consulting, a faculty member agrees to use professional capabilities to further the agenda of a third party in return for compensation. A faculty member serving as consultant may be on the client's payroll, work as an independent contractor, or receive non-monetary valuable compensation – goods, services, property or use of property – in return for services rendered. Consulting may take many different forms, including, without limitation, service on a board of directors; expert witness testimony; report preparation. Neither the form of compensation nor the capacity in which service is offered defines consulting under this policy. Instead, consulting subject to this policy occurs when a faculty member (a) works to advance the interests of a third party; (b) makes use of some knowledge, skill or experience essential to the faculty member's University position; (c) does not represent the University in the activity; and (d) none of the four categories of exclusion below applies. Several types of faculty activity, other than regular University duty, are not consulting within the scope of this Policy. These are:

- a. Scholarly communication including without limitation communications in the form of books, movies, television productions, art works, performances, though frequently earning financial profit for a faculty member and for another party (e.g., publisher), are not viewed as consultation.
  - b. Seminars, service on national commissions, on governmental agencies and boards, on granting agency peer-group review panels, on visiting committees or advisory groups to other universities, and on analogous bodies or similar professional service including also service as a clinician or adjudicator in the fine and performing arts. The fundamental distinction between consulting and professional service activities (service to which a faculty member's disciplinary expertise is essential) is that in providing professional service, the faculty member acts on the University's behalf; and in consulting, the faculty member acts on the client's behalf. Although an honorarium or equivalent sometimes is forthcoming from professional services, these professional service activities are not undertaken primarily for personal financial gain. Therefore, such service is not consulting with the scope of this Policy.
  - c. Faculty members may pursue a variety of endeavors for financial profit that are not directly related to their fields or disciplines. These efforts are not considered consulting under this Policy, but such activities may fall within the scope of Board Policy No. 4:35 or otherwise be subject to regulation under federal and state laws addressing public employee conflicts of interest.
  - d. Private activities protected under Article III of this agreement.
2. The privilege of engaging in private paid consulting on the terms allowed herein is limited to faculty unit members employed full-time and assigned professorial or librarian rank. Such faculty unit members may receive permission to enter into private paid consulting agreements with outside parties, where the contracted services benefit the institution by promoting state and local economic development, the professional development of the individual or otherwise; provided that the services will not interfere with the individual faculty unit member's primary employment responsibilities. Prior authorization will be required for each private paid consulting agreement to be performed during a period when the faculty unit member is under contract with the institution or when required under the conflict of interest policy or when the consulting agreement will require the faculty unit member to waive patent or intellectual property rights. This privilege is subject in all instances to the conditions set forth below. Failure to comply with this policy may subject an employee to disciplinary action including reprimand, suspension, or termination.
    - a. The first responsibility of faculty unit members is to the institution that employs them, and outside professional commitments may not interfere with the full-time responsibilities to that institution.

- b. Permission to enter into private paid consulting agreements that present actual or potential conflicts of interest or conflicts of commitment may be granted subject to a conflict management plan.
- c. Use of institutional facilities, space, equipment, or support staff for private paid consulting may only be permitted where such private use is consistent with bond covenants and where, prior to the contracting to provide outside private paid consulting, faculty unit members have executed a written financial arrangement to reimburse the institution for direct costs arising from the permitted use, including supplies and salaries, to pay commercially reasonable equipment or facility rental, and to indemnify the institution against losses occasioned by such use.
- d. Faculty unit members may not represent themselves as acting in the capacity of institutional employees when conducting private paid consulting or other paid professional activities. The institution bears no responsibility for any actual or implied obligations or liabilities incurred by the faculty unit member resulting from a private paid consulting.
- e. Faculty unit members who wish to arrange private paid consulting must submit written requests for authorization to their supervisors before contracting to provide such services. Supervisor review of proposed private paid consulting or other paid professional activities will include consideration of any real or apparent conflict of interest and the benefit of the proposed service to the institution. Each faculty member who engages in private paid consulting or other paid professional service must ensure that such activities do not require commitments that exceed four days in any single month, and must arrange such activities so as not to interfere with regularly scheduled instructional or advising activities or scheduled research activities.
- f. Faculty unit members must submit for prior review any proposed private paid consulting agreement that requires the faculty unit member to waive patent or other intellectual property rights. Permission to waive rights to scholarly or creative artistic works will be granted except where those rights vest in the Board of Regents on behalf of the institution under the Board Policy No. 4:34, Intellectual Properties. All proposed private paid consulting agreements containing such waivers will be submitted to the Vice President for Research for prior review and approval. No faculty unit member may waive patent rights held by the Board of Regents on behalf of the institution. Where private paid consulting activities involve the development of inventions or potential inventions based upon work first undertaken by the faculty unit member while engaged in research funded in whole or in part by federal agencies, state agencies or the institution, permission to waive patent rights will not be granted. Full disclosure

of any invention discovered in the course of such work must be made to the Vice President for Research.

- g. When any of an individual's salary is paid from funds for externally sponsored activities, the time allowable for consultation must comply with sponsor requirements.
  - h. In order to document paid consulting leave for purposes of federal effort reporting and to assure avoidance of conflicts of commitment, each faculty unit member who has engaged in private paid consulting will report the full number of days, including weekends and holidays, devoted to such private activities. Reports will be filed in writing with the faculty unit member's supervisor at the end of each spring semester, and they will identify both the outside entities that paid for the faculty unit member private paid consulting and the days of service provided for each such employer.
3. Whenever a request for permission to consult is denied, the administration will inform the unit member of the reasons for the denial.

#### ***10.6 OUTSIDE ENDEAVORS FOR PROFIT***

The statutory provisions regarding dual employment are at SDCL §§ 3-8-4 to 3-8-4.3. To the extent permitted under SDCL §§ 3-8-4 to 3-8-4.3, § 10.5 and Board policies regulating conflicts of interest and commitment, faculty unit members may pursue other outside endeavors for profit.

#### ***10.7 PROFESSIONAL TRAVEL***

Travel expense incurred by faculty unit members in administratively authorized representation of the institution at federal, state agency, or other professional meetings will be fully reimbursed by the institution in accordance with state travel regulations. The administration will develop uniform procedures by which a faculty unit member may request travel funds for professional activities. Faculty unit members may submit concerns regarding travel procedures to the administration.

#### ***10.8 STUDENT DISCIPLINE***

Student discipline is addressed in the Board policy manual, and each institution will include the student discipline policy for the institution in the faculty handbook. It is the responsibility of the administration to take appropriate steps to enforce the discipline policy(s) referenced above.

## **XI. ASSIGNMENT, REASSIGNMENT AND TRANSFER**

### ***11.1 ASSIGNMENTS***

The administration will make every effort to assign faculty unit members according to their area of qualification and expertise.

If faculty unit members believe that the duties which are being assigned are outside the area of their academic preparation, they will notify the president in writing, which notice will be placed in their personnel file.

Faculty unit members will have the opportunity to review their instructional schedules and discuss them with their department head before such schedule is finalized.

### ***11.2 GENERAL PROVISIONS***

Intra-institutional transfers are defined as those transfers wherein a faculty unit member within an institution transfers to another department, school or faculty position within the same institution. An applicant from within the same institution will be selected for the position over other applicants provided that the faculty unit member's qualifications as related to the job description are equal to or better than those of any other applicant.

Inter-institutional transfers are defined as those transfers wherein a faculty unit member from one institution under the governance of the Board transfers to another such institution. Inter-institutional applicants will be selected over outside applicants providing that their qualifications as related to the job description are equal to or better than those of any outside applicant. Tenure rights will be addressed as provided in Article XIII.

The accrued rights of faculty unit members will be maintained in those cases involving involuntary transfers of faculty unit members that have resulted from geographical relocation of such programs. The Board will provide moving expenses in the case of such transfers as provided by state rules and regulations.



## **XII. EVALUATION**

### ***12.1 GENERAL PROVISIONS***

1. Faculty unit member evaluation is a joint concern of the faculty and the administration. The purpose of the evaluation will be to:
  - a. Promote positive communication between faculty and administration.
  - b. Increase awareness of institutional program objectives and needs.
  - c. Provide information for decisions on professional training, staff improvement programs and those conditions which promote quality performance.
  - d. Provide basic information for personnel decisions such as discipline, contract renewal, salary and pay matters, tenure, and promotion.
2. Faculty unit member performance will be evaluated pursuant to institutional performance standards implementing Board Policy No. 4:38. Such standards may be institution-wide or they may reflect concerns distinctive to the administrative unit or units to which a faculty unit member has been assigned. Current institutional standards will be made available to faculty no later than August 1.
  - a. Where changes have been made in institutional standards, the changed standards will become effective for the evaluation year beginning on January 1 of the subsequent year. Annual evaluations covering the subsequent year will be based upon such changes, and promotion or tenure applications filed during the subsequent year will be reviewed with due consideration for such changes.
3. The administration is responsible for implementation of the procedure and the evaluation process and for the development and revision of standards implementing Board Policy No. 4:38.

### ***12.2 PERFORMANCE EVALUATION GUIDELINES***

Performance evaluations will be conducted in accordance with the following guidelines:

1. Performance evaluations have as their primary purpose the assessment of whether, consistent with contemporary standards of the institution, the faculty unit member achieved, exceeded or fell short of the level of performance reasonably expected of faculty unit

members of like rank, experience and tenure status and with comparable professional responsibilities and resources.

A secondary purpose, in conjunction with the evaluation of tenure track faculty unit members or faculty unit members at the junior ranks, is to assess progress toward achieving the levels of performance that, under contemporary institutional standards for faculty unit members with comparable professional responsibilities and resources, justify promotion to a more senior rank or award of tenure.

2. Institutional standards implementing Board Policy No. 4:38 will be made available to faculty no later than August 1. Where changes have been made in institutional standards, the changed standards will become effective for the evaluation year beginning on January 1 of the subsequent year. Annual evaluations covering the subsequent year will be based upon such changes, and promotion or tenure applications filed by during the subsequent year will be reviewed with due consideration for such changes.
3. All faculty unit members holding full-time nine, ten, eleven or twelve month appointments will be evaluated annually. The annual evaluation of faculty unit members holding tenure track or tenure appointments will cover relevant activities during the calendar year ending with the close of the fall semester. The annual evaluation of faculty unit members holding term appointments, whether at professorial or lecturer rank, will cover relevant activities during the term of the appointment. The evaluation will be conducted by each faculty unit member's department head and will include student opinion surveys as described in § 12.4 if the faculty unit member's duties include teaching. If it is not practical to address fall semester student opinion surveys for the current evaluation, they will be addressed in the subsequent evaluation.
  - a. Faculty unit members serving on tenure track appointments will be responsible for proposing three-year plans for their own professional development in the areas of teaching, scholarship and service. Individualized professional development plans must address institutional standards for faculty performance, and they must be designed to permit individuals to progress towards the levels of high performance in all areas of professional activity and extramural recognition for ongoing scholarly accomplishment and leadership that would be expected of persons holding the rank of professor. If such plans necessitate equipment or resources not otherwise available at the university, the plans must indicate how the faculty unit member intends to secure funding for such resources.
  - b. Faculty unit members serving on tenure contracts will be responsible for proposing six-year plans for their own professional development in the areas of teaching, scholarship and service. Individualized professional development plans must address institutional standards for faculty performance, they must assure maintenance of productivity consistent with expectations for tenured faculty, and, for persons below the rank of professor, they must be designed to permit

individuals to progress towards the levels of performance that would justify the award of tenure under institutional performance standards then in effect in all areas of professional activity and extramural recognition for ongoing scholarly accomplishment and leadership that would be expected of persons holding the rank of professor. If such plans necessitate equipment or resources not otherwise available at the university, the plans must indicate how the faculty unit member intends to secure funding for such resources.

- c. Faculty unit members serving on term contracts, whether at professorial or lecturer rank, will not prepare professional development plans.
  - d. Individualized professional development plans will be presented to the department head no later than the beginning of the third semester of employment for review and approval. Thereafter, faculty unit members will be responsible for presenting revised plans to the department head no later than the beginning of the final semester on the current three-year or six-year plan. In the event of a material change in institutional standards or programs or individual opportunities, the plans may be reviewed for revision at the request of the faculty unit member or they may be revised at the direction of the department head.
  - e. Approval does not constitute an institutional commitment to provide external equipment, resources or support not otherwise available at the institution other than resources or support that are generally available to faculty unit members.
  - f. Administrators and promotion and tenure committees will consider the progress towards meeting the objectives of an approved plan when evaluating faculty unit member performance for purposes of salary increase, renewal, promotion or tenure or like recognition, and they will heed evidence that the faculty unit member is effectively pursuing approved objectives, but they will exercise independent judgment as to the quality of results achieved by the faculty unit member. Approval of a plan does not limit the review of faculty unit member performance by the department head or any other administrator or faculty committee.
4. As a part of the evaluation process, the faculty unit member and the department head will discuss the faculty unit member's planned activities and professional objectives for the following year. These discussions will include comments about what, consistent with institutional policies for unit members holding professorial or lecturer rank and subject to the concurrence of the dean and vice president, the department head expects the faculty unit member to do with respect to teaching and academic advising; research, scholarship or creative activity; or service. Correspondence and memoranda between the faculty unit member and the department head relating to workload or assignment will be attached to the evaluation document and will be considered as part of the evaluation process. Upon request to the department head, a faculty unit member will receive in writing the guidelines and

performance expectations intended to be used for the performance and evaluation of the faculty unit member.

### **12.3 ANNUAL EVALUATION PROCEDURE**

The following procedure will be used for conducting annual performance evaluations, except that, in the case of faculty unit members holding professorial rank who submitted applications for promotion or tenure, the process will be limited to the discussions contemplated under §§ 12.3(1A) and (2A). The performance review of faculty unit members who elected to retain professorial rank while serving in library positions will proceed under §§ 1C through 5C below, but consideration will also be given to delivery of instruction, research and service under institutional standards implementing Board Policy No. 4:38 for professorial ranks. Faculty unit members who hold appointments split between professorial and librarian ranks will be evaluated under the procedures that pertain to the rank assigned for their primary employment, and their performance in each role will be evaluated independently based upon that standards that pertain to that role. The evaluation will be placed in the faculty unit member's personnel file and will address:

#### **Professorial Ranks:**

- 1A. The department head will discuss workload and performance expectations with each faculty unit member holding professorial rank. For new faculty unit members, these conversations will take place during the first two weeks of their first term in service. For continuing faculty unit members, these conversations will take place during the annual evaluation. The discussions should consider the workload goals of the department, the individual's professional development plan (where available) and institutional performance standards for faculty unit members holding like professorial rank. Subject to the concurrence of the dean and the vice president for academic affairs, the department head will establish individualized workload and performance expectations for the faculty unit member.

Such discussions will be repeated whenever a significant change in workload is anticipated. In the event of a disagreement about the individualized workload and performance expectations, either the faculty unit member or his department head may consult an institutional peer group established by COHE in an attempt to resolve the differences. COHE will designate the membership of an institutional peer group as soon as practical after the unit membership list is received. The membership will continue until replacements have been named. In the event that such differences are unresolved, the vice president for academic affairs will unilaterally assign responsibilities to the faculty unit member.

- 2A. Faculty unit members will document their accomplishments for the year. Faculty unit members serving under tenure-track or tenure appointments will review their progress for the year towards meeting the objectives set out in their professional development plans. Based on this information, the faculty unit member will complete a self evaluation on a form

prepared by the administration. For faculty unit members serving under fall-spring appointments or spring-summer appointments, the evaluation form and any attached comments and materials will be presented to the department head by the end of the January 15, or the first working day thereafter, of each year. For faculty unit members serving under summer-fall appointments, the evaluation form and any attached comments and materials will be presented to the department head by the end of January 5, or the first working day thereafter, of each year. At the time the self-evaluation documents are presented, a faculty unit member may request in writing a meeting with the department head to discuss them.

- 3A. The department head will complete the remainder of the evaluation form, responding to the faculty unit member's self-evaluation, and drawing upon additional information available to the department head, which, in the case of faculty unit members with instructional responsibilities, will include student opinion surveys and other evidence of expertise in course design and delivery.

Included in the evaluation must be comments about the faculty unit member's performance in teaching and academic advising; research, scholarship or creative activity; or service, all as appropriate in light of the faculty unit member's assignments and responsibilities implicit in service at professorial rank. These comments must explain whether, consistent with contemporary standards of the institution, the faculty unit member achieved, exceeded, or fell short of the level of performance reasonably expected of faculty unit members of like rank, experience and tenure status and with comparable professional responsibilities and resources. The explanation must indicate the consideration given to rank, experience and tenure status, professional responsibilities and resources.

In addition to comments about performance at the faculty unit member's current rank and tenure status, the department head must also comment about progress towards achieving the levels of performance that, in keeping with institutional standards, justify a recommendation for promotion to a more senior rank or, for untenured faculty unit members holding professional ranks, award of tenure. Such comments will be made, as appropriate, for all faculty unit members who serve on tenure track contracts or who hold rank below that of professor. Comments must address each area of professional responsibility.

Comments about progress towards promotion or tenure will not be deemed to give rise to a contractual entitlement to favorable action, nor will they be deemed to require unfavorable action, on subsequent applications for promotion or tenure. Such comments will not be construed as binding the discretion of department heads, their successors in office, or promotion or tenure committees.

Where appropriate, the evaluation should include recommendations for salary increases and contract renewal.

For faculty unit members serving under fall-spring appointments or spring-summer appointments, the faculty unit member and the department head will meet to discuss the written evaluation by the fifteenth day of February. For faculty unit members serving under summer-fall appointments, the meeting will be completed by the twenty-fifth day of January. The faculty unit member will acknowledge receipt of the evaluation document. The faculty unit member will have five working days in which to notify the department head that the unit member will submit additional comments or that a peer group will be requested. A copy of the department head's comments will be given to the faculty unit member at the time of the meeting. If the faculty unit member agrees with the evaluation, the faculty unit member will sign the form within five (5) working days of the interview.

When a faculty unit member requests that the evaluation be sent to a peer group established by COHE for additional signed recommendations to be attached to the evaluation, the evaluation will be forwarded to the peer group within five working days of the meeting at which the evaluation is given to the faculty unit member. The peer review process must be completed by March 25.

The process of determining institutional salary increase recommendations will proceed independently of the peer review process. The institution will make use of the department head's original evaluation for purposes of distributing salary increases; provided that, if, as a result of the peer review report, the institution subsequently determines that the original evaluation should be changed, the institution will be responsible for adjusting the faculty unit member's salary increase.

- 4A. If the faculty unit member has any additional comments to make after the meeting with the department head, the faculty unit member may note them in the "faculty unit member's comments" section, provided that notification of this intent is given pursuant to § 12.3(3A). All additional comments or recommendations must be submitted by March 15.
- 5A. The dean or vice president will review the completed evaluation and may revise any ratings suggested by the department head. The dean or vice president will make appropriate comments to the president about performance, contract renewal, salary increase, promotion; or tenure. Copies of any comments made by the dean or vice president will be sent to the faculty unit member five (5) working days before the dean forwards them to the vice president or the vice president forwards them to the president. The faculty unit member may submit a response within the five working days which will be attached to the evaluation before it is forwarded to the vice president or to the president. This process must be finished before May 1.

### **Lecturer Ranks:**

- 1B. The department head will discuss workload and performance expectations with each faculty unit member holding lecturer rank and appointed to serve full-time during an academic year. The meeting to discuss these matters will be scheduled during the first

three weeks of the fall term. The discussions will consider the workload goals of the department and institutional performance standards for faculty unit members holding like lecturer rank. Subject to the concurrence of the dean and the vice president for academic affairs, the department head will establish individualized workload and performance expectations for the faculty unit member. Such discussions will be repeated whenever a significant change in workload is anticipated.

- 2B. Faculty unit members document their accomplishments for the academic year and assess their efforts to achieve standards of performance established under institutional policies for unit members holding lecturer rank. These accomplishments and the faculty unit member self-assessment will be recorded on a form prepared by the administration and submitted to the department head on March 15.
- 3B. The department head will complete the remainder of the evaluation form, responding to the faculty unit member's self-evaluation, and drawing upon additional information available to the department head, which, in the case of faculty unit members with instructional responsibilities, will include student opinion surveys and other evidence of expertise in course design and delivery.

Included in the evaluation must be comments about the faculty unit member's performance of assigned teaching and academic advising responsibilities. These comments must explain whether, consistent with contemporary standards of the institution, the faculty unit member achieved, exceeded, or fell short of the level of performance reasonably expected of faculty unit members of like lecturer rank, experience and with comparable resources. The explanation must indicate the consideration given to rank, experience and resources.

In addition to comments about performance at the faculty unit member's current rank, the department head must also comment about progress towards achieving the levels of performance that, in keeping with institutional standards, justify a recommendation for change in lecturer rank. Comments about progress towards change in lecturer rank will not be deemed to give rise to a contractual entitlement to favorable action, nor will they be deemed to require unfavorable action, on subsequent applications for change in lecturer rank. Such comments will not be construed as binding the discretion of department heads, their successors in office or senior administrators.

Where appropriate, the evaluation should include recommendations for contract renewal.

The faculty unit member and the department head will meet to discuss the written evaluation by April 15. The faculty unit member will acknowledge receipt of the evaluation document. A copy of the department head's comments will be given to the faculty unit member at the time of the meeting. If the faculty unit member agrees with the evaluation, the faculty unit member will sign the form within five (5) working days of the interview.

- 4B. If the faculty unit member has any additional comments to make after the meeting with the department head, the faculty unit member may note them in the "faculty unit member's comments" section, provided that notification of this intent is given pursuant to § 12.3(3B). All additional comments or recommendations must be submitted by April 25.
- 5B. The dean or vice president will review the completed evaluation and may revise any ratings suggested by the department head. The dean or vice president will make appropriate comments to the president about performance, contract renewal or change in lecturer rank. Copies of any comments made by the dean or vice president will be sent to the faculty unit member five (5) working days before the dean forwards them to the vice president or vice president forwards them to the president. The faculty unit member may submit a response within the five working days which will be attached to the evaluation before it is forwarded to the vice president or to the president. This process must be finished before May 5.

**Librarian ranks:**

- 1C. The annual evaluation will be based on written individual performance goals developed by each faculty unit member holding librarian rank and approved, or modified and approved, by the administration. These performance goals will relate to the responsibilities assigned pursuant to § 10.2, above, and support the library program's goals.
- a. For purposes of this section, goals describe the outcomes that the unit member plans to achieve during a year. Goals do not describe tasks or methods of completing tasks, they focus upon results obtained. A goal, for instance, may be to make operational new functionality, to digitize university catalogs from 1900 through 1950, to reduce error cataloging rates or to respond to reference inquires within two days.
  - b. Faculty unit members will submit performance goals to their supervisors during their third month after joining the library staff. Goals will be revised and restated during the annual evaluation process.
  - c. In addition to relevant requirements set forth in Board Policy No. 4:38, faculty unit members assigned to library positions will be accountable for performing assigned responsibilities in accordance with recognized standards of professional ethics, in a manner that reflects a high level of professional knowledge and skill and an accurate understanding of the mission assigned to the library by the institutional president.
- 2C. Faculty unit members will document their accomplishments for the academic year and assess their efforts to achieve their approved goals. These accomplishments and the faculty unit member self-assessment will be recorded on a form prepared by the administration and submitted to the department head on March 15.



- 3C. The department head will complete the remainder of the evaluation form, responding to the faculty unit member's self-evaluation, and drawing upon additional information available to the department head. Included in the evaluation must be comments about the faculty unit member's performance of assigned responsibilities and approved goals.

Where circumstances preclude the attainment of particular goals, the supervisor will take such circumstances into account during evaluation.

Without precluding consideration of other, material matters, six criteria will be considered in evaluating the job performance and goal attainment of each librarian:

- Job knowledge, skills, and overall performance
- Customer service
- Teamwork and interpersonal relations
- Initiative and creativity
- Efforts to support and further the mission of the library and institution, and
- Supervisory or managerial skills (when applicable).

Evaluative comments must explain whether the faculty unit member achieved, exceeded, or fell short of the level of performance reasonably expected of faculty unit members of like librarian rank and experience. The explanation must indicate the consideration given to rank and experience.

In addition to comments about performance at the faculty unit member's current rank, the department head must also comment about progress towards achieving the levels of performance that, in keeping with institutional standards, justify a recommendation for change in librarian rank. Comments about progress towards change in librarian rank will not be deemed to give rise to a contractual entitlement to favorable action, nor will they be deemed to require unfavorable action, on subsequent applications for change in librarian rank. Such comments will not be construed as binding the discretion of department heads, their successors in office or senior administrators.

Where appropriate, the evaluation should include recommendations for contract renewal.

The faculty unit member and the department head will meet to discuss the written evaluation by April 15. The faculty unit member will acknowledge receipt of the evaluation document. A copy of the department head's comments will be given to the faculty unit member at the time of the meeting. If the faculty unit member agrees with the evaluation, the faculty unit member will sign the form within five (5) working days of the interview.

- 4C. If the faculty unit member has any additional comments to make after the meeting with the department head, the faculty unit member may note them in the "faculty unit member's comments" section, provided that notification of this intent is given pursuant to § 12.3(3C). All additional comments or recommendations must be submitted by April 25.

- 5C. The dean or vice president will review the completed evaluation and may revise any ratings suggested by the department head. The dean or vice president will make appropriate comments to the president about performance, contract renewal or change in librarian rank. Copies of any comments made by the dean or vice president will be sent to the faculty unit member five (5) working days before the dean forwards them to the vice president or vice president forwards them to the president. The faculty unit member may submit a response within the five working days which will be attached to the evaluation before it is forwarded to the vice president or to the president. This process must be finished before May 5.

#### ***12.4 STUDENT OPINION SURVEYS***

Student opinion surveys will be used as part of the evaluation of faculty unit members, along with other procedures set forth in this article.

1. The term "student opinion surveys" is understood to include only written opinion surveys of classroom students administered during a regularly scheduled class period or other opinion surveys administered through means that provide reasonable assurance that the person who submitted the survey was enrolled in the class and had not previously submitted a survey for the class.
2. Unless copies are requested by the faculty unit member, no unsigned individual student opinion survey, or any portion thereof, will be copied by the administration, except for purposes of data analysis. Confidentiality and security will be maintained for all evaluation data.
3. Student opinion surveys will not be used as the controlling criterion for personnel actions.
4. The faculty unit member's department head will prepare a statistical profile and a narrative summary of the student opinion surveys. The faculty unit member and the department head will meet to discuss the survey results. The meeting will take place within thirty days after the start of the subsequent academic term. The survey instruments, together with the profile and summary, will be given to the faculty unit member at least five working days before the meeting.

If the department head makes use of written student comments in a narrative summary, the department head must explain why the comments are reliable, taking into consideration their relation to responses tabulated on the statistical profile and considering their frequency in relation to the total number of students surveyed. Special attention must be given to the basis for regarding such answers as representative of student opinions.

5. The Board will select, or develop, an instrument whose validity and reliability have been, or may be, established to a level of confidence consistent with national norms for such instruments. The Board will establish a special committee to recommend an appropriate instrument, and it will invite COHE to appoint one half of the committee.
6. Student opinion surveys will be returned to the faculty unit member within twenty (20) working days after the start of the subsequent academic term.

If serious deficiencies in performance are suggested by student opinion surveys, the department head will notify the faculty unit member within twenty (20) working days after the start of the subsequent academic term, and will investigate such deficiencies by evaluative means, other than by student opinion surveys. Interviews with students do not alone satisfy the requirements to investigate suggested deficiencies by evaluative means. Classroom observations will be performed at the discretion of the administration or if requested by the faculty unit member. Any investigation of deficiencies will include a review of course materials, including but not limited to course syllabi, graded examinations and assignments, and handouts. Where there is concern with a pedagogical approach or course content, faculty unit members will be allowed to present evidence that the approach or material is accepted within their discipline. A written report of the investigation will be attached to the evaluation document.

## ***12.5 PRELIMINARY CONSTRUCTIVE PLAN***

If the evaluation identifies deficiencies in performance of assigned duties that are considered serious by the faculty unit member's department head, the administration will develop a preliminary constructive plan to remedy the faculty unit member's deficiencies and will provide reasonable assistance to the faculty unit member in achieving the required improvement. The plan will provide for guidance and direction from the administration and for achievement by the faculty unit member. The ultimate responsibility for improvement rests with the faculty unit member; however, it is the responsibility of the administration to assist the faculty unit member in making improvements.

Once the preliminary constructive plan has been drafted, a written copy will be sent to the affected faculty unit member for review. Included with the written copy of the preliminary constructive plan will be a notice of the faculty unit member's right to COHE representation in the process, together with a copy of this section of the agreement to inform the faculty unit member of the rights and procedures provided herein. The notice will also include the name and contact information for the institutional COHE grievance officer. A meeting between the department head and the faculty unit member will be scheduled no sooner than fifteen days following the transmission of the written preliminary constructive plan. If the faculty unit member requests intercession of a peer group, such meeting will be scheduled following completion of the peer review.

In the event the faculty unit member disagrees with the preliminary constructive plan, the faculty unit member may, within ten (10) working days, request the intercession of a peer group established by COHE for that purpose. The peer group will consider the dispute and, within twenty (20) working days following the request, submit its recommendation for affirmance, reversal, or modification. Such recommendation will be advisory only, but will become a part of the faculty unit member's personnel file.

No constructive plan will be implemented until the preliminary constructive plan has been submitted to, finalized and approved by the institutional president and the department head has held a meeting with the faculty unit member to discuss the preliminary constructive plan. If the faculty unit member disagrees with any aspect of the final constructive plan, the faculty unit member will have the right to respond in writing to the areas of disagreement within ten (10) working days of the meeting. All such written objections and comments of the faculty unit member will be attached to the constructive plan.

If the faculty unit member fails to correct the serious deficiencies identified in the constructive plan, the faculty unit member may be subject to the alternative disciplines under Article XV, Code of Professional Conduct – Discipline - Just Cause. The constructive plan may not be imposed on any faculty unit member either as harassment or as a guise to effect a termination or discharge under Article XV. For the purpose of invoking the provisions of Article XV of this agreement, no more than one constructive plan will be developed in any academic year.

## ***12.6 FILING OF EVALUATION DOCUMENTS***

The statistical profile and narrative summary of the student opinion surveys required by § 12.4(4) will be attached and made a part of the performance evaluation prepared in accordance with the procedures set forth in § 12.2. The results of any investigation conducted by the department head, as well as the faculty unit member's response, must be attached.

The completed evaluation and any plan developed to correct deficiencies will be placed in the faculty unit member's personnel file.

## ***12.7 INFORMAL EVALUATION***

In addition to the formal evaluations provided for under this article, the respective institutional agreement management committees may provide for informal evaluations that serve to encourage and support faculty unit member experimentation with new instructional techniques.

## **XIII. RANK AND PROMOTION**

The division of ranks into professorial, librarian and lecturer ranks will take effect on July 1, 2012, subject to the following exceptions.

Faculty unit members serving under term contracts but having previously been assigned professorial rank may elect to continue to serve with such ranks in lieu of lecturer ranks, although in all other respects they will be subject to the terms and conditions of employment for lecturer ranks.

Faculty unit members assigned to libraries who hold tenure appointments may elect to continue to serve on tenure appointments with professorial rank. Those who do so will remain subject to all requirements relating to qualifications for promotion and other performance expectations that govern the tenured professorial ranks. In all other respects, such faculty unit members will be subject to the terms and conditions of employment for librarian ranks.

Faculty unit members assigned to libraries who hold tenure track appointments may elect to continue to serve on tenure track appointments with professorial rank and will remain subject to all requirements relating to qualifications for promotion and tenure applicable faculty unit members holding professorial rank and serving under tenure track appointments. In all other respects, such faculty unit members will be subject to the terms and conditions of employment for librarian ranks.

Faculty unit members entitled to elect whether to retain rank, to remain on tenure track or to remain on tenure appointments will notify their department heads of their elections no later than August 30, 2012, or they will be assigned to lecturer or librarian ranks as appropriate.

All persons who report for work on or after July 1, 2012, in positions assigned to lecturer or librarian ranks will be subject to the terms and conditions of employment for those ranks.

### ***13A.1 MINIMUM RANK QUALIFICATIONS FOR EMPLOYMENT AT PROFESSORIAL RANK AND PROMOTION***

The rank qualifications which are set forth below are minimums for employment and promotions.

All references to teaching or research experience in rank qualifications listed below are to full-time academic year appointments or to their equivalents. Where part-time experience is to be recognized, it will be recognized on a pro-rata basis. For purposes of this article, one year of full-time successful service with the Agricultural Cooperative Extension Service is equivalent to one year of successful college teaching or research experience.

ASSISTANT PROFESSOR: (Nontenurable)

For faculty unit members who report for service on or before June 30, 2012, the minimum rank qualifications for the rank of assistant professor are:

1. Earned master's degree, plus thirty (30) additional semester hours of graduate credit in fields related to assigned responsibilities, and three (3) years of successful full-time college teaching or research experience in appropriate fields (or appropriate equivalent experience); or
2. Earned doctorate or a postgraduate degree, other than a doctorate, recognized by the Board as a permitted terminal degree for the faculty unit members' discipline at the institution; and
3. Evidence of scholarship consistent with institutional standards implementing Board Policy No. 4:38 for professorial ranks.

ASSISTANT PROFESSOR: (Nontenurable)

For faculty unit members who report for service on or after July 1, 2012, the minimum rank qualifications for the rank of assistant professor are:

1. Completion of all requirements for a doctoral degree except for the successful defense of the dissertation; provided that a person assigned the rank of assistant professor under this subsection pending completion of the dissertation, is not eligible for a tenure track appointment, may be offered a term contract at that rank for no more than two successive years, and may not be reappointed at that rank if the doctoral degree has not been granted by the end of the second academic year;
2. Earned doctorate or a postgraduate degree, other than a doctorate, recognized by the Board as a permitted terminal degree for the faculty unit members' discipline at the institution; and
3. Evidence of scholarship consistent with institutional standards implementing Board Policy No. 4:38 for professorial ranks.

ASSOCIATE PROFESSOR: (Tenurable)

1. Either,

- (a) Earned doctorate and six (6) years of successful tenure track or postdoctoral college teaching or research experience in appropriate fields (or appropriate equivalent experience); or
  - (b) A postgraduate degree, other than a doctorate, recognized by the institutional administration as terminal for the faculty unit members' discipline, and six (6) years of successful tenure track or post-degree college teaching or research experience in appropriate fields (or appropriate equivalent experience);
- 2. Evidence of external recognition for scholarly accomplishment consistent with institutional standards implementing Board Policy No. 4:38 for professorial ranks; and
  - 3. Tenure at the institution or, for persons appointed to the rank of associate professor at the time of hire, tenure at a prior institution.

PROFESSOR: (Tenurable)

- 1. Either,
  - (a) Earned doctorate and ten (10) years of successful tenure track or postdoctoral college teaching or research experience in appropriate fields (or appropriate equivalent experience); or
  - (b) A postgraduate degree, other than a doctorate, recognized by the institutional administration as terminal for the faculty unit members' discipline, and ten (10) years of successful tenure track or post-degree college teaching or research experience in appropriate fields (or appropriate equivalent experience);
- 2. Evidence of external recognition for ongoing scholarly accomplishment and leadership consistent with institutional standards implementing Board Policy No. 4:38 for professorial ranks; and
- 3. Tenure at the institution or, for persons appointed to the rank of professor at the time of hire, tenure at a prior institution.

***13A.2 MINIMUM PROMOTION ELIGIBILITY CRITERIA***

In addition to the minimum rank qualifications for employment and promotion stated in § 13A.1, the minimum eligibility criteria for promotion in professorial rank will be:

ASSISTANT PROFESSOR TO ASSOCIATE PROFESSOR:

There are no time in rank or length of service requirements for promotion to the rank of associate

professor; this rank is assigned upon the grant of tenure.

#### ASSOCIATE PROFESSOR TO PROFESSOR:

Five (5) years in rank at the institution; tenure; high level of performance in the areas of responsibilities commensurate with promotion to the rank of professor.

All references to years in rank herein are to full-time academic year appointments or to their equivalents. Faculty unit members become eligible to apply for promotion during the year in which their length of service will meet the stated requirements. Faculty unit members serving in library positions on tenure or tenure track appointments who, on or before August 30, 2012, elect to retain professorial rank, will accrue years of service under the standard rules. Faculty unit members whose appointment is split between professorial and librarian ranks will accrue years of service in proportion to the percent of their appointment assigned to professorial duties.

The Board may, at its discretion and upon the recommendation of the administration of the institution, reduce the number of years of service required for eligibility for promotion; provided that prior service credit may not be requested in conjunction with an application for promotion. The grant of prior service credit for purposes of promotion will not thereby reduce the tenure track service requirements stated in § 14.2.

#### ***13A.3 EXCEPTIONS***

Upon the recommendation of the institutional president, the Board may grant exceptions to the minimum rank qualifications (§ 13A.1) or the promotion eligibility criteria relating to the minimum number of years in rank in the institution (§13A.2), or both. When time and circumstances reasonably permit, requests for exceptions to the minimum rank qualifications or promotion eligibility criteria will be reviewed under the procedures set out in § 13A.5. For new faculty and for promotions, the Board will consider only those faculty unit members who, in the judgment of the Board, have demonstrated that their level of performance or professional qualifications are notably excellent and sufficient to offset the lack of a required degree or years in rank.

#### ***13A.4 PROMOTION AND TENURE COMMITTEE FORMULATION***

The institutional promotion and tenure committee will consist of elected members of the faculty unit and members appointed by the administration. The composition of the committee will be: fifty percent (50%) tenured faculty unit members; fifty percent (50%) administrative appointees, who may be administrators or tenured faculty. Each president will determine the total number of members for the institutional promotion and tenure committee at each institution and will notify the institutional COHE president no later than the date when faculty report for the start of the fall term of the number of members on the committee.



The faculty unit representatives on the institutional promotion and tenure committee will be elected by the faculty unit as soon as practicable after the commencement of school activities in the fall. Membership terms will be for three (3) years.

Vacancies will be filled according to procedures established for the original appointment. Election procedures will be determined by COHE and the election will be conducted under its auspices. Only tenured faculty unit members will be eligible for election to the institutional promotion and tenure committee. Election procedures must provide all faculty unit members whose names appeared on the list generated on February 15 pursuant to § 2.2 and who are still employed at the institution at the time of the election, with equal opportunities to nominate candidates for committee membership and to elect committee members, and they must provide all tenured faculty unit members whose names appeared on the list generated on February 15 pursuant to § 2.2 and who are still employed at the institution at the time of the election with equal opportunities to be nominated for committee membership. Alternates should be selected in the same manner.

The parties recognize that the integrity of the promotion and tenure review process requires not only that it be fair, but also that it be regarded as fair. Therefore, individual committee members will recuse themselves whenever their ability to make a disinterested judgment might reasonably be called into question.

Faculty unit members, who themselves are to be considered for promotion or tenure, are not eligible for membership on the promotion and tenure committee during the academic year in which their promotion or tenure is being considered. If such a faculty unit member is denied promotion or tenure, the individual's term on the committee will be deemed to have expired. Faculty unit members who have been denied promotion may serve on the promotion and tenure committee if elected in an election held no sooner than one academic year following the year in which the denial occurred.

Administrative appointees will be appointed by the president.

Colleges, school, departments or other appropriate administrative units that have sufficient numbers of tenured faculty to form a committee may petition the president for the creation of a promotion and tenure committee for the respective college, school, department or unit. If approved, the president will determine the membership consistent with the ratio and constituency heretofore established for the institutional promotion and tenure committee. Tenured faculty unit members will be elected to college or school, department or other appropriate administrative unit promotion and tenure committees using the same procedures used to elect tenured faculty unit members to the institutional promotion and tenure committee. Faculty unit members within the appropriate unit will participate in the election procedures.

The promotion and tenure committees will make their recommendations to the administrator of the applicable department or appropriate unit. Administrators will consider the recommendations of

their departmental or unit promotion and tenure committee in formulating their recommendations to the next level of the process.

### ***13A.5 PROCEDURES FOR PROMOTION RECOMMENDATIONS***

Faculty unit members who wish to apply for promotion will submit a written application to their immediate supervisor no later than such date, which shall be no earlier than September 5, as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, October 5. Such notification will allow the promotion and tenure committees, instituted under § 13A.4, access to the faculty unit member's personnel file and individualized professional development plans. The application will include documentation to establish performance commensurate with the award of the professorial rank sought as required under Board Policy No. 4:11(4) or, for faculty unit members not assigned the rank of Associate Professor when first awarded a tenure track contract, to establish performance commensurate with the award of tenure as required under Board Policy No. 4:10(3). The review of eligibility for promotion will consider only performance in the unit member's professorial role; hence, faculty unit members with library duties who are entitled to retain professorial rank or whose appointment is split between professorial and librarian ranks will be responsible for producing documentation that their instructional, research and service activities meet institutional standards implementing Board Policy No. 4:38 for professorial ranks. Each institution may stipulate certain desired elements or format for the documentation, which will be made available to faculty unit members in written form. The immediate supervisor, and any other supervisors, including the president, who review the file in order to make independent recommendations, may supplement the material assembled by the faculty with information obtained from other sources, and they may base their recommendations upon such additional information, provided that such additional information is included in the file together with the materials assembled by the faculty unit member. This documentation and the recommendations of the department head (and of the departmental promotion and tenure committee, if any) will be forwarded by the department head to the administrator responsible for the process at the college/ or school level or at the institutional level, whichever is applicable, no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, November 5.

If the institution has college or school promotion and tenure committees, the recommendations of the appropriate administrator (and of the college or school promotion and tenure committees) will be forwarded by that administrator, with the supporting documentation, to the president or designee no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, December 1 for consideration by the institutional promotion and tenure committee.

The institutional promotion and tenure committee will review all materials and may consult with applicable college, school, or departmental promotion and tenure committees, and in addition, may consult with the faculty unit member or other individuals as it deems appropriate. After such

consultation, the institutional promotion and tenure committee will add its recommendation and forward all information to the president no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, January 20 of each academic year. The working papers and files of the promotion and tenure committee(s) will remain confidential; except that, subsequent to the Board's final determination, the president will have the written recommendations of administrators with supervisory responsibility for the faculty unit member placed in the faculty unit member's personnel file, together with any additional materials that they may have secured to assist in formulating their opinions.

If an outside recommendation is sought, the administrator or committee requesting the recommendation will provide the outside party a copy of the institutional standards used in the promotion review.

The president will make the institutional recommendation to the Board by April 15. At the request of the faculty unit member, the recommendation of the institutional promotion and tenure committee will accompany the institutional recommendation to the Board.

The faculty unit member will be notified no later than April 1 of the year in which the faculty unit member is being considered for promotion, of whether the president will recommend promotion to the Board. Such notice will indicate the institutional promotion and tenure committee's recommendation. If the president intends to recommend that promotion be denied, the president will, upon receipt prior to April 15 of a written request, within fifteen (15) working days of the request provide reasons in writing for the decision. The reasons given will be substantive in nature and will transcend the mere fact of the recommendations by the committees by including the opinions of the president from the information available to him or her. The right to obtain reasons will not expand the rights and limitations under § 8.8.

Deadlines to bring any grievance arising from the denial of promotion will run from the time that the president notifies the faculty unit member of the intended recommendation to the Board; provided that where a faculty unit member requests a statement of reasons, the deadlines will run from the time that the president provides notice, pursuant to § 22.9, setting forth the reasons for the denial.

The entire process, including Board action, will be completed by June 1.

### ***13B.1 MINIMUM RANK QUALIFICATIONS FOR EMPLOYMENT AT LECTURER RANK***

The rank qualifications which are set forth below are minimums for employment. All references to teaching experience in rank qualifications listed below are to full-time academic year appointments or to their equivalents. Where part-time experience is to be recognized, it will be recognized on a pro-rata basis. For purposes of this article, one year of full-time successful service with the

Agricultural Cooperative Extension Service is equivalent to one year of successful college teaching or research experience.

INSTRUCTOR:

1. Earned master's degree; or
2. Other degrees or qualifications recognized under academic program or discipline accreditation standards.

LECTURER:

Earned doctorate or a postgraduate degree, other than a doctorate, recognized by the Board as a permitted terminal degree for the faculty unit members' discipline at the institution.

SENIOR LECTURER:

Earned doctorate or a postgraduate degree, other than a doctorate, recognized by the Board as a permitted terminal degree for the faculty unit members' discipline at the institution and six (6) years of successful teaching at the university level.

***13B.2 MINIMUM ELIGIBILITY CRITERIA FOR A CHANGE IN LECTURER RANK***

In addition to the minimum rank qualifications for employment stated in § 13B.1, the minimum eligibility criteria for change in rank will be:

INSTRUCTOR TO LECTURER:

Three (3) years in rank at the institution; performance of assigned responsibilities commensurate with expectations for lecturers.

LECTURER TO SENIOR LECTURER:

Five (5) years in rank at the institution; performance of assigned responsibilities commensurate with expectations for senior lecturers.

All references to years in rank herein are to full-time academic year appointments or to their equivalents. Faculty unit members become eligible to apply for change in rank during the year in which their length of service will meet the stated requirements.

The Board may, at its discretion and upon the recommendation of the administration of the institution, reduce the number of years of service required for eligibility for change in rank; provided that prior service credit may not be requested in conjunction with an application for

change in rank.

### ***13B.3 EXCEPTIONS***

Upon the recommendation of the institutional president, the Board may grant exceptions to the minimum rank qualifications (§ 13B.1) or the change in rank eligibility criteria relating to the minimum number of years in rank in the institution (§ 13B.2), or both. When time and circumstances reasonably permit, requests for exceptions to the minimum rank qualifications or change in rank eligibility criteria will be reviewed under the procedures set out in § 13B.4. For new faculty and for promotions, the Board will consider only those faculty unit members who, in the judgment of the Board, have demonstrated that their level of performance or professional qualifications are notably excellent and sufficient to offset the lack of a required degree or years in rank.

### ***13B.4 PROCEDURES TO REQUEST A CHANGE IN RANK***

Faculty unit members who wish to apply for change in rank will submit a written application to their immediate supervisor no later than such date as may be specified under institutional change in rank procedures or, in the absence of such institutional procedures, October 5. The application will include documentation to establish performance commensurate with the award of the lecture rank sought. Each institution may stipulate certain desired elements or format for the documentation, which will be made available to faculty unit members in written form. The immediate supervisor, and any other supervisors, including the president, who review the file in order to make independent recommendations, may supplement the material assembled by the faculty with information obtained from other sources, and they may base their recommendations upon such additional information, provided that such additional information is included in the file together with the materials assembled by the faculty unit member. This documentation and the recommendations of the department head will be submitted to the dean or vice president, as the case may be, at such time as may be stipulated under institutional policy.

If the request for change in rank is granted, it will become effective with the next annual appointment notice.

The faculty unit member will be notified no later than April 1 of the year in which the faculty unit member is being considered for change in rank, of whether the president will accept the recommendation for change in rank. If the president intends to reject a recommended change in rank, the president will, upon receipt prior to April 15 of a written request, within fifteen (15) working days of the request provide reasons in writing for the decision. The reasons given will be substantive in nature and will transcend the mere fact of the recommendations by the department head, dean or vice president by including the opinions of the president from the information

available to him or her. The right to obtain reasons will not expand the rights and limitations under § 8.8.

Deadlines to bring any grievance arising from the denial of promotion will run from the time that the president notifies the faculty unit member of the intended recommendation to the Board; provided that where a faculty unit member requests a statement of reasons, the deadlines will run from the time that the president provides notice, pursuant to § 22.9, of setting forth the reasons for the denial.

The entire process, including Board action, will be completed by June 1.

### ***13B.5 NONRENEWAL OF SENIOR LECTURERS***

Faculty unit members promoted to the rank of senior lecturer will be subject to nonrenewal under this section. Faculty unit members assigned the rank of senior lecturer at hire will become subject to the provisions of this section after completion of eight consecutive full-time contracts.

For purposes of transition, faculty unit members assigned the rank of senior lecturer with the contract for the academic year 2012-2013 will become subject to nonrenewal under provisions of this section effective with the first academic year following completion of eight consecutive full-time contracts at the institution, including service prior to academic year 2012-2013.

Nonrenewal under this section ordinarily terminates employment at the end of an annual contract term. Nonrenewal is not a disciplinary action. It does not terminate rights under an existing annual contract. The decision not to renew a senior lecturer's appointment is discretionary with the administration, provided that it is not based upon reasons expressly forbidden by this agreement. Nonrenewal is subject only to those procedural limitations expressly set forth in this section.

1. Prior to the issuance of a final written notice of nonrenewal, the institutional administration will provide the opportunity for a meeting with the senior lecturer to apprise the senior lecturer of the proposed nonrenewal, together with reasons for the action. The senior lecturer will be given at least five (5) working days' written notice of such meeting so that both the senior lecturer and the administration may arrange to have present a witness or a representative.
2. No later than five working days after the personal meeting, the administration will provide the senior lecturer with final written notification whether the appointment will not be renewed, and, if the decision is made not to renew the appointment, the reasons for the decision.

3. Deadlines to bring any grievance arising from the decision, under this section, not to renew a senior lecturer's appointment will run from the time that the administration provides notice, pursuant to § 22.9, of the final written notice of nonrenewal.
4. The administration will provide the faculty unit member with final written notice of nonrenewal before December 15 of the current year of employment for senior lecturers serving under fall-spring appointments, by April 15 for senior lecturers serving under spring-summer appointments, or before August 31 for senior lecturers serving under summer-fall appointments.
5. If the administration is late in providing the final written notice, the senior lecturer will be entitled to receive, at the election of the administration, either (1) an additional term contract for a period of time equal to twice the number of working days by which the notice is late; or (2) a payment equal to twice the number of working days by which the notice is late times the senior lecturer's monthly salary divided by twenty-two (22).

***13C.1 MINIMUM RANK QUALIFICATIONS FOR EMPLOYMENT AT LIBRARIAN RANK***

The rank qualifications which are set forth below are minimums for employment. All references to teaching experience in rank qualifications listed below are to full-time academic year appointments or to their equivalents. Where part-time experience is to be recognized, it will be recognized on a pro-rata basis.

**ASSISTANT LIBRARIAN:**

1. Master's degree in library or information science from a program accredited by the American Library Association; or
2. Other degrees or qualifications recognized under academic program or discipline accreditation standards.

**ASSOCIATE LIBRARIAN:**

1. Master, Specialist or Doctoral degrees in addition to the master degree in library or information science; and
2. Ten years of experience as a professional librarian or three years in rank as an Assistant Librarian at the institution.

**LIBRARIAN:**

1. Master, specialist or doctoral degrees in addition to the master degree in library or information science; and

2. Fifteen years of experience as a professional librarian or five years in rank as an associate librarian at the institution.

### ***13C.2 MINIMUM ELIGIBILITY CRITERIA FOR A CHANGE IN LIBRARIAN RANK***

In addition to the minimum rank qualifications for employment in § 13C.1, the minimum eligibility criteria for change in rank will be:

#### **ASSISTANT LIBRARIAN TO ASSOCIATE LIBRARIAN:**

Three (3) years in rank at the institution; performance of assigned responsibilities that meet or exceed expectations for associate librarians.

#### **ASSOCIATE LIBRARIAN TO LIBRARIAN:**

Five (5) years in rank at the institution; performance of assigned responsibilities that meet or exceed expectations for librarians.

All references to years in rank herein are to full-time, twelve month appointments or to their equivalents. Faculty unit members become eligible to apply for change in rank during the year in which their length of service will meet the stated requirements.

The Board may, at its discretion and upon the recommendation of the administration of the institution, reduce the number of years of service required for eligibility for change in rank; provided that prior service credit may not be requested in conjunction with an application for change in rank.

### ***13C.3 PROCEDURES TO REQUEST A CHANGE IN RANK***

Faculty unit members who wish to apply for change in rank will submit a written application to their immediate supervisor no later than such date as may be specified under institutional change in rank procedures or, in the absence of such institutional procedures, October 5. The application will include documentation to establish performance commensurate with the award of the librarian rank sought. Each institution may stipulate certain desired elements or format for the documentation, which will be made available to faculty unit members in written form. The immediate supervisor, and any other supervisors, including the president, who review the file in order to make independent recommendations, may supplement the material assembled by the faculty with information obtained from other sources, and they may base their recommendations upon such additional information, provided that such additional information is included in the file together with the materials assembled by the faculty unit member. This documentation and the recommendations of the department head will be submitted to the dean or vice president, as the case may be, at such time as



may be stipulated under institutional policy.

If the request for change in rank is granted, it will become effective with the next annual appointment notice.

The faculty unit member will be notified no later than April 1 of the year in which the faculty unit member is being considered for change in rank, of whether the president will accept the recommendation for change in rank. If the president intends to reject a recommended change in rank, the president will, upon receipt prior to April 15 of a written request, within fifteen (15) working days of the request provide reasons in writing for the decision. The reasons given will be substantive in nature and will transcend the mere fact of the recommendations by the department head, dean or vice president by including the opinions of the president from the information available to him or her. The right to obtain reasons will not expand the rights and limitations under § 8.8.

Deadlines to bring any grievance arising from the denial of promotion will run from the time that the president notifies the faculty unit member of the intended recommendation to the Board; provided that where a faculty unit member requests a statement of reasons, the deadlines will run from the time that the president provides notice, pursuant to § 22.9, of setting forth the reasons for the denial.

The entire process, including Board action, will be completed by June 1.

### ***13C.4 NONRENEWAL OF LIBRARIANS***

Faculty unit members promoted to the rank of librarian will be subject to nonrenewal under provisions of this section. Faculty unit members assigned the rank of librarian at hire will become subject to the provisions of this section after completion of eight consecutive full-time contracts.

For purposes of transition, faculty unit members assigned the rank of librarian with the contract for the academic year 2012-2013 will become subject to nonrenewal under provisions of this section effective with the first academic year following completion of eight consecutive full-time contracts at the institution, including service prior to academic year 2012-2013.

Nonrenewal under this section ordinarily terminates employment at the end of an annual contract term. Nonrenewal is not a disciplinary action. It does not terminate rights under an existing annual contract. The decision not to renew a librarian's appointment is discretionary with the administration, provided that it is not based upon reasons expressly forbidden by this agreement. Nonrenewal is subject only to those procedural limitations expressly set forth in this section.

1. Prior to the issuance of a final written notice of nonrenewal, the institutional administration will provide the opportunity for a meeting with the librarian to apprise the librarian of the proposed nonrenewal, together with reasons for the action. The librarian will be given at least five (5) working days' written notice of such meeting so that both the librarian and the administration may arrange to have present a witness or a representative.
2. No later than five working days after the personal meeting, the administration will provide the librarian with final written notification whether the appointment will not be renewed, and, if the decision is made not to renew the appointment, the reasons for the decision.
3. Deadlines to bring any grievance arising from the decision, under this section, not to renew a tenure track appointment will run from the time that the administration provides notice, pursuant to § 22.9, of the final written notice of nonrenewal.
4. The administration will provide the librarian with final written notice of nonrenewal before December 15 of the current year of employment for persons serving under fall-spring appointments, by April 15 for persons serving under spring-summer appointments, or before August 31 for persons serving under summer-fall appointments.
5. If the administration is late in providing the final written notice, the librarian will be entitled to receive, at the election of the administration, either (1) an additional term contract for a period of time equal to twice the number of working days by which the notice is late; or (2) a payment equal to twice the number of working days by which the notice is late times the librarian's monthly salary divided by twenty-two (22).

## **XIV. TENURE**

### ***14.1 TENURE APPOINTMENT***

A tenure contract entitles a faculty unit member to reemployment from year to year until such time as the faculty unit member resigns or retires, is discharged for cause (Article XV, Code of Conduct — Discipline – Just Cause), or is terminated pursuant to a reduction of personnel (Article XVI, Faculty Unit Member Reduction Procedures).

Tenure involves a mutual commitment between the institution and the most expert of its faculty members. Tenure encourages outstanding faculty members to remain at the institution. By virtue of the rigorous standards that must be met to receive tenure, tenure secures for students and the South Dakota public distinctive, informed advice. Tenure safeguards the content and delivery of the curriculum by assuring their oversight by a faculty that understands the norms for quality expected in the academy and the workforce. Tenure contributes to the expansion of knowledge and to the growth of the state's economic, cultural and community resources by assuring competent oversight for the design and conduct of research, scholarship and creative artistic endeavor.

A tenure contract may be granted for less than a full-time appointment, in which case the holder will have an expectation of continued part-time employment at the percentage of time stipulated without any expectation of continued employment at full-time or at any greater percentage of time. The grant of tenure to a person whose appointment is split between professorial and librarian ranks shall be deemed be a tenure contract for less than a full-time appointment. A tenure contract granted by an institution will be valid at that institution and at the discretion of other institutions, may be transferable to other institutions within the system.

### ***14.2 MINIMUM TENURE ELIGIBILITY REQUIREMENTS***

Faculty unit members holding the rank of Assistant Professor or higher may apply for tenure during their sixth year of tenure track service. Tenure track service shall be based upon full-time academic year appointments or their equivalents. Part-time experience may be recognized on a pro-rata basis. Faculty unit members serving in library positions on tenure or tenure track appointments who, on or before August 30, 2012, elect to retain professorial rank will accrue years of service under the standard rules. Faculty unit members whose appointment is split between professorial and librarian ranks will accrue years of service in proportion to the percent of their appointment assigned to professorial duties.

Tenure track service credit is not earned during a period of leave of absence, but may be earned during sabbatical leave periods. Full-time reassignment to off-campus duties in the service of

private industry or government is treated as a leave of absence for purposes of tenure track service credit.

The Board may, at its discretion and upon the recommendation of the administration of the institution, reduce the number of years of tenure track service required; provided that prior service credit may not be requested in conjunction with an application for tenure. If the Board elects to reduce the number of years of tenure track service required, its decision will also operate to reduce the number of years of service required to become eligible for promotion. In such instances, faculty unit members will be given the same number of years prior service credit for both tenure and promotion.

A faculty unit member who has been granted a tenure contract at one institution within the system and is employed at another institution within the system may apply for tenure during the second year of tenure track appointment at the new institution. A faculty unit member will retain tenure in an intra-institutional transfer.

The Board may grant tenure to a faculty unit member conditioned upon the attainment of a required academic degree. Such condition must be satisfied within a period of time specified by the Board. The faculty unit member will be given a term contract pending satisfaction of the condition.

Faculty unit members who wish to apply for tenure will submit a written application to their immediate supervisor no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, October 5 of the sixth year of tenure track service. Such notification will allow the promotion and tenure committees, instituted under § 13A.4, access to the faculty unit member's personnel file and individualized professional development plans. The application will include documentation to establish that the unit member has developed, maintained and implemented well defined plans for professional development in the areas of teaching, scholarship and service that demonstrate promise, as required under BOR Policy No. 4:10, that the unit member will in due course meet institutional performance standards in teaching, scholarship and service for persons who hold the rank of professor. The review of eligibility for tenure will consider only performance in the unit member's professorial role; hence, faculty unit members with library duties who are entitled to retain professorial rank or whose appointment is split between professorial and librarian ranks will be responsible for producing documentation that their instructional, research and service activities meet institutional standards implementing Board Policy No. 4:38 for professorial ranks. Each institution may stipulate certain desired elements or format for the documentation, which will be made available to faculty unit members in written form. The immediate supervisor, and any other supervisors, including the president, who review the file in order to make independent recommendations, may supplement the material assembled by the faculty with information obtained from other sources, and they may base their recommendations upon such additional information, provided that such additional information is included in the file together with the materials assembled by the faculty unit member. This documentation and the recommendations of the department head (and of the departmental promotion and tenure committee, if any) will be forwarded by the department head to the administrator responsible for the process at the college or school level or at the institutional level,

whichever is applicable, no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, November 5.

Successful applicants will receive a tenure contract the following year. Unsuccessful applicants and faculty unit members who complete their sixth year of tenure track service without applying for tenure will be offered a single term contract for the appointment year following that in which tenure is denied. This term contract is not subject to renewal, and the faculty unit member will be ineligible for reappointment after it expires.

An institutional recommendation to grant tenure to a faculty unit member will be based upon an assessment of the candidate's past contributions and promise of future contributions to the goals and missions of the institution. The performance record of a faculty unit member considered for tenure will be based in part upon the performance evaluations conducted by the administration during all years of service credited toward tenure qualification.

If the institution has college or school promotion and tenure committees, the recommendations of the appropriate administrator (and of the college or school promotion and tenure committees) will be forwarded by that administrator, with the supporting documentation, to the president or designee no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, December 1 for consideration by the institutional promotion and tenure committee.

The institutional promotion and tenure committee will review all materials and may consult with applicable college, school, or departmental promotion and tenure committees. In addition, the institutional promotion and tenure committee may consult with the faculty member or other individuals as it deems appropriate. After such consultation, the institutional promotion and tenure committee will submit its recommendations as to whether or not each faculty unit member under consideration should be granted tenure. Those recommendations will be submitted to the president no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, January 20 of each academic year. The working papers and files of the promotion and tenure committee(s) will remain confidential; except that, subsequent to the Board's final determination, the president will have the written recommendation of administrators with supervisory responsibility for the faculty unit member placed in the faculty unit member's personnel file, together with any additional materials that they may have secured to assist in formulating their opinions.

If an outside recommendation is sought, the administrator or committee requesting the recommendation will provide the outside party a copy of the institutional standards used in the promotion review.

The president will make the institutional recommendation to the Board by April 15. At the request of the faculty unit member, the recommendation of the institutional promotion and tenure committee will accompany the institutional recommendation to the Board.

The faculty unit member will be notified, not later than April 1 of the year in which the faculty unit member is being considered for tenure, of what the president will recommend to the Board regarding the faculty unit member's tenure status. Such notice will indicate the institutional tenure committee's recommendation. If the president intends to recommend that tenure be denied, the president will, upon receipt prior to April 15 of a written request, within fifteen (15) working days of the request, provide reasons in writing for the decision. The reasons given will be substantive in nature and will transcend the mere fact of the recommendations by the committees by including the opinions of the president from the information then available to him or her. The right to obtain reasons will not expand the rights and limitations under § 8.8.

Deadlines to bring any grievance arising from the denial of tenure will run from the time that the president notifies the faculty unit member of the intended recommendation to the Board; provided that where a faculty unit member requests a statement of reasons, the deadlines will run from the time that the president provides notice, pursuant to § 22.9, setting forth the reasons for the denial.

The entire process, including Board Action, will be completed by June 1.

Faculty unit members who hold tenure at the time of execution of this agreement have tenure under this agreement.

### ***14.3 EXCEPTIONS***

Upon request of the president, the Board may approve exceptions to the minimum rank qualifications in accordance with § 13A.1 or to the length of service eligibility criteria state in § 13A.2. When time and circumstances reasonably permit, requests for exceptions to the minimum rank qualifications will be reviewed under the procedures set out in § 13A.3.

## **XV. CODE OF CONDUCT--DISCIPLINE--JUST CAUSE**

### ***15.1 PREAMBLE***

The parties acknowledge that the general faculty of the South Dakota system of public higher education has maintained a commitment, over generations, to adhere to the highest standards of academic professionalism and decency; and that the expectations of lawful conduct, academic rigor and service to larger social goods that characterize the historic and accepted ethos of the professoriate, must continuously be maintained.

The Board, through its institutional administrators, is responsible for maintaining a competent, productive, effective and ethical workforce and to assure observance of obligations and rights established by law, rule or policy and implicated in university operations. This authority extends to supervision of faculty unit member conduct. The Board and its administrators possess the inherent power to discipline faculty unit members who fail to adhere to expectations for competent, productive, effective and ethical teaching, research or service, who violate laws, rules or policies implicated in university operations, or who engage in misconduct, neglect of duty, insubordination or otherwise unacceptable conduct. This article assures that the exercise of the power to discipline comports with the requirements of due process.

## ***15.2 ALTERNATIVE MEASURES***

In the most usual cases, where institutional administrators are concerned that a faculty unit member has not met expectations for competent, productive, effective or ethical performance or has engaged in conduct that might warrant corrective action through disciplinary measures, initial actions may be informal conversations to reinforce administrative expectations. Likewise, ordinarily, disciplinary actions may be applied progressively with resort to coercive or punitive measures coming after less intrusive actions have failed to change the faculty unit member's behavior.

Nothing in this section either precludes or requires such usual and ordinary practices. The Board has delegated to institutional administrators provisional authority to discipline faculty unit members for failure to adhere to expectations for competent, productive, effective and ethical teaching, research or service, violation laws, rules or policies implicated in university operations, or misconduct, neglect of duty, insubordination or otherwise unacceptable conduct, including such conduct identified in Board Policy No. 4:14 (2) Code of Professional Conduct. The authority delegated to institutional administrators must be exercised consistently with Board policy. The delegated authority includes the power to determine the discipline to be imposed and its effective date.

Taking into consideration the circumstances that warrant discipline, past service, scholarly achievements or other mitigating or aggravating circumstances, discipline may include any of the following alternative actions:

1. Warnings;
2. Warnings to be filed with the personnel file of the faculty unit member;
3. Required training related to the conduct that occasioned discipline, such as, by way of illustration and without limitation, training in anger management or training in compliance with antidiscrimination obligations;
4. Required treatment for current substance abuse at the cost of the faculty unit member;
5. Suspension from duties with, or without, loss of pay commensurate therewith;
6. Reassignment;
7. Demotion;

8. Discharge.



### **15.3 PROCEDURES**

1. The following procedures apply to all disciplinary measures other than warnings and warnings filed in the personnel file.

The disciplinary procedure comprises two stages. The first, informal stage is designed to provide an initial check against mistaken decisions, by creating an opportunity to determine whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. At the first stage, the faculty unit member will receive oral or written notice of the allegations, an explanation of the evidence, and an opportunity to respond. At the close of the first stage informal hearing the administration may impose the selected discipline. The second stage assures clear and actual notice of the reasons for termination in sufficient detail to enable presentation of evidence relating to them; notice of both the names of those who have made allegations against the faculty unit member and the specific nature and factual basis for the charges; a reasonable time and opportunity to present testimony on any disputed issue of material fact; and a hearing before an impartial decision-maker.

#### ***Stage One: Informal Pre-Discipline Hearing***

If the administration determines that there are reasonable grounds for discipline, the faculty unit member will be furnished written notice of the allegations supporting the determination, an explanation of the evidence relied upon by the administration and the intended disciplinary action. At the same time, the COHE chapter president will be notified that the administration intends to discipline the faculty unit member. The matter will be discussed with the faculty member at a personal conference which will be held at a time not sooner than ten (10) working days, nor later than fifteen (15) working days from the date of the transmission of the written notice, unless otherwise agreed by the faculty unit member and the administration. The faculty unit member may bring to this meeting a representative chosen by the faculty unit member. At the close of the personal conference, or within five working days thereafter, the administration will notify the faculty unit member whether it will discipline the faculty unit member, and if so, what discipline it will impose and the effective date of the discipline.

#### ***Stage Two: Post-Discipline Hearing Rights***

Faculty unit members who have been disciplined after completion of Stage One hearings may challenge the action through the grievance procedures established in Article VII of this agreement. Any grievance appeal under this section will begin at Step 2. The grievance conference required at Step 2 must be held by the president, or in the absence of the president, the acting president, and may not be delegated to any other person.

When the disciplinary action is a discharge and the individual invokes the grievance procedures, the faculty unit member will be placed on interim suspension as provided in § 15.4 during the pendency of grievance before the institution or the Board.

To the extent provided by law, the administration will bear the burdens of production and persuasion to prove conduct warranting discipline. Faculty unit members will bear the burden to prove affirmative defenses, bearing both the burdens of production and persuasion for such defenses and for any claims that an administrative action misinterprets, misapplies or violates a specific right protected under this agreement or Board policy.

2. Faculty unit members may respond to warnings filed in the personnel file, and their responses will be attached to such warnings.

A faculty unit member will have five working days from the time that the institution provides notice, pursuant to § 22.9, of its intention to place a warning in the personnel file to notify the department head that the unit member will submit additional comments or that a peer group will be requested.

When a faculty unit member requests that the warning letter be sent to a peer group established by COHE for additional signed recommendations to be attached to the warning letter, the warning letter will be forwarded to the peer group within five working days. The peer group recommendations will be forwarded to the department head no later than fifteen working days after the warning letter has been forwarded to it, and the recommendations will be attached to the warning letter.

Placement of a response or a peer review statement in the personnel file will not relieve the faculty unit member of the obligation to comply with the directive stated in the warning letter.

#### ***15.4 INTERIM SUSPENSION***

Unlike a disciplinary suspension under paragraph 5 of the alternative disciplinary actions enumerated in § 15.2, an interim suspension from duties during the pendency of an active review of allegations of conduct warranting discipline is not deemed to be a discipline under this article or during the pendency of a grievance brought to challenge a discharge .

The decision to place a faculty unit member on interim suspension pursuant to this section does not require compliance with the Stage One notice procedures set forth in § 15.3(1), but an informal pre-suspension process will ordinarily be provided. Absent the need for quick action or manifest impracticality, a faculty unit member will be informed, either orally or in writing, of the

basis for the suspension, given an explanation of the evidence supporting the action and afforded an opportunity to respond before being placed on interim suspension.

In circumstances that require quick action or where the pre-suspension process is impractical, and where independent third-party findings confirm reasonable grounds for the allegations against the faculty unit member, the administration may place a faculty unit member on interim suspension before providing the requisite information, explanation and opportunity to respond.

In exceptional circumstances, the administration may withhold pay. Such suspension without pay ordinarily is appropriate, where the circumstances that trigger the interim suspension implicate public trust in ways that would preclude the unit member's continued discharge of assigned responsibilities.

### ***15.5 NONDISCIPLINARY ACTION***

The procedures set forth in this article will also be used, to the extent practicable, where incapacity prevents a faculty unit member from discharging essential functions.

## **XVI. FACULTY UNIT MEMBER REDUCTION PROCEDURES**

### ***16.1 GENERAL PROVISIONS***

If it becomes necessary to terminate the contractual rights of faculty unit members because of governmental action, significant loss of enrollment, consolidation of departments, or other reorganization, dropping of courses, programs, or activities, or financial exigency, the Board may, notwithstanding any other provision of this agreement, terminate the appointments of faculty unit members in accordance with the provisions of this agreement.

The president of the institution will notify any individual faculty unit member of termination and provide the local president of COHE or the UniServ director of COHE the reasons for the reduction and the faculty unit members to be affected under the proposal, in order for COHE to have the opportunity to respond. Such response will be within ten (10) working days of the president's notice. Upon request of COHE, the president will schedule a meeting to discuss the response and furnish COHE with all analyses that led to unit member reductions. An effort will be made to provide notice of intent to utilize the provisions of this article, as soon as practicable.

## **16.2 FACULTY UNIT MEMBER REDUCTION PROCEDURES**

1. The following guidelines will be used in sequence in the identification of faculty unit members, within a designated organizational area (grouping of faculty unit members by department, discipline, or program), to be terminated subject to the need to retain personnel with special skills essential to maintain the integrity and quality of a program. Where the reduction plan is expressed in terms of a program(s), a reasonable effort will be made to group more than one program within a department, such that the programs selected for grouping are those in which faculty unit members exist who are comparably qualified for the programs to be retained.
  - a. Whenever possible, faculty unit member reduction will be accomplished through attrition.
  - b. Provided that they are willing to return to full-time appointments for each of the years remaining under their phased retirement contracts, faculty unit members in the first four years of a phased retirement plan will have retention priority over faculty unit members serving under terms contracts or in the fifth year of a phased retirement plan.
  - c. Faculty unit members serving under tenure track appointments will have retention priority over faculty unit members serving under term contracts or participating in phased retirement plans.
  - d. Faculty unit members serving under full-time tenure appointments will have retention priority over faculty unit members serving under tenure track and term contracts, and faculty unit members serving under part-time tenure appointments will have retention priority over faculty unit members serving part-time under tenure track and term contracts.

The retention priorities outlined stated in subparagraphs (b), (c) and (d) apply only to persons who have met expectations on their annual performance reviews in each of the three most recent years, if available.
2. Among faculty unit members having equal retention priority under section 1, the faculty unit member with highest rank will have higher retention priority over junior colleagues, and, within ranks, the faculty unit member with greatest seniority will have highest retention priority. In the event that individuals have equal retention priority, after rank and seniority have been considered, persons with higher performance ratings for the most recent three years will be accorded higher retention priority. Seniority will be based upon faculty unit member's total years of full-time equivalent employment within the system exclusive of periods of unpaid leave, provided that faculty unit members with a break in service of more than four (4) years will not be given credit for service prior to such break.

3. The preceding provisions of this article notwithstanding, a faculty unit member who is under a constructive plan with significant deficiencies remaining uncorrected after a reasonable time for such correction, may be terminated prior to any other faculty unit member. A constructive plan will not be used to frustrate the intent of this article.
4. If a tenured faculty unit member is terminated under this article, the position may not be filled for a period of three (3) years, unless the terminated faculty unit member has been offered reappointment and refused the offer. The terminated faculty unit member has twenty (20) working days from the receipt of an offer of reappointment to accept the position.
5. During four (4) calendar years following the last day of the spring semester of the year in which a reduction in force took place, faculty unit members will be recalled to their institution in order of greatest retention priority as specified in Article 16.2, provided the faculty unit member is qualified to perform the duties of the vacant position. Outside applicants will not be employed unless the position has been offered to and rejected by all faculty unit members subject to recall who fulfill all qualifications specified for the vacancy and assert an interest in it. The institution will have the obligation to attempt to contact former faculty unit members who enjoy rights under this provision.

As to persons who had been displaced by a reduction in force during or prior to the end of the 1990-91 academic year, the four year period will be deemed to commence July 1, 1991. The administration of each institution will notify such former faculty unit members whose addresses are known to it of these changes in their recall rights.

6. The fringe benefits of faculty unit members who return to employment under item 4 or 5 above will, to the extent provided by law, be as they were at the time their previous employment terminated, provided the benefits still exist and they are eligible for them in the new position.
7. Every reasonable effort will be made to relocate a terminated faculty unit member in another academic position within the regental system that is vacant and to be filled, provided the faculty unit member fulfills all qualifications specified for the vacant position. Priority consideration for relocation will be given to those faculty unit members nearing retirement age. If relocation is accomplished the salary and other considerations of employment will be as stated for that position.
8. Every reasonable effort will be made to allow an affected unit member to complete the current appointment.
9. To the extent that the same or comparable positions are available, the accrued rights of faculty unit members will be maintained in those cases involving involuntary transfers of faculty unit members that have resulted from geographical relocation of programs. The

Board will provide moving expenses in the case of such transfers as provided by state rules and regulations.

### ***16.3 FEDERAL FUNDING--SPECIAL CONDITIONS***

A faculty unit member who is terminated in accordance with this article, and whose salary was fully supported by federal funds, will have no priority of employment over faculty unit members in positions supported by state funding sources, unless such faculty unit member was previously employed in a state funded position. In the latter case the faculty unit member will be treated in accordance with the guidelines provided in this article.

### ***16.4 FURTHER PROVISIONS***

A faculty unit member terminated pursuant to the provisions of this article may institute a grievance under Article VII, Contract Disputes, and the burden of proof will rest with the administration to the extent required by law. Any grievance challenging an action taken under this article will begin at Step 2 of the procedures outlined in § 8.7.

## **XVII. PERSONNEL FILES**

### ***17.1 STATEMENT***

A single official personnel file will be maintained on each faculty unit member at a central location(s) designated by the president; provided, however, that there will be two (2) such official files maintained on those faculty unit members with federal appointments by the Extension Service at South Dakota State University. Business records concerning each member of the unit may be maintained in the institutional business or personnel office. Administrators may maintain working files to document faculty unit member performance. Such working files will be separate from the official personnel file. If working files are maintained by any administrators, all materials thus generated must be filed in the personnel file at the time of their use in any adverse personnel decisions involving faculty unit members.

Items placed in a faculty unit member's personnel file will be signed and dated by the person placing the material in the file and the faculty unit member will be notified at that time. This notification requirement will not apply to documents whose placement in the personnel file is required under this agreement, i.e., the annual appointment notice and annual evaluations, or to documents whose placement is required under state law, e.g., leave documents.

Faculty unit members will have access to their personnel and business record files, exclusive of confidential pre-employment placement credentials, during normal business hours and may request copies, at their own cost, of material contained therein. If the file is not immediately available, it will be made available within one (1) working day. Faculty unit members may not remove their files from the room in which they are housed.

Faculty unit members may enter a statement in their file which they feel clarifies, corrects, or refutes material therein, and such statement will be attached to the applicable documents in the file. Faculty unit members may also place in their file materials relevant to academic qualifications, teaching, research, scholarship and service.

Access to faculty unit members' personnel files will be restricted to the faculty unit members, their authorized agents, or authorized administrators. Members of departmental, school or institutional promotion and tenure committees may also have access to the file when reviewing the credentials of applicants for promotion or tenure.

A log will be maintained which indicates the following:

1. Name of faculty unit member.
2. Date accessed.
3. Name of person accessing file.
4. If taken to another room, date removed and location to which removed.
5. Date returned to room in which file is housed.

The log requirement set forth above does not apply to access or inspection for routine clerical purposes, such as to insert copies of individual appointment notices or to confirm accuracy of data, provided that the file is not taken from the room.

Personnel files may be purged of any material which is obsolete, unfounded, unnecessary or otherwise inappropriate, under the following circumstances and procedures:

1. On written request by the faculty unit member to the administration, with assent by the administration as demonstrated by the return of either all, or a part, of such documents to the faculty unit member. Lacking administrative assent, the faculty unit member may initiate a grievance to remove the material on any of the bases stated above.
2. By action of the administration in purging such files, and forwarding such material to the faculty unit member. On receipt thereof, the faculty unit member will return, by mail, those materials he prefers to have refiled in his personnel file.

## **XVIII. WORKING CONDITIONS**

### ***18.1 SAFE WORKING CONDITIONS***

The parties will comply with all applicable state and federal laws relating to safe working conditions.

Whenever a faculty unit member becomes aware of a condition which the faculty unit member feels is a violation of an institutional safety or health rule or regulation, the faculty unit member will report such conditions to an appropriate administrator who will promptly investigate such conditions.

Protective devices and first aid equipment will be provided to faculty unit members who practice in a hazardous institutional environment and the faculty unit member will be responsible for the proper use of such devices.

The parties recognize that unruly students not only present a discipline problem and hinder the educational process within the classroom, but, on occasion, can threaten the safety and security of the faculty unit member. The parties note that such disruptive conduct is proscribed under Board Policy 3:4(2)(B). Faculty unit members who believe that individual students attending their classes have engaged in disruptive or threatening conduct or otherwise violated disciplinary regulations should file written allegations with the senior student affairs officer at their respective institutions. The chief student affairs officer will investigate the allegations and will take appropriate action. The faculty unit member will be deemed to have an ongoing educational interest in the outcome of the investigation and action, both as an incident of the faculty unit member's responsibilities to control the classroom and in view of the ongoing presence of faculty member and student in the institutional community; therefore, the chief student affairs officer will inform the faculty unit member of the disposition of the matter.

### ***18.2 OFFICE SECURITY***

The institution will furnish the faculty unit member a lockable desk or a lockable file. The administration will provide faculty unit members with access to secure physical or virtual repositories for student records, research data or similar records for which they responsible under law, regulation or policy. If an office is assigned to a faculty unit member, the institution will provide security for each faculty unit member's office by means of a lockable door. The lockable furniture and office space are provided to permit faculty unit members to control access to confidential student records, course materials and research documents, materials, specimens or equipment by unauthorized students and others who have no authority to access the locked areas.



Ordinarily, administrators will have access to a faculty unit member's office spaces or locked furniture only with the authorization of the faculty unit member. In exceptional circumstances, when the faculty unit member is unavailable and is not expected to return in time to provide necessary assistance or cannot be reached to provide authorization, an administrator may enter the space for some routine administrative purpose, for instance, to obtain a file that would be provided as a matter of course. Administrators may also enter without notice when there are reasonable grounds for suspecting that the entry will turn up evidence that the faculty unit member is guilty of work-related misconduct.

### ***18.3 INFORMATION TECHNOLOGY SYSTEMS***

Each institution will provide access to telephone service and information technology systems for each faculty unit member under substantially similar conditions to those available to full-time instructional or research faculty unit members holding professorial rank.

### ***18.4 CLERICAL ASSISTANCE AND INSTRUCTIONAL SUPPLIES***

The parties recognize the desirability of professional clerical assistance and adequate instructional supplies. To the extent that financial resources permit, effort will be made to provide faculty unit members the clerical assistance, including the assistance of available work-study students, and instructional supplies necessary for the fulfillment of their assigned responsibilities.

### ***18.5 FACILITIES AND EQUIPMENT***

The Board will make a reasonable effort to provide each faculty unit member with reasonably adequate facilities and equipment for effective performance.

### ***18.6 HEATING AND AIR CONDITIONING***

An effort will be made, subject to budgetary and physical constraints, to improve present air conditioning and heating conditions through deferred maintenance funds. Where feasible, seasonal reassignment of offices will be made at the request of the faculty unit member.

### ***18.7 EDUCATIONAL MATERIALS***

Except for courses designated by the administration to be taught in a consistent or sequential fashion using a specified set of texts, programs or other instructional resources, faculty unit members will select the texts, programs or other instructional resources for the courses for which they are professionally responsible, provided that these are consistent with the course descriptions. Every reasonable effort will be made to provide adequate equipment and materials required for each approved course of study.

## **XIX. SALARY PROVISIONS**

### ***19.1A PROFESSORIAL AND LIBRARIAN RANK SALARY PROVISIONS***

Allocation priorities are applicable to all sums appropriated to support salary increases for faculty unit members holding professorial or librarian rank and who will be offered reappointment for a successive fiscal year, plus such additional monies as the Board in its sole discretion may elect to provide.

1. Before any other distribution is considered, each institution will allocate any sums needed to assure that internal salary structures comport with governing law.
2. Remaining funds will be apportioned to faculty unit members who meet or exceed expectations as follows:
  - a. 20-35% of available monies will be reserved to apportion to all faculty unit members who have met performance expectations a portion of the difference between their individual salaries and the average salaries for persons of like discipline and rank as recorded in the most recent available Oklahoma salary survey.
    - i. Institutional administrators will code faculty unit member assignments for purposes of market comparison to reflect each individual's actual primary assigned responsibilities.
    - ii. Market levels will be adjusted to reflect performance as follows:
      - a) Salaries of unit members who met expectations will be compared against 100% of the Oklahoma salary survey average salary for persons of like discipline and rank;
      - b) Salaries of unit members who exceed expectations will be compared against 110% of the survey average; and
      - c) Salaries of unit members who substantially exceed expectations will be compared against 120% of the survey average.
      - d) Where overall weighted market averages are fractional, the market averages will be adjusted proportionately, e.g., a rating of 1.8 will be compared to 108% of the Oklahoma salary, a rating of 2 would be compared to 110%, a rating of 2.66 would be compared to 116.6%, and a rating of 3 would be compared to 120%.

- b. 60-70% of available monies will be allocated on the basis of faculty unit member performance.
  - i. All unit members will be compensated in accordance with the quality of their performance as described below. Additionally, the institutions may reserve monies to be distributed to persons who rendered superior performance.
  - ii. Performance ratings will be based upon the annual performance evaluation conducted according to institutional practice.
  - iii. Each university will designate organizational units that will be grouped together for purposes of distribution of the performance increase. These groupings need not coincide with the institutional organizational structure; except that the performance evaluations of all grouped organizational units will have been reviewed by the same reviewer.
  - iv. Performance ratings will be adjusted as follows:
    - a) At each institution, evaluations will be reviewed by a superior administrator, hereafter “the reviewer,” who will have the duty of rating unit members in each area of professional responsibility based upon department head comments recorded as part of the annual evaluation of performance. Areas of professional responsibility will be determined with reference to expectations for professorial or librarian ranks as modified by workload. A four category rating scale will be employed, and each rating will be assigned a number:
      - 1. Unit members who failed to meet expectations. Assigned number = 0.
      - 2. Unit members who met expectations. Assigned number = 1.
      - 3. Unit members who performed above expectations. Assigned number = 2.
      - 4. Unit members who performed substantially above expectations. Assigned number = 3.
    - b) The reviewer will have the prerogative of placing unit members in groupings based upon his or her independent review of the department head’s performance assessment and of the activities that the unit member reported on the annual evaluation instrument.

- c) The performance ratings thus assigned in each category will be multiplied by the percent of effort for that category stated as part of the annual evaluation.
  - d) The resulting products for each area of responsibility will be added together to derive an overall, weighted performance rating.
  - e) Any unit member whose overall, weighted performance rating is less than 1 will be assigned the number 0. Other overall, weighted performance rating values will be employed according to their derived values.
- v. The unit member's prior year base salary will be multiplied by one of the following rank factors as appropriate to derive a rank-adjusted salary:
- |  |      |
|--|------|
| Full Professor or Librarian                | 1.02 |
| Associate Professor or Associate Librarian | 1.01 |
| Assistant Professor or Assistant Librarian | 1.00 |
- vi. The overall, weighted performance rating will be multiplied by the rank-adjusted salary. The product of this operation will equal the individual faculty unit member's performance salary points.
  - vii. The individual faculty unit member's performance salary point for the year will be averaged with the individual faculty unit member's performance salary points for the two immediately prior years, and the resulting number will be the weighted performance salary point and will form the basis of the determination of formula-driven performance distribution as provided in this Article. Where individual faculty unit members were not assigned performance salary points for either two the immediately prior years, the assigned performance salary points for the current year will be used for purposes of the formula-driven performance distribution; if a performance salary point was assigned for one of the two immediately preceding years, a weighted performance salary point for the current year will be derived by averaging the current year with that year.
  - viii. The individual faculty unit member's weighted performance salary point for each individual unit member within a rating group will be added together to form the grouping's total weighted performance salary points.
  - ix. The total weighted performance salary points for each grouping will be divided into the total dollars available for the formula-driven performance distribution for that group, and the result will be expressed as a percentage, the standard performance factor.

- x. The weighted performance salary point for each unit member will be multiplied by the standard performance factor to yield for each individual the formula-driven performance increase.
- xi. Each institution may recognize distinguished performance by distributing funds reserved for this purpose from the performance pool to persons whose performance was so distinguished and of such exceptional quality in the judgment of the university presidents as to be superior and worthy of special institutional recognition. Presidents may elect to dedicate up to 15% of this part of the pool for such purposes. Monies directed to this purpose will reduce the sums available for the formula-driven performance increase.
- c. 5-20% of available monies will be allocated on the basis of institutional priorities. In selecting individual recipients of institutional priorities increments, presidents will consider individual performance, market conditions and other circumstances bearing upon individual contribution to program success.
- d. The Board will have the discretion, but not the obligation, to contribute additional monies beyond salary policy to salary enhancement. All monies so directed to salary enhancement will be distributed on a discretionary basis. By way of illustration and without limiting the scope or objects of the exercise of the authority reserved hereunder, the Board may exercise its reserved authority over compensation systems to establish one or more research incentive plans and to be operated under such eligibility criteria as it determines are consistent with grant requirements, auditing standards and available resources.
- e. Board representatives will provide to COHE representatives the following data relating to the new fiscal year salary distribution for each individual faculty unit member:

- name
- rank
- tenure status
- department
- university
- CIP code
- prior fiscal year salary
- new fiscal year salary
- date of hire
- date of current rank
- market increase (identifying the percentage of the estimated market average used to calculate the market increase)

performance increase (including the individual performance function and the sum of money available for distribution among the members of the group of employees with which the unit member had been classed)  
dollars distributed to address institutional priorities (including which sums, if any, have been distributed on a one-time basis)  
dollars distributed to correct for past bias  
promotion increments  
non-recurring salary supplement under the program improvement funding fee mechanism  
FTE  
percent of full time  
length of contract  
date of birth  
sex  
race

The Board will provide these data to the president of the local COHE unit as soon as the Board has approved salary recommendations.

- f. The Board will provide COHE with information about any regression analyses of faculty salaries that it may elect to perform.
- g. At the time that annual appointment notices are issued in those years when the state provides salary policy, faculty unit members will receive an explanation of how their individual salary increases were determined. The notification will specify the dollar amounts distributed through the market mechanism, any amounts distributed in recognition of their performance, and any amounts distributed to correct possible discrimination. Faculty unit members will also be notified of the CIP Code and average salary that were employed in calculating the market raise. In those years when the state provides no salary policy, the annual appointment notice may omit details that are irrelevant to the proffered salary, but it will indicate that no salary policy was provided that year.
- h. Absent more current documentation, faculty unit members who were on approved leave during the year being evaluated for purposes of determining salary increases will be presumed to have continued to serve at the levels and with the assignments recorded on their most recent evaluation documents. Documentation of relevant professional accomplishments during approved leaves taken during the previous calendar year must be considered if received by the last working day in January.

Faculty unit members who hold appointments as endowed chairs will participate in any salary distributions provided pursuant to this section. Additional monies payable solely from endowment earnings, or from contributions made expressly

for the purpose of supporting the chair, may be paid to faculty unit members as provided in the endowment agreements.

The non-coaching portions of the salary of coaches will be adjusted pursuant to this agreement where their instructional or research duties bring them within the bargaining unit.

Except for summer session contracts extended to persons serving under fall-spring contracts, salary increases will become effective July 1. Summer session contracts will not be adjusted to reflect increases in salary affecting fall-spring contracts.

### ***19.1B LECTURER RANK SALARY PROVISIONS***

Allocation priorities are applicable to all sums appropriated to support salary increases for faculty unit members holding lecturer rank and who will be offered reappointment for a successive fiscal year.

1. Before any other distribution is considered, each institution will allocate any sums needed to assure that internal salary structures comport with governing law.
2. Remaining funds will be apportioned to faculty unit members who meet or exceed expectations as follows:
  - a. 90% to 100% of available monies will be allocated on the basis of faculty unit member performance.
    - i. All unit members will be compensated in accordance with the quality of their performance as described below. Additionally, the institutions may reserve monies to be distributed to persons who rendered superior performance.
    - ii. Performance ratings will be based upon the annual performance evaluation conducted according to institutional practice
    - iii. Each university will designate organizational units that will be grouped together for purposes of distribution of the performance increase. These groupings need not coincide with the institutional organizational structure; except that the performance evaluations of all grouped organizational units will have been reviewed by the same reviewer.
    - iv. Performance ratings will be adjusted as follows:



- a). At each institution, evaluations will be reviewed by a superior administrator, hereafter “the reviewer,” who will have the duty of rating unit members, based upon department head comments recorded as part of the annual evaluation of performance. A four category rating scale will be employed, and each rating will be assigned a number:
1. Unit members who failed to meet expectations. Assigned number = 0.
  2. Unit members who met expectations. Assigned number = 1.
  3. Unit members who performed above expectations. Assigned number = 2.
  4. Unit members who performed substantially above expectations. Assigned number = 3.
- b). The reviewer will have the prerogative of placing unit members in groupings based upon his or her independent review of the department head’s performance assessment and of the activities that the unit member reported on the annual evaluation instrument.
- c). Any unit member whose performance rating is less than 1 will be assigned the number 0. Performance rating values will be employed according to their derived values.
- v. The overall performance rating will be multiplied by the salary. The product of this operation will equal the individual faculty unit member’s performance salary points.
- vi. The individual faculty unit member’s performance salary point for the year will be averaged with the individual faculty unit member’s performance salary points for the two immediately prior years, and the resulting number will be the weighted performance salary point and will form the basis of the determination of formula-driven performance distribution as provided in this Article. Where individual faculty unit members were not assigned performance salary points for either two the immediately prior years, the assigned performance salary points for the current year will be used for purposes of the formula-driven performance distribution; if a performance salary point was assigned for one of the two immediately preceding years, a weighted performance salary point for the current year will be derived by averaging the current year with that year.

- vii. The individual faculty unit member's weighted performance salary point for each individual unit member within a rating group will be added together to form the grouping's total weighted performance salary points.
  - viii. The total weighted performance salary points for each grouping will be divided into the total dollars available for the formula-driven performance distribution for that group, and the result will be expressed as a percentage, the standard performance factor.
  - ix. The weighted performance salary point for each unit member will be multiplied by the standard performance factor to yield for each individual the formula-driven performance increase.
  - x. Each institution may recognize distinguished performance by distributing funds reserved for this purpose from the performance pool to persons whose performance was so distinguished and of such exceptional quality in the judgment of the university presidents as to be superior and worthy of special institutional recognition. Presidents may elect to dedicate up to 15% of this part of the pool for such purposes. Monies directed to this purpose will reduce the sums available for the formula-driven performance increase.
- c. 0% to 10% of available monies may be allocated on the basis of institutional priorities. In selecting individual recipients of institutional priorities increments, presidents will consider individual performance, market conditions and other circumstances bearing upon individual contribution to program success.
  - d. The Board will have the discretion, but not the obligation, to contribute additional monies beyond salary policy to salary enhancement for lecturer ranks. The Board specifically reserves the discretion to allocate to increase salaries of faculty unit members holding professorial or librarian rank any and all such additional monies as may become available for salary increases.
  - e. Board representatives will provide to COHE representatives the following data relating to the new fiscal year salary distribution for each individual faculty unit member holding lecturer rank:
    - name
    - rank
    - department
    - university
    - prior fiscal year salary
    - new fiscal year salary
    - date of hire
    - date of current rank

performance increase (including the individual performance function and the sum of money available for distribution among the members of the group of employees with which the unit member had been classed)  
dollars distributed to address institutional priorities (including which sums, if any, have been distributed on a one-time basis)  
dollars distributed to correct for past bias  
promotion increments  
FTE  
percent of full time  
length of contract  
date of birth  
sex  
race

The Board will provide these data to the president of the local COHE unit as soon as the Board has approved salary recommendations.

- f. The Board will provide COHE with information about any regression analyses of faculty salaries that it may elect to perform.
- g. At the time that annual appointment notices are issued in those years when the state provides salary policy, faculty unit members will receive an explanation of how their individual salary increases were determined. The notification will specify the dollar amounts distributed in recognition of their performance, to address institutional priorities or to correct possible discrimination. In those years when the state provides no salary policy, the annual appointment notice may omit details that are irrelevant to the proffered salary, but it will indicate that no salary policy was provided that year.
- h. The non-coaching portions of the salary of coaches will be adjusted pursuant to this agreement where their instructional or research duties bring them within the bargaining unit.

Except for summer session contracts extended to persons serving under fall-spring contracts, salary increases will become effective July 1. Summer session contracts will not be adjusted to reflect increases in salary affecting fall-spring contracts.

## ***19.2 SUPPLEMENTARY AGREEMENT WITH RESPECT TO SALARY DISPARITY***

In addition to those mechanisms established in § 19.1 to provide for the use of newly appropriated funds to adjust the salaries of faculty unit members who have been identified by

statistical analyses or otherwise based on particular circumstances as possible victims of impermissible bias, institutions may at any time reallocate funds from any source to remedy such documented disparities.

Institutions making distributions to correct salary bias will disclose to their union locals the names of persons who are to receive such distributions.

### ***19.3 SALARY IMPROVEMENT***

The parties recognize that faculty salaries are significantly lower than those paid to colleagues with comparable qualifications and experience in surrounding states. The parties agree that a salary improvement program is necessary to make faculty unit member salaries commensurate with those of their colleagues in surrounding states and to make the South Dakota higher education system competitive with those states with respect to the hiring and retention of faculty. To that end, the parties agree that discussion pursuant to § 23.1 of this agreement will include seeking agreement on the internal and external funding necessary to bring faculty salaries comparable with those of surrounding states and discussion of a timetable by which those levels might feasibly be achieved.

### ***19.4 PROMOTION OR CHANGE IN RANK INCREMENTS***

A faculty unit member who is to be promoted or granted a change in rank will receive an increment based on the faculty unit member's current fiscal year base salary. If the faculty unit member's next fiscal year contract is for a different percentage of time or number of months than was in effect in the current fiscal year, the current fiscal year base salary will be adjusted to reflect such changes prior to the application of the following schedule of increments:

#### **PROFESSORIAL RANKS:**

Assistant Professor to Associate Professor -- 8%  
Associate Professor to Professor -- 10%

#### **LECTURER RANKS:**

Instructor to Lecturer -- 4%  
Lecturer to Senior Lecturer -- 6%

#### **LIBRARIAN RANKS:**

Assistant Librarian to Associate Librarian -- 8%  
Associate Librarian to Librarian -- 10%

## ***19.5 OVERLOAD, SUMMER TERM AND SELF-SUPPORT***

Faculty unit members may not be assigned overload, summer term or self-support courses that would interfere with completion of other assigned responsibilities. For purposes of this section, summer term and self-support classes include only courses assigned in addition to a faculty unit member's base course load. The administration may only offer contracts for overload or self-support courses to faculty unit members whose primary responsibilities are instructional; such additional instructional responsibilities may only be offered to faculty unit members who already carry a course load equivalent to four three-credit hour undergraduate courses for the semester. Faculty unit members who are not under contract to perform externally funded research may be offered course assignments to teach during the summer session. Faculty unit members who accept such overload or summer term assignments will be compensated at the rate of seven percent of academic year base salary for each three credit hour course taught; provided that the rate may be increased by up to two percentage points to address exceptional circumstances. Faculty unit members who accept self-support assignments will be compensated at the rate of eight percent of academic year base salary for each three credit hour course taught; provided that the rate may be increased by up to two percentage points to address exceptional circumstances. When determining whether additional compensation is warranted, the administration will take into account faculty effort required to prepare and to deliver the course, institutional resources provided to conduct the course and institutional opportunities deriving from the course. Among the factors considered in these connections, without limitation, will be current workload, extent of necessary new preparation, projected enrollments, availability of assigned assistants, technological resources and market driven limitations on course costs.

If a course exceeds or falls short of three credit hours, the compensation will be adjusted pro rata. When a course fails to meet the specified minimum enrollment, the contract may be voided by the administration, or the faculty unit member may elect to teach the course at reduced compensation. The administration of each university will determine the minimum enrollment needed, consistently with sound fiscal practices, to justify offering a class. Faculty unit members will be advised of the minimum enrollments specified by the university administration at the time that the contract is offered. Where a course has not achieved minimum enrollment by one week prior to the first scheduled class meeting, the administration will contact the faculty unit member to discuss whether the faculty unit member would be willing to teach the course at reduced compensation.

When the university administration determines that it will schedule a course for the summer term or as a self-support offering, it will advise faculty unit members in the relevant department of the employment opportunity.

### ***19.6 SALARY ADJUSTMENT AFTER RECEIPT OF TERMINAL DEGREE***

Faculty unit members holding professorial rank who, while employed by an institution on a tenure track or tenure contract, earn a terminal degree appropriate for their assigned teaching or research responsibilities will be awarded a salary adjustment. The adjusted salary will not exceed the average salary in the discipline and at the rank among persons who hold appropriate degrees and rank. The adjustment will take effect during the academic year following that in which the degree is awarded. When determining the total salary increase for the year in which the market based salary adjustment will be given effect, the adjustment will be made prior to determination of any other form of salary adjustment for the fiscal year.

### ***19.7 POLICIES, PRACTICES AND COMPENSATION--CONTINUING EDUCATION/ SUMMER SESSIONS***

Committees consisting of two (2) faculty unit members appointed by the local chapter of COHE and two (2) administrators appointed by the president will be continued on each campus to review current policies and practices regarding summer sessions, continuing education and extension and make recommendations to their respective presidents, specifically noting any recommendations not unanimously agreed upon by the members of the committee. Plans and policies so developed will be shared with corresponding committees at other institutions in an effort to develop uniformity with respect to policies on summer session and continuing education.

Modifications of locally agreed policies on any campus may be proposed by the president or local COHE chapter by November 1 to be resolved by the processes described above.

### ***19.8 SALARY AND FRINGE BENEFIT FUNDING***

Representatives of the Board and COHE will meet prior to the June Board meeting to hold preliminary discussions on salary and fringe benefits for a successor contract. It is the intent of the parties to attempt to reach such agreement as is necessary to cooperate in supporting legislation to fund salaries and fringe benefits.

## **XX. FRINGE BENEFITS**

### **20.1 STATEMENT OF BENEFITS**

Subject to legislative prerogative and action, the following fringe benefits will remain in force and effect for the faculty unit members:

Retirement (SDCL Ch. 3-12), Unemployment Insurance (SDCL title 61), Worker's Compensation Insurance (SDCL title 62), Long Term Disability Insurance (SDCL Ch. 3-12), and Personal Liability Indemnification (SDCL §§ 3-19-1 and 3-19-2).

The health and life insurance policies presently in effect for the faculty unit members will remain in force until and unless such policies are modified, changed, substituted or extended by legislative or executive action.

The UniServ director of COHE will be furnished a copy of any master insurance policies for insurance.

### **20.2 GENERAL PROVISIONS**

In the event the foregoing insurance coverages are changed by legislative or executive action, the parties agree to meet, at the written request of either, to renegotiate that portion of this article which is affected. Such negotiations will commence within thirty (30) working days of receipt of the request for renegotiation. During the period of negotiations, the policies and coverages established by the modification, change or extensions will go into effect at such times as are specified in the respective contracts of insurance will so provide and existing policies and coverages are deemed amended accordingly.

### **20.3 PHASED RETIREMENT PROGRAM**

The Phased Retirement Program is available for those full-time faculty unit members who are tenured, and who:

1. have been employed full-time in postsecondary education faculty or administrative positions for 15 or more years (at least 8 of which have been at a Board of Regents institution); and
2. wish to ease into retirement by reducing their workload obligation gradually over a five-year period.

Qualified faculty unit members, as specified above, who wish to enter the program must submit a written request to be placed on a phased contract to the immediate academic supervisors (and the appropriate chair or director if necessary) and the appropriate dean at least one semester prior to the proposed effective date of the contract. The grant of a phased retirement appointment is discretionary with the institution.

Upon entering into a phased retirement program, faculty unit members will affirm in writing their understanding that their employment will terminate no later than upon completion of their fifth year on the phased retirement program, and that in case of a Reduction in Force, their retention priority is as outlined in 16.2 Faculty Unit Member Reduction Procedures.

Faculty unit members who enter the program but later decide to retire completely may do so after the first year of the program, upon one semester's written notice to their immediate academic supervisors (and the appropriate chair or director if necessary) and the appropriate dean.

After entry into the program, the faculty unit members' teaching load or work schedule will be gradually reduced and the faculty unit members' salary will be prorated accordingly. The faculty unit members will otherwise be expected to maintain normal responsibilities and duties until their teaching load or workload, and salary are reduced to the equivalent of three three-credit-hour courses per year. Thereupon, the faculty unit members will be relieved of all extra duties and responsibilities. This does not preclude faculty unit members voluntary committee work or academic advising. Delivery of the reduced course load may be scheduled in one semester of the year or the equivalent agreed upon by the faculty unit members and their departments, divisions or programs.

At any time while in this program, before full retirement, faculty unit members may choose to halt the progressive reduction of load at whatever stage it has reached. Unless the faculty unit members choose to resume a progressive reduction in load, they will remain that load until full retirement. However, at no time will the faculty unit members be able to return to a higher teaching or research load, unless so agreed in writing by the faculty unit members, the affected department, and the University.

While in the phased retirement program, faculty unit members will continue to be evaluated in conformity with the provisions of this agreement.

While in this program, faculty unit members will have all the privileges of full-time faculty unit members.

#### **20.4 TUITION AND FEE WAIVER**

Any full-time faculty unit member who has been continuously employed by the state for a period of three years may, upon compliance with SDCL § 3-30-4 and all of the requirements for admission,



attend and pursue any undergraduate or graduate course in any state educational institution under the control and management of the Board of Regents upon the payment of fifty percent (50%) of tuition and one hundred percent (100%) of required fees. The Board of Regents will maintain an annual record of the number of participants and the tuition dollar value of such participation.

**XXI. LEAVES**

**21.1 SICK LEAVE**

Upon request, a faculty unit member may take sick leave with full compensation, in accordance with SDCL Chapter 3-6, for personal illness, pregnancy and related disabilities, adoption, exposure to contagious diseases that would endanger the health of fellow employees, eye and dental care, or medical examinations.

The institutions have the right to investigate the use of sick leave. If use of sick leave is found to be for other than the uses listed above, the time off will be charged to leave without pay and may be cause for disciplinary action.

Full-time faculty unit members who have contracts for the full academic year will accrue 9.334 hours of sick leave per month. Faculty unit members who are employed at least fifty percent (50%), but less than one hundred percent (100%), during the full academic year, will accrue sick leave on a prorated basis of the above. Accumulation of unused accrued sick leave is unlimited.

Advance sick leave may be granted, not to exceed 224 hours. Advance sick leave may be used only after the exhaustion of all regularly accumulated sick and annual leave. Advanced sick leave will be charged against all sick leave credits subsequently earned. Advanced sick leave must be repaid prior to leaving the employment of the institution. Advance sick leave may not be granted during the first year of employment. All advance sick leave must be approved by the president and the commissioner of the bureau of personnel.

**21.2 ANNUAL LEAVE**

Faculty unit members who have ten (10), eleven (11), or twelve (12) month appointments, exclusive of summer session appointments, and who are required to perform regular duties during student vacation periods, will accrue annual leave credit on the following schedule for each month of service:

Years of Service	Rate of Accrual	Maximum Allowed
0 through 15	10 hours per month	240 hours

Over 15

13.334 hours per month

320 hours

Accrual begins on the faculty unit member's date of employment. No annual leave may be taken until the faculty unit member has completed six (6) months of service. The total accrual at the end of any one (1) month may not exceed that which the faculty unit member may earn in two (2) years of service. When a faculty unit member is on annual leave and is terminating employment, no other type of leave may be used.

### ***21.3 PERSONAL EMERGENCY LEAVE***

Faculty unit members are allowed to use forty (40) hours of accumulated sick leave during each calendar year for personal emergency. The use of sick leave for personal emergency may be granted due to a death in the immediate family (spouse, child, mother, father, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother, sister, grandparent, grandchild, stepchildren or stepparents); the temporary care of members of the immediate family; call to state active duty of military reserve or national guard members; volunteer police or rescue work.

### ***21.4 MILITARY LEAVE***

Faculty unit members who are called to active duty in the military services are eligible to request a leave without pay during the length of required service.

Faculty unit members who are members of Reserve or National Guard units are authorized up to fifteen (15) working days during a calendar year for required training. The faculty unit member does not lose pay or benefits during the training period.

### ***21.5 JURY LEAVE***

Faculty unit members who are summoned for jury duty will receive their regular compensation and are authorized to accept the fees ordinarily paid to a juror. No charges will be made against accrued leave.

### ***21.6 SABBATICAL, FACULTY UNIT MEMBER IMPROVEMENT AND CAREER REDIRECTION LEAVES***

A faculty unit member serving on a tenure appointment may be granted sabbatical leave after six (6) or more consecutive years of full-time employment in the system. A faculty unit member serving on a tenure track or tenure appointment may be granted faculty unit member improvement or career redirection leave after three (3) consecutive years of full-time employment in the system. Approval

for such leave will be contingent upon the faculty unit member presenting plans for formal study, research, or other experiences which are designed to improve the quality of service of the faculty unit member to the institution, to the Board and to the state of South Dakota.

The number of all faculty unit member improvement, career redirection or sabbatical leaves granted by an institution during any fiscal year will not exceed five percent (5%) of the faculty unit members or one (1) FTE, whichever is greater, in any one year, unless additional awards are recommended by the president and approved by the Board.

Sabbatical leave for nine (9) month faculty unit members will be for not more than two (2) semesters at one-half the salary which would have been paid had the faculty unit member been on full-time employment, or not more than one (1) semester at the full salary which would have been paid had the faculty unit member been on full-time employment.

Sabbatical leave for twelve (12) month faculty unit members will be for not more than twelve (12) months at one-half the salary which would have been paid on full-time employment, or not more than six (6) consecutive months at the full salary which would have been paid on full-time employment.

Faculty unit member improvement or career redirection leave for nine (9) month faculty unit members will be for not more than two (2) academic terms at eight percent (8%) of the salary which would have been paid on full-time employment, for each full academic year of consecutive full-time service, up to a maximum of fifty percent (50%) of salary, or not more than one (1) academic term at sixteen percent (16%) of the salary which would have been paid on full-time employment, for each full academic year of consecutive full-time service, up to a maximum of one hundred percent (100%) of salary, for each year of consecutive service.

Faculty unit member improvement or career redirection leaves for twelve (12) month faculty unit members will be for not more than twelve (12) months at eight percent (8%) of the salary which would have been paid on full-time employment, for each full year of consecutive full-time service, up to a maximum of fifty percent (50%) of salary, or not more than six (6) consecutive months at sixteen percent (16%) of the salary which would have been paid on full-time employment, for each full year of consecutive service up to a maximum of one hundred percent (100%) of salary.

All faculty unit members receiving faculty unit member improvement, career redirection, or sabbatical leave are required to return to the institution granting the leave for at least two (2) academic years of full-time service or to refund the full salary and institutional costs of fringe benefits received while on leave. If a faculty unit member returns, but fails to perform the full two (2) years return-to-service obligation, then the repayment obligation will be prorated. Any repayment obligation will be due in full one (1) calendar year after the end of the leave period or any subsequent, successive leave periods. Any repayment obligation which remains unpaid after falling due will earn interest at a rate equal to the monthly average prime rate of interest offered by the Wells-Fargo Bank system, or its successor in interest during the leave period plus two percentage points. Interest will be compounded semi-annually on all unpaid balances. A faculty unit member

who cannot perform return-to-service obligations due to death or permanent and total disability or reduction in force will be released of all repayment obligations. Determination of whether a faculty unit member is to be considered disabled will be made by the Board.

All faculty unit members, upon return from faculty unit member improvement, career redirection, or sabbatical leave will be returned to their former positions or be assigned to positions of like nature and status and will be granted increment increases that were given during their leave. As noted in § 19.1A(2)(H), for purposes of performance-based salary increases, absent more current documentation provided to the department head, faculty unit members who were on approved leave during the year being evaluated for purposes of determining salary increases will be presumed to have continued to serve at the levels and with the assignments recorded on their most recent evaluation documents. Documentation of relevant professional accomplishments during approved leaves taken during the previous calendar year must be considered if received by the last working day in January. They may be considered for merit increases as if they had served at the institution during such period. They will maintain tenure, insurance benefits, accumulated sick leave, and all other accrued benefits. If the faculty unit member is on less than fifty percent (50%) compensation, service for retirement is not accumulated during the period of such leave. Nothing in this article will be construed to abrogate other provisions of this agreement which affect employment status.

The following criteria will be considered in selecting the candidates for faculty unit member improvement, career redirection or sabbatical leave:

1. The merit of the objectives as they relate to improving the instructional program and enhancing the professional growth of the application, and where other institutions are involved, evidence of acceptance of the faculty unit member's program or project by the institution offering the advanced study or research.
2. Years of experience in the system.
3. Previous leaves.
4. Distribution of applicants by academic area.
5. Anticipated program changes.

All grantees of faculty unit member improvement, career redirection or sabbatical leave will execute a promissory note with the Board which is consistent with the terms of this article.

### ***21.7 RETRAINING OR REASSIGNMENT SABBATICAL LEAVE***

Based upon individual negotiation and without precedential value, a faculty unit member may be granted a retraining or reassignment sabbatical leave for a period not to exceed two (2) semesters for retraining which would lead to permanent reassignment from an area where his services are no longer required or, in the future, may no longer be required to a discipline where additional faculty are needed. The potential receiving department will be consulted with respect to both the proposed

retraining plan and the reassignment. The individual faculty unit member may have a COHE representative during the negotiations.

When significant needs for reassignment exist, as defined by the administration, applications from faculty members not normally eligible for sabbatical leave may be considered.

Faculty members receiving additional financial support beyond that ordinarily provided for faculty on a sabbatical leave will be required to extend their commitment to return to full service at the institution granting the leave for a period of at least one year and possibly longer if requested by the institution at the time the leave is negotiated. Terms and conditions of retraining or reassignment or sabbatical leaves which provide supplemental financial support will be reduced to writing and a copy of the leave agreement will be sent to COHE. The selection of the individuals to receive retraining or reassignment sabbaticals, as well as the selection of the individuals who receive supplemental financial support as described above, and the terms and conditions to be established in each individual case, are not subject to the grievance procedures outlined in Article VII of this Agreement. Failure on the part of either party to maintain the terms of the leave agreement will form the basis for a grievance.

The administration will develop appropriate procedures, including time considerations, for applications submitted under this Section.

### ***21.8 LEAVE OF ABSENCE WITHOUT PAY***

Leave of absence without pay may be granted by the Board for up to one (1) year for educational, parental, research or other valid reasons. Extensions may be granted by the Board. If allowed by existing insurance contract(s), the faculty unit member may elect to continue group insurance coverage by notifying the appropriate administrative office at the institution, by complying with the insurance contract(s) requirements, and by arranging to pay monthly premiums. Institutions are allowed to pay the monthly premiums on behalf of the faculty unit member.

Upon return from a leave of absence without pay, faculty unit members will be assigned to their former positions or to comparable positions for which they are qualified. Faculty unit members will retain all accrued benefits during leaves of absence without pay. A leave of absence without pay will not constitute a break in service for purposes of eligibility for the leaves established under § 21.6.

### ***21.9 UNAUTHORIZED ABSENCE***

A faculty unit member who is absent from assigned professional activities without authorized administrative approval may be subject to the provisions of Article XV, Code of Conduct – Discipline - Just Cause.

### ***21.10 ADMINISTRATIVE LEAVE***

Administrative leave will be granted in the following situations, allowing an employee to receive compensation for the hours that the employee would normally have worked with no loss of leave.

1. An office is administratively closed;
2. An employee is a member of a volunteer fire department or ambulance service and is called to duty during working hours;
3. Pending an investigation of charges made against an employee upon which disciplinary action could be taken; and
4. For any other purpose that has been requested in writing and approved by the commissioner.

The appointing authority will grant administrative leave hours as straight time off at a later date or as cash payment at the regular hourly rate to employees who are required to work when an office is administratively closed. If an office remains open and an employee is not able to reach the worksite, the employee must use annual leave, compensatory time, or leave without pay. Appointing authorities will inform the commissioner of all office closings.

### ***21.11 DONATION OF LEAVE--RECIPIENT AND DONOR REQUIREMENTS***

Under conditions outlined in the Career Service Regulations, faculty unit members may donate leave or receive donated leave. The Board will forward new rules to the COHE UniServ Director as they are adopted by the Career Service Commission.

### ***21.12 RESCHEDULING***

The parties recognize that faculty unit members serve in professional capacities. As such, it is reasonable for them to expect to receive some latitude in rescheduling their workload, from time to time, in order to accommodate significant outside commitments. Faculty unit members may request approval from their supervisors to reschedule their assigned responsibilities in order to pursue significant outside commitments. Where rescheduling affects a faculty unit member's regularly scheduled classes, the department head may approve the rescheduling only if the faculty unit member has made suitable arrangements, consistent with accepted academic practice, to assure that student progress in the course will not be impeded by the rescheduling. The rescheduling permitted hereunder is not a substitute for any leave otherwise available to the faculty unit member; rescheduling will not be authorized to extend leave available for purposes of consulting.

## **XXII. AGREEMENT MANAGEMENT PROVISIONS**

### ***22.1 AGREEMENT MANAGEMENT***

In order to facilitate the management of this agreement, the following agreement management committees are established.

### ***22.2 INSTITUTIONAL AGREEMENT MANAGEMENT COMMITTEES***

Each institution will establish an institutional agreement management committee (IAMCOM) made up of three (3) administrators, appointed by the institutional president, and three (3) faculty unit members appointed by the COHE chapter president, except at the special schools where the committees will be comprised of two (2) administrators who will be appointed by the superintendent and two (2) faculty unit members appointed by the COHE chapter president. For each of such committees, the appointment authorities will designate one (1) of their appointees as co-chairperson. The co-chairpersons will be jointly responsible for establishing meetings and composing agenda. Such committees will meet at least once every ninety (90) calendar days unless otherwise agreed by the co-chairpersons.

The IAMCOMs are intended to be informal forums for identification and discussion of problems of interpretation of agreement language and agreement implementation and management. Except as otherwise specifically provided in this agreement, the committees are not authorized to modify, supplement or amend agreement language. Items of business will be placed on the agenda of any meeting upon written request of any two (2) members.

The committee will report the subject and results of its deliberations to the Board, COHE, the presidents, superintendents and other IAMCOMs.

The committee will not become involved in the grievance process or in negotiations, nor be obligated to reach agreement on any item of business considered.

### ***22.3 SYSTEM-WIDE COMMITTEES***

From time to time the parties may establish such special system-wide committees as they deem convenient. Such committees shall operate under the following guidelines:

1. The committee will consist of at least four (4) members, with one half the membership appointed by COHE and one half appointed by the Board;

2. Expenses of each member will be the responsibility of the appointing party;
3. The constitution of such committees and their charges will be subject to the agreement of the Executive Director of the Board and to the statewide President of COHE; and
4. Committee reports will be submitted to the Executive Director of the Board and to the statewide President of COHE.

Under the 2011-2014 agreement, two committees will be established:

Given the existence of documentation that some highly effective faculty unit members have salaries that are less than sixty-five percent (65%) of the Oklahoma Survey Average Salary for persons of like rank and tenure status, the parties agree to establish a system-wide committee to review the operation of the salary distribution system in order to assess the factors that yielded that result and the feasibility of corrective measures.

Given reports that faculty unit members perceive themselves to have few effective options short of adversarial grievance procedures to express concerns about supervisor competence, judgment or fairness, the parties agree to establish a system-wide committee to review the feasibility and effectiveness of alternative measures to allow faculty unit members to bring concerns to the attention of senior administrators.

#### ***22.4 TOTALITY OF AGREEMENT***

All matters on which the parties have reached agreement are set forth in this document. All other understandings, representations, or agreements between the parties are of no force and effect.

During the duration of this agreement, the provisions hereof will supersede any previous or future regulations, practices, rules, policies or handbook provisions which may be in conflict with the express terms hereof. Any individual contract entered into between the Board and a faculty unit member will be subject to the provisions of this agreement.

Guidelines for intra-institutional rights and responsibilities for a particular institution may be compiled in a handbook. Faculty handbooks are neither intended, nor should they be considered, as conferring any employment rights not provided for in this agreement, and to the extent they may be so arguably interpreted, the same are void and of no effect.

#### ***22.5 PRINTING AND DISTRIBUTION OF AGREEMENT***

The Board of Regents/COHE will cooperate in preparing and printing bound copies of this agreement. The Board will arrange to have the agreement printed, and each party will pay for the



number of copies it requires. Faculty handbooks will reference where the contract can be found electronically.

## **22.6 SEVERABILITY**

If any word, phrase or provision of this agreement or any application thereof to any faculty unit member or the Board is held to be contrary to law by a court of competent jurisdiction, such word, phrase, or provision or application will be deemed valid and subsisting only to the extent permitted by law and all other words, phrases, provisions and applications will be separated and will continue in full force and effect.

## **22.7 WAIVER**

Failure of either party to require performance by the other party of any promise, condition or covenant herein will in no way affect the full right to require such performance at any time thereafter, nor will the waiver by either party of a breach of any promise, condition or covenant hereof be taken or held to be a waiver of the promise, condition or covenant.

## **22.8 MODIFICATION**

This agreement may be modified in writing upon agreement of the parties.

## **22.9 NOTICE**

1. Unless otherwise provided, where notice is required to be given, it will be sufficient, and in all other cases, if sent by campus or regular mails to the institutional office or regular business address of the person or party. The parties agree that a signed receipt acknowledging hand delivery will be provided upon request.

In the case of faculty unit members, if sent by first class mail to their last reported residential address, if delivery by electronic mail to the faculty unit members' official university electronic mail account constitutes notice as provided in ¶ 4 of this section or if hand delivered directly to the affected faculty unit member;

In the case of COHE, if sent by first class mail to the institutional COHE president at the last reported residential address, or to the office of the COHE UniServ Director, or hand-delivered to the institutional COHE president or to an employee of the Pierre COHE office;

In the case of the Board, if sent by first class mail to Board of Regents, 306 East Capitol Suite 200, Pierre, South Dakota 57501-3159, or hand-delivered to the executive director of the Board or to a clerical staff member on duty at the office of the executive director;

In the case of institutional presidents, if sent by first class mail to their respective institutional addresses, or hand-delivered to the president or to a clerical staff member on duty at the respective president's office.

2. Notice will be required only when the words "notice" or "notification" appear in this agreement.
3. In connection with disciplinary or grievance proceedings, the administration's initial notice will be by first class mail to the faculty unit member's home address.
4. In any case in which a faculty unit member, administrator, COHE, the Board or an attorney representing such person, official or entity uses electronic mail, telefacsimile or other electronic communications systems to send or to respond to a notice, the sender will be deemed thereby to have consented to the use of electronic mail to deliver any subsequent, related correspondence, including notices, to the electronic mail address, telefacsimile number or other electronic address used by the sender.
5. Notice will be effective on the date postmarked by the United States Postal Service, on the date delivered by hand or on the date sent electronically (whether by electronic mail, telefacsimile or other electronic communications system); provided that, where disruption of institutional electronic communications systems interferes with delivery of an electronic notice, the effective date of notices sent electronically will be delayed until service has been restored.

## **XXIII. LEGISLATIVE ACTION**

### **23.1 STATEMENT**

Where a provision of this agreement requires legislative action, other than appropriations, for its implementation, COHE and the Board agree to meet to discuss the drafting of such legislation, and its introduction into the legislative process. Where mutual agreement is reached on the proper form of the desired legislation and the proper introduction of such legislation into the process, then the parties will lend their support to the passage of such legislation.

## **XXIV. DUES DEDUCTION**

### ***24.1 STATEMENT***

During the term of this agreement, the Board agrees to deduct COHE membership dues, in an amount established by COHE and communicated in writing to the Board by an authorized official of COHE, from the pay of those faculty unit members in the bargaining unit who individually and voluntarily make such request on the dues deduction authorization form as depicted in Appendix F of this agreement.

Deductions will be made monthly. Annual dues will be deducted in twelve (12) equal installments for faculty unit members with twelve (12) month contracts, or whose nine (9) month compensation is paid in twelve (12) installments. Annual dues will be deducted in nine (9) equal installments for faculty unit members with less than twelve (12) month contracts. Twelve (12) month contract faculty unit members requesting dues deduction subsequent to July or less than twelve (12) month contract faculty unit members requesting the dues deduction subsequent to September will have their annual dues deducted in the remaining pay periods on a pro rata basis. The faculty unit member's dues deduction authorization form must reach the business office no later than the tenth day of the month in which the authorized dues deduction is to begin. COHE will give to the Board written notice of any change in its dues at least thirty (30) working days prior to the effective date of any such change. Only one such change may be made per calendar year.

The dues deducted will be remitted by the institution to the local COHE treasurer as soon as possible, but not later than fifteen (15) working days following the end of each pay period. Accompanying each remittance will be a list of the faculty unit members from whose salaries such deductions were made, and the amounts deducted.

The institutions will not be responsible for making deduction for dues if a faculty unit member's pay within a period, after other mandatory voluntary deductions, is less than the amount authorized. In such event it will be the responsibility of COHE to collect its dues for that pay period directly from the faculty unit member.

The institution's responsibility for deducting dues from a faculty unit member's salary will terminate automatically upon either (1) revocation of the faculty unit member's prior dues deduction authorization, or (2) cessation of the authorized faculty unit member's employment, or (3) the cessation of the authorizing faculty unit member's inclusion in the bargaining unit.

Faculty unit members who wish to cancel their dues deduction authorization will forward a completed dues deduction cancellation form (Appendix G) to the institutional payroll section prior to the first of the month in which the faculty unit member wishes a dues deduction authorization to be canceled.

The institution will inform the institutional COHE chapter president of any request for dues deduction cancellation by the fifth working day of the month in which the dues deduction is to be canceled.

COHE will indemnify, defend and hold the Board, its members, officials, agents and representatives harmless against any claim, demand, suit, or any form of liability (monetary or otherwise), including attorneys' fees and costs, arising from any action taken or not taken by the Board, its members, officials, agents or representatives in complying with this article or in reliance upon any notice, letter or written authorization furnished to the Board pursuant hereto. COHE assumes full and sole responsibility for all monies deducted pursuant to this article upon remittance to COHE. COHE will promptly refund to the Board any funds received pursuant to this article which are in excess of the amount of dues which the Board has agreed to deduct.

The Board will not deduct from the pay of any faculty unit member any COHE fines, penalties, or special assessments which are not a part of the amount of annual dues.

The Board's responsibilities under this article will terminate automatically upon the expiration of this agreement.

## **XXV. EFFECT AND DURATION**

### ***25.1 EFFECT AND DURATION***

This agreement will take effect when signed and ratified by both parties. It will remain in full force and effect through the 30th day of June 2016, except to the extent that modification is required in order to respond to changes in statute or regulation or to binding court decisions. Notwithstanding this limitation, the parties may reopen talks concerning §19.1 in the event that the Board fails to provide funds to supplement salary policy for a fiscal year

On or before the first day of March 2016, either party may notify the other that it wishes to renew or modify this agreement. In this event, the parties will meet no later than the 15th day of March 2016, to negotiate with respect to a successor agreement.

If a successor agreement has not been ratified by the 30th day of June 2016, the parties may mutually agree to extend the force and effect of this agreement.

Executed this 30<sup>th</sup> day of June 2013

SOUTH DAKOTA BOARD OF REGENTS

COUNCIL ON HIGHER EDUCATION

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Dean M. Krogman  
President, Board of Regents

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Gary Aguiar  
President, COHE  
Chief Negotiator

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Jack R. Warner  
Executive Director, CEO

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James F. Shekleton  
General Counsel  
Chief Negotiator

SDBOR Negotiating Team:

James F. Shekleton  
Samuel B. Gingerich  
Paul D. Turman  
Barbara A. Basel  
Janice K. Minder

COHE Negotiating Team:

Gary Aguiar  
Bill Adamson  
Alan Aldrich  
David Boyles  
Kathie Courtney  
Tim Martinez  
Dan Talley  
Ron Utecht