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PREFACE

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

- (a) conflict of interest (Appendix S)
- (b) Appendix Q

and of the imposed portions of the

- (c) Grievance procedures (Article VII)
- (d) Contract year (Section 8.4)
- (e) Contract fulfillment: liquidated damages (Section 8.7)
- (f) Unit member responsibilities (Section 9.1)
- (g) Workload and Technological Course Delivery (Section 9.2)
- (h) Annual Evaluation Procedure: Response time (Section 11.3)
- (i) Disciplinary procedures (Article XV)
- (j) Alternative Measures: disciplinary measures (Section 15.2)
- (k) Procedures (Section 15.3)
- (l) Performance based retention priorities (Section 16.2)
- (m) Overload, Summer Term and Self-Support: pay rates (Section 19.5)
- (n) Appendix G: Civility Code, elimination of standard lists of sample activities, and teaching technology

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 nonbargaining unit personnel employed at the institutions and the executive office of the Board who have supervisory or managerial responsibilities.
- 1.4 "Day" means calendar day, unless otherwise indicated.
- 1.5 "Department" or "division" means the smallest grouping of disciplines which are administratively organized.
- 1.6 "Executive director" means the executive director of the Board as established by SDCL § 13-49-10, or designee.
- 1.7 Wherever in this agreement reference is made to "department head," the same also includes any supervisor designated by the president to perform the functions that this agreement describes as being discharged by the department head. For an extension program, a faculty unit member's immediate supervisor is the respective program leader.
- 1.8 "Faculty unit member" means an employee of the Board included in the collective bargaining unit as defined in Appendix A.
- 1.9 Gender--any reference to gender is all inclusive.
- 1.10 Number--the singular includes the plural.
- 1.11 "Policy manual" means the compilation of rules, regulations and policies of the Board.
- 1.12 "Working days" means those days when the offices of the institution or Board are open for business.

- 1.13 "Will" is a verb having the mandatory sense of "shall" or "must." It is a word of certainty, while the word "may" is one allowing discretion.
- 1.1.14 "Board" means the South Dakota Board of Regents.
- 1.15 "COHE" means the Council of Higher Education.
- 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 "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.

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. MANAGEMENT RIGHTS

3.1 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.

3.2 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 reasonable work rules of conduct.
5. To suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause.
6. To determine the sizes and composition of the institutions in its charge and to lay off faculty unit members as provided for under Articles IV, VII and XVI.
7. 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.

3.3 LIMITATIONS

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

3.4 INCORPORATION BY REFERENCE

It is acknowledged by the parties to this agreement that there are statutes, regulations and Board policies that are, and have been, operative in the administration of the rights, entitlements and responsibilities hereunder, *i.e.*, insurance, travel, judicial or administrative redress, etc. and that such enactments, promulgations and adoptions are subject to change and repeal. To the extent such changes or repeals may occur during the term of this agreement, the results are deemed to be part of this agreement

3.5 GENERAL BENEFITS

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

IV. COHE STATUS

4.1 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.

4.2 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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 § 3-18, notification will be sent to the COHE director by registered mail. COHE shall immediately, by registered letter, so notify such member or members of the receipt of the Board charge and shall advise such member or members that their actions are governed by SDCL § 3-18. If it shall be objectively established that such Board charges have substance, COHE shall notify in writing such member or members of the opinion. Copies of such correspondence shall be forwarded to the Board's executive director.

4.9 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.

V. ACADEMIC GOVERNANCE

5.1 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.

VI. NONDISCRIMINATION, CIVIL RIGHTS AND AFFIRMATIVE ACTION

6.1 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. Therefore, the parties agree that it is desirable that civil rights and discrimination grievances should first be pursued through the grievance machinery recognized under this agreement. Nothing herein contained should be construed to preclude the right of any faculty unit member to pursue those remedies provided by SDCL § 3-18.

In those cases where the grievance claimed alleges in whole or in part prohibited discrimination, the grievance procedures should comply with Board Policy No. 4:6, attached as Appendix N. The local COHE president will receive notice where required under § 15.3. This Board policy has been incorporated in order to reduce the likelihood that grievants and parties charged will be subject to multiple hearings. Time constraints will be adjusted to conform to those established under Board policy.

6.2 RESORTING TO OTHER PROCEDURES

If any faculty unit member seeks resolution of any civil rights claim in any forum or by any set of procedures other than those established under Article VI of this agreement, whether administrative or judicial, the institution or Board will be under no obligation to proceed any further with those issues unless the grievant is under an obligation to exhaust administrative remedies in order to bring such other action. Where the civil rights issues are, however, combined with other issues required to be processed under the provision of Article VI, such latter issues will proceed through the process provided by such article. The act of filing an action or claim in any other forum in order to avoid violating a time limitation will not be considered a violation of the intent of this section.

VII. CONTRACT DISPUTES

PART A--FACULTY GRIEVANCE RIGHTS

7.1 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.

7.2 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 shall provide COHE with a written statement of any resolution.

7.3 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. Any other grievances authorized by law, and which do not constitute a grievance under this definition, may be processed in the forum designated for the hearing such grievances.

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 shall 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.

7.4 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.

7.5 CONFIDENTIALITY

The grievance proceedings will be maintained as confidential, subject only to the necessity of the parties to prepare their cases. All meetings and conferences will be held in a confidential setting.

7.6 TIME LIMITATIONS

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.

7.7 STEPS FOR PROCESSING A GRIEVANCE

1. Step 1

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.

2. Step 2.

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.

Where a submission is untimely or where a faculty unit member fails to assert a specific factual basis for a complaint or fails to identify any specific term or provision of this agreement that would have been misinterpreted, misapplied or violated based upon such facts, 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 assert a specific factual basis for a complaint or fails to identify any specific term or provision of this agreement that would have been misinterpreted, misapplied or violated based upon such facts, 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.

If the president, or designee, concludes that the defect has been cured, 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, president, or designee, will notify the grievant of that conclusion and its basis. No further proceedings will be required at Step 2 or Step 3.

3. Step 3, General Procedures

If, at the time of the notice and filing of the Step 2 grievance form, as above provided, grievant elects to invoke the intervention or assistance of a standing peer faculty committee, designated and constituted by COHE at the time of the notice, grievant shall so note on the grievance form, or that right shall be waived.

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. Based on the investigative results of such investigation, and the recommendations that may be generated by the investigative process employed, the president shall 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 shall schedule a conference with the grievant, which shall be held no sooner than four (4) days after the proposed decision shall be delivered to the grievant or his office. At the time of the delivery of the proposed decision, grievant shall 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 § 7.4, 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.

Optional step 3 procedures for certain grievances involving termination of employment.

The special procedures set out hereunder are available only in three circumstances: where the grievance arises from a dismissal for cause, a termination of a tenure contract or a reduction in force.

If, at the time of notice and filing of the Step 2 grievance form, as above provided, grievant elects to invoke the intervention or assistance of a faculty hearing panel, grievant will so note on a grievance form 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 in § 7.7(3).

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 of proof as set out in § 7.8(7). The panel may request legal advice in determining applicable due process standards in the matter before it. The institution will be responsible for necessary arrangements to provide competent, disinterested legal advice.
- b. The hearing panel will be made up of three faculty members, one selected by the president of the institution or a designee, one selected by the local COHE president and a third selected by the first two. 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. 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 and the local COHE president. 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.

4. Step 4

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 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.

5. Step 5

- a. If no resolution is achieved within the time herein last provided, the executive director shall 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. If a matter presents contested questions of fact, the executive director shall, within the ten day period allowed for making this determination, refer the formal grievance to a hearing examiner who, within ten (10) days after his designation and appointment, shall set the matter down for full hearing to be held no earlier than seven (7) days and no later than fifteen (15) days after his notice of appointment has been postmarked to COHE.

Such hearing shall 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), to the extent not limited by contract or law. 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.

- b. If the executive director determines that there are no contested facts requiring referral to a hearing examiner, the executive director shall, within the ten 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.
- c. 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.

7.8 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 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, shall rest 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 of proof will rest upon the administration to the extent required by law. In all other cases, the burden of proof will rest upon the grievant.
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

7.9 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 shall be scheduled and held within fifteen (15) days of the notice. If the dispute involves primarily one institution, the conference shall 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 shall 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 shall 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 shall preclude individual faculty unit members from processing their individual grievances under Part A.

VIII. INDIVIDUAL CONTRACTS

8.1 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.

8.2 TERM CONTRACTS

A term contract may be either part-time or full-time and shall 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 shall 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. The parties acknowledge, nevertheless, that, once a decision has been made not to reissue a subsequent term contract to such faculty unit members, professional courtesy requires that they be accorded an opportunity to assure themselves that the rationale and factual basis for the decision have been reviewed formally and have been found satisfactory.

To give effect to this professional courtesy, the parties agree that a faculty unit member on a term contract who has received eight or more consecutive full-time contracts may obtain a review of the decision not to reissue a subsequent contract. The faculty unit member may challenge the decision through the procedures that govern the termination of employment, including, at the option of the faculty unit member, a hearing before a faculty hearing panel. The review provided hereunder will not constitute a grievance proceeding or a contested case, but the faculty unit member will be entitled to receive written responses when such would be required under grievance procedures, including findings and conclusions supporting the determination reached upon completion of the review. The institution will not bear a burden of proof, except when required by law in a proper case to show that its decision gave effect to the faculty unit member's entitlements under the first amendment to the United States Constitution and under state and federal antidiscrimination statutes. The determination reached at step 3 will be final and not subject to appeal to the department of labor.

The right to review created hereunder shall not be interpreted to extend any limitation inherent in, or incidental to, a term contract as defined in this section. In particular, the right of review shall not give rise to an expectation of continued employment beyond the expiration of the term contract; nor may the creation of the right of review be deemed to cloak a term contract with any of the characteristics or privileges of tenure track or tenure contracts.

8.3 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 shall be of a definite term, not to exceed one fiscal year. A tenure track contract may be renewed by the Board, subject to procedures for nonrenewal of tenure track contracts set forth in § 8.6. 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 a tenure contract.

8.4 CONTRACT YEAR

The nine-month individual appointment contract period for faculty unit members will extend from August 15 to May 19, from May 1 to January 31, or from December 15 to September 15, 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 shall 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 shall be voluntary, with the exceptions noted, and there shall be no reprisals for nonattendance.

Faculty unit members shall 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.

8.5 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, and the provisions of this agreement;
8. Tenure status;
9. Prior service credited for promotion or tenure;-and
11. 10. Salary.

8.6 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 to nonrenew 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 written notice of nonrenewal, the faculty unit member's immediate supervisor will provide the opportunity for a meeting with the faculty unit member to apprise the faculty unit member of the proposed 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 immediate supervisor may arrange to have present a witness or a representative.

In order to facilitate the relocation of faculty unit members who are not to be rehired, the administration agrees to provide notice of its intent not to rehire any faculty unit members serving under a tenure track contract. The notice will state the reasons for the decision and will be given in accordance with the following schedule:

1. A faculty unit member who has completed less than two (2) academic years of service under a tenure track contract shall receive 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. Where the decision not to renew a tenure track contract is based upon concerns with the faculty unit member's performance, this clause may be invoked only if the institution has provided the faculty unit member with a written evaluation of performance by the end of February, as required under § 11.2, unless the failure to complete the evaluation by that time is a function of the action or inaction of the person being evaluated.

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 institution shall provide the faculty unit member with written notice of nonrenewal before December 15 of the current year of employment. 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 shall provide the faculty unit member 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. The faculty unit member so notified may file a request for reconsideration with the president within ten (10) working days of receipt of the notice of nonrenewal. The president, after reviewing the request, shall notify the faculty unit member, within ten (10) working days, of the final institutional recommendation to be forwarded to the Board.
3. If a faculty unit member has completed at least four (4) years of service under a tenure track contract, the institution shall provide the faculty unit member with 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 written notice of nonrenewal shall receive a term contract for the term of one (1) academic year, effective the subsequent academic year. The faculty unit member may file a request for reconsideration and conference with the president within ten (10) working days of receipt of the notice of nonrenewal. The president, after reviewing the request and holding the conference, shall notify the faculty unit member within ten (10) working days of the final institutional recommendation to be forwarded to the Board. The faculty unit member may file with the president a statement which will accompany the institutional recommendation to the Board. The Board will consider the institutional recommendation and any statement at its next regularly scheduled meeting and shall issue its binding decision which will be final at the end of ten (10) days from the date of issuance unless such faculty unit member submits a resignation prior thereto.
4. Faculty unit members first employed on tenure track contracts after September 1, 1991, who are nonrenewed may be granted no more than one subsequent term contract. Nothing in this article is intended to modify the rights and limitations contained in § 7.8(2) hereof.

If the administration is late in providing the 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).

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 § 13.2.

5. 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 §§ 8.6(1) through 8.6(4), the faculty unit member may be nonrenewed as provided therein. If the completion date is later than the nonrenewal dates specified in §§ 8.6(1) through 8.6(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 shall end upon completion of such nine-month appointment.

8.7 CONTRACT FULFILLMENT

Full-time faculty unit members who after their second year of employment resign their individual contract 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 shall 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 shall 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 school.

When a resignation is received less than thirty days prior to the date when unit members are scheduled to report to the institution, 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, 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.

8.8 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.

8.9 AGREEMENT TO ASSIGN INTELLECTUAL PROPERTIES WHEN REQUIRED UNDER BOARD POLICY

At the time of hire, each faculty unit member shall execute an agreement to assign to the employing institution intellectual property rights to properties created in the course of their employment in accordance with the policies adopted by the Board and incorporated into the collective bargaining agreement. The obligations undertaken pursuant to the agreement to assign will be continuing and will survive the termination or interruption of employment or transfer within an institution or between institutions. The obligations will comprise an essential condition of employment.

The agreement will acknowledge the Board's right to change its Intellectual Property Policy at any time in such manners as may be provided under law, including collective bargaining negotiations when required under SDCL ch 3-18, which may consequently alter unit member rights and obligations with respect to properties that may be invented or authored. It will include an undertaking that, if such policy changes require the execution of a new agreement to assign intellectual property rights, the faculty unit member will accept and execute such documents when requested to do so.

IX. UNIT MEMBER RESPONSIBILITIES

9.1 UNIT MEMBER RESPONSIBILITIES

Upon accepting an appointment, a faculty unit member generally assumes responsibility in three (3) areas: teaching, research and scholarship, and service unless otherwise specified under item 6 of § 8.5; provided that faculty unit members who have been assigned to full thirty credit hour undergraduate instruction load or its equivalent may be relieved of some responsibilities for research and scholarship. Faculty unit members who have been relieved of some responsibilities for research and scholarship remain 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. A representative list of duties within these areas is found in Appendix G. In addition, a faculty unit member is expected to perform assigned responsibilities in accordance with recognized standards of professional ethics and departmental policy.

9.2 WORKLOAD AND TECHNOLOGICAL COURSE DELIVERY

The 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. The parties recognize that in some instances development of materials for use in telecommunicated instruction or preparation of class presentations may require additional time or resources. The department head will consult with faculty unit members to determine, case by case, whether and to what extent particular telecommunications assignments should be treated as requiring adjustment in standard workload expectations under the respective institutional workload policies.

COHE and the Board recognize the value of workload policies which regulate workload based on credit hours, contract hours, preparation, clinical work, research, service and other factors deemed appropriate by the parties. The standard two-term workload is presumed to require thirty credit hours of undergraduate instruction, or its equivalent, per academic year. Reasonable release time will be granted to faculty members who actively engage in research, scholarship or creative artistic activity or who actively pursue professional service activities related to their disciplines; ordinarily reasonable release time will involve six credit hours of undergraduate instruction, or its equivalent, per academic year. Institutions may adjust this presumed requirement to assure that faculty unit members have adequate time to address their responsibilities for research and scholarship, or service, or as deemed necessary in light of the nature of the instruction that faculty unit members undertake. Institutional workload policies may allow faculty unit members to carry light course loads in one term, provided that the course

load for the academic year conforms to the thirty credit hour requirement. The workload policy for each institution will be in Appendix J to this agreement and 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.

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.

9.3 SYSTEM WORKLOAD COMMITTEE

A system workload committee will be established for the purpose of reviewing and discussing workload and making recommendations to the parties. This committee will consist of members appointed by the Board and members appointed by COHE. Any recommendations or unresolved issues will be submitted to the parties.

9.4 WORKLOAD--LIBRARIANS

Faculty unit members assigned to positions in the various institutional libraries shall 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. Faculty unit members assigned to library positions with teaching responsibilities will have their class time and class preparation time counted into their regular work week.

All faculty unit members assigned to library positions will enjoy the same rights and must maintain the same professional expertise and responsibility as exercised by other faculty unit members by this agreement. Librarians are responsible for sufficient and adequate provision of library services to support the mission and goals of each institution. The determination of the adequacy of said services rests with the president of each institution and the librarians' immediate supervisor. Librarian faculty unit members are expected to perform assigned responsibilities in accordance with recognized standards of professional ethics and departmental policy. Any failure of librarian faculty unit members to perform according to said standards will subject said members to discharge for cause or other disciplinary measures in accordance with Article XV of this agreement.

9.5 PRIVATE PRACTICE AND CONSULTATION

A higher education faculty unit member who enters into private practice, private consulting, additional teaching or research, or other activity for which additional compensation is received during the faculty unit member's contract period and during the period of this agreement, and excepting as next provided, will not contract to devote more than four (4) days per month on such activity if said activity requires the faculty unit member's absence from duties. Such consultation and related activity privileges are cumulative to a maximum of six (6) days, with all accumulated time to terminate with the end of the faculty member's contract period. The activity for which the individual is released must be substantially and significantly related to assigned duties. Such activity must promote state and local economic development or must benefit the professional discipline and development of the individual, all as determined by the president under such guidelines and restrictions, as established from time to time by the Board. Release time is subject to the following conditions:

The faculty unit member will:

1. Apply in writing to the president, on established forms, for written approval before engaging in such activity or contracting to do so;
2. Report to the president through administrative channels the activity, duration of the activity, and the number of hours which were devoted to the additional activity;
3. Limit and restrict such activity so that it does not interfere with assigned responsibilities;
4. Reimburse the institution at the institutionally established rate for any institutional space, equipment, personnel, and materials used for such additional activity.

9.6 OUTSIDE EMPLOYMENT

The statutory provisions regarding dual employment are at SDCL §§ 3-8-4 to 3-8-4.3. The Board and the institution will not infringe upon a faculty unit member's privilege to engage in consulting or other employment outside the institution's regular day class schedule during the academic year, so long as the other employment does not adversely affect or conflict with the faculty unit member's performance of his primary responsibilities to the institution. In the event of any question about such conflict, the faculty unit member will have the burden of proving that there is no conflict. Faculty unit members who engage in outside employments or other endeavors for profit that relate to their academic expertise or that emphasize their institutional affiliation will report these outside activities as part of their annual performance evaluation.

9.7 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.

9.8 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.

X. ASSIGNMENT, REASSIGNMENT AND TRANSFER

10.1 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.

10.2 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.

XI. EVALUATION

11.1 GENERAL PROVISIONS

Faculty unit member evaluation is a joint concern of the faculty and the administration. The purpose of the evaluation will be to:

1. Promote positive communication between faculty and administration.
2. Increase awareness of institutional program objectives and needs.
3. Provide information for decisions on professional training, staff improvement programs and those conditions which promote quality performance.
4. Provide basic information for personnel decisions such as discipline, contract renewal, salary and pay matters, tenure, and promotion.

The administration is responsible for implementation of the procedure and the evaluation process.

11.2 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. All faculty unit members will be evaluated annually. The annual evaluation will cover relevant activities during the calendar year ending with the close of the fall semester. The evaluation will be conducted by each faculty unit member's department head and will include student opinion surveys as described in § 11.4 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.

The review of applicants for promotion and tenure will satisfy the annual performance evaluation requirement; except that the faculty unit member and the department head will discuss the faculty unit member's planned activities and professional objectives for the following year as provided in § 11.2(4).

3. The department head shall, upon written request from the faculty unit member being evaluated, apprise the faculty unit member in writing of the faculty unit member's ranking relative to other faculty unit members being evaluated by the department head and of the ranking system utilized, if such ranking exists. Any ranking of faculty unit members will not become public information.
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 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; and service. Correspondence and memoranda between the faculty unit member and the department head relating to workload or assignment shall be attached to the evaluation document and shall be considered as part of the evaluation process. Upon request to the department head, a faculty unit member shall receive in writing the guidelines and performance expectations intended to be used for the performance and evaluation of the faculty unit member.

11.3 ANNUAL EVALUATION PROCEDURE

The following procedure will be used for conducting annual performance evaluations, except that, in the case of faculty unit members who submitted applications for promotion or tenure, the process will be limited to the discussions contemplated under §§ 11.1(4) and 11.2(1). The evaluation will be placed in the faculty unit member's personnel file and will address:

1. Establishment of responsibilities for each faculty unit member. During the preceding year's annual performance appraisal or before the end of the second week of classes in the first academic term of the faculty unit member's current appointment, based on the workload goals of the department, the faculty unit member and department head will discuss what, consistent with institutional policies and subject to the concurrence of the dean and vice president for academic affairs, the department expects the faculty unit member to do with respect to teaching and academic advising; research, scholarship or creative activity; and service. Such discussion will be repeated whenever a significant change in workload is anticipated. In the event of a disagreement in the percentages, 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 shall unilaterally assign responsibilities to the faculty unit member.

2. Faculty unit member self-evaluation. The faculty unit member will review his/her factual information listing the faculty unit member's accomplishments for the year. Based on this information, the faculty unit member will complete Part A of the Professional Staff Evaluation Form (Appendix F). For faculty unit members serving under fall-spring appointments or spring-summer appointments, the evaluation form and any attached comments and materials shall 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 shall 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.
3. Assessment of performance by the department head and indication of progress toward promotion, tenure, contract renewal, or augmentation monies (PIF, Merit, Critical, Discretionary, etc.). Based on observations of the faculty unit member's performance in each of the areas of teaching and academic advising; research, scholarship or creative activity; and service; and the informal discussion described above, the department head will complete the remainder of the evaluation form (Part B of Appendix F). Observations may include, but do not require, classroom observations.

Included in the evaluation must be comments about the faculty unit member's performance in each of the areas of teaching and academic advising; research, scholarship or creative activity; and service. 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 award of tenure. Such comments shall 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 shall not be deemed to give rise to a contractual entitlement to favorable action, nor shall they be deemed to require unfavorable action, on subsequent applications for promotion or tenure. Such comments shall 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 augmentation monies 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.

4. Faculty unit member response to department head's assessment of performance. 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 § 11.3(3). All additional comments or recommendations must be submitted by March 15.

5. Review and recommendation by the vice president/dean. The vice president/dean will review the completed evaluation and make appropriate comments to the president about contract renewal, augmentation monies, promotion, or tenure, and/or performance. Copies of any comments made by the vice president/dean will be sent to the faculty unit member five (5) working days before the vice president/dean 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 president. This process must be finished before May 1.

11.4 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 shall 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. Especial 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. Institutionally selected instruments shall continue to be used until such time as the Board has designated a system instrument.
6. Student opinion surveys shall 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 shall 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 shall be performed at the discretion of the administration or if requested by the faculty unit member. Any investigation of deficiencies shall 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 shall 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.

11.5 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. 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 shall consider the dispute and, within twenty (20) working days following the request, submit its recommendation for affirmance, reversal, or modification. Such recommendation shall 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.

11.6 FILING OF EVALUATION DOCUMENTS

The statistical profile and narrative summary of the student opinion surveys required by § 11.3 will be attached and made a part of the performance evaluation prepared in accordance with the procedures set forth in § 11.2. 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.

11.7 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.

XII. RANK AND PROMOTION

12.1 MINIMUM RANK QUALIFICATIONS FOR EMPLOYMENT 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 shall 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: (Nontenurable)

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

ASSISTANT PROFESSOR: (Nontenurable)

1. Earned master's degree and three (3) years of successful college teaching or research experience in appropriate fields (or appropriate equivalent experience). For faculty unit members whose initial appointment is for the 1982-83 fiscal year or thereafter, thirty (30) additional semester hours of graduate credit will be required; 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.

ASSOCIATE PROFESSOR: (Tenurable)

1. Earned doctorate and five (5) years of successful college teaching or research experience in appropriate fields (or appropriate equivalent experience); or
2. 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 college teaching or research experience in appropriate fields (or appropriate equivalent experience);
3. Evidence of scholarship.

PROFESSOR: (Tenurable)

1. Earned doctorate and ten (10) years of successful college teaching or research experience in appropriate fields (or appropriate equivalent experience); or
2. A postgraduate degree, other than a doctorate, recognized by the institutional administration as terminal for the faculty unit members' discipline, and twelve (12) years of successful college teaching or research experience in appropriate fields (or appropriate equivalent experience);
3. Evidence of scholarship.

12.2 MINIMUM PROMOTION ELIGIBILITY CRITERIA

In addition to the minimum rank qualifications for employment and promotion stated in § 12.1, the minimum eligibility criteria for promotion in rank will be:

Instructor to Assistant Professor:

Three (3) years in rank, including at least two (2) at the institution; high level of performance in the areas of responsibilities commensurate with promotion to the rank of assistant professor.

Assistant Professor to Associate Professor:

Four (4) years in rank at the institution; high level of performance in the areas of responsibilities commensurate with promotion to the rank of associate professor.

Associate Professor to Professor:

Five (5) years in rank at the institution; 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, e.g., an assistant professor who had one prior year of university level teaching experience when first hired, will be eligible to apply for promotion during the fourth year of service in rank at the institution, an assistant professor who had no teaching experience when hired will be eligible to apply for promotion during the fifth year of service at the institution, as per § 12.1.

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 § 13.1, though the grant of prior service credit towards tenure pursuant to § 13.2 will operate to reduce the service requirements for promotion under both this section and § 12.1, by the same number of years granted towards tenure.

12.3 EXCEPTIONS

Upon the recommendation of the institutional president, the Board may grant exceptions to the minimum rank qualifications (§ 12.1) or the promotion eligibility criteria relating to the minimum number of years in rank in the institution (§ 12.2), or both. When time and circumstances reasonably permit, requests for exceptions to the minimum rank qualifications or promotion eligibility criteria shall be reviewed under the procedures set out in § 12.5. 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 and/or professional qualifications are notably excellent and sufficient to offset the lack of a required degree or years in rank.

12.4 PROMOTION AND TENURE COMMITTEE FORMULATION

The institutional promotion and tenure committee will consist of elected members of the faculty unit and members of the administration. The composition of the committee will be: fifty percent (50%) tenure track and tenured faculty unit members; fifty percent (50%) administrators. Each president will determine the total number of members for the institutional promotion and tenure committee at each institution.

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. Election procedures must provide all faculty unit members with equal opportunities to nominate candidates for committee membership, to be nominated for committee membership to elect committee members, and provide all tenure track and tenured faculty unit members 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 are encouraged to recuse themselves whenever they feel that their ability to make a disinterested judgment might be called into question by a candidate or by other members of the university community.

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.

Administrators will be appointed by the president.

At USD and SDSU there will be, in addition to the institutional promotion and tenure committees, college or school promotion and tenure committees. At all institutions, departments or other appropriate administrative units may petition the president for the creation of a promotion and tenure committee for the respective 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. Tenure track and 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 tenure track and 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.

12.5 PROCEDURES FOR PROMOTION RECOMMENDATIONS

Faculty unit members who wish to be considered for promotion will notify their immediate supervisor in writing no later than October 5. Such notification will allow the promotion and tenure committees, instituted under § 12.4, access to the faculty unit member's personnel file. It is the responsibility of the faculty unit member to prepare, assemble and submit no later than October 5 all favorable documentation which is appropriate and upon which the faculty unit member relies for favorable action. Each institution may stipulate certain desired elements or format for the documentation, which shall be made available to faculty unit members in written form. This documentation must accompany the request to the immediate supervisor for consideration. The immediate supervisor, and any other administrators, 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/school level or institutional level, whichever is applicable, no later than 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 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 January 15 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.

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 March 15 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 1 of a written request, within fifteen (15) working days of the request provide reasons in writing for the decision. The reasons given shall be substantive in nature and shall transcend the mere fact of the recommendations by the committees by including the opinions of the president from the information available to him/her. The faculty unit member may file a written request for reconsideration within ten (10) working days of receipt of the president's reasons for denial of promotion. The request should specify the grounds and considerations that the faculty unit member believes warrant a different result. The president, after reviewing the request, shall notify the faculty unit member in writing, within ten (10) working days, of the final institutional recommendation to be forwarded to the Board and of its basis. The rights to obtain reasons and to request reconsideration shall not expand the rights and limitations under § 7.8.

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

XIII. TENURE

13.1 TENURE APPOINTMENT

A tenure contract may be extended to a faculty unit member in accordance with the provisions of this article. It 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). 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. 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. 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.

13.2 MINIMUM TENURE ELIGIBILITY REQUIREMENTS

Faculty unit members who have achieved the rank of Associate Professor, or who are then applying for promotion to that rank, may apply for tenure during their sixth year of tenure track service. Tenure track service should be based upon full-time academic year appointments or their equivalents. Part-time experience may be recognized on a pro-rata basis.

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 shall 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 shall retain tenure in an intrainstitutional 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.

13.3 PROCEDURES FOR TENURE RECOMMENDATIONS

Faculty unit members who wish to be considered for tenure will notify their immediate supervisor in writing no later than October 5. Such notification will allow the promotion and tenure committees, instituted under § 12.4, access to the faculty unit members personnel files. It is the responsibility of the faculty unit member to prepare, assemble, and submit no later than October 5 all favorable documentation which is appropriate and upon which the faculty unit member relies for favorable action. Each institution may stipulate certain desired elements or format for the documentation, which shall be made available to faculty unit members in written form. The immediate supervisor, and any other administrators, 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/school level or institutional level, whichever is applicable, no later than 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 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 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.

The president will make the institutional recommendation to the Board by April 1. 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 March 15 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 1 of a written request, within fifteen (15) working days of the request, provide reasons in writing for the decision. The reasons given shall be substantive in nature and shall transcend the mere fact of the recommendations by the committees by including the opinions of the president from the information then available to him/her. The faculty unit member may file a written request for reconsideration within ten (10) days of receipt of the president's reason for denial of tenure. The president, after reviewing the request, shall notify the faculty unit member in writing, within ten (10) working days, of the final institutional recommendation to be forwarded to the Board and of its basis. The rights to obtain reasons and to request reconsideration shall not expand the rights and limitations under § 7.8.

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.

13.4 EXCEPTIONS

Upon request of the president, the Board may approve exceptions to the minimum rank qualifications in accordance with § 12.1 or to the length of service eligibility criteria state in § 13.2. When time and circumstances reasonably permit, requests for exceptions to the minimum rank qualifications shall be reviewed under the procedures set out in § 12.3.

XIV. ACADEMIC FREEDOM

14.1 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.

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

15.1 PREAMBLE

The credibility and effectiveness of faculty and institutions are derived from the high standards of conduct and integrity demonstrated by those who generate, refine, and transmit knowledge. To protect and maintain the status of the profession, criteria and procedures for just cause actions are needed to provide for the rare occasions when established standards of conduct are violated. Just cause requires quick and efficient action when the standards and reputation of institutions and their faculties are jeopardized; it also requires meticulous due process to protect the rights of individuals and to guard against arbitrary and heedless actions. The burden of proof for any just cause action rests with the administration; any action is subject to the due process requirements specified in Articles VI and XI of this agreement.

15.2 ALTERNATIVE MEASURES

With full recognition for the foregoing, the Board may discipline faculty unit members for performance deficiencies or unacceptable conduct, as defined in Appendix E. Taking into consideration the nature of the performance deficiencies or unacceptable conduct, past service, scholarly achievements or other mitigating circumstances, any performance deficiencies, whether or not identified in evaluations conducted pursuant to Article XI, or unacceptable conduct, as herein referenced and attached, may result in any of the following alternative actions:

1. Warnings;
2. Warnings to be filed with the personnel file of the faculty unit member;
3. Required counseling or treatment at the cost of the faculty unit member;
4. Temporary suspension from duties with, or without, loss of pay commensurate therewith;
5. Reassignment;
6. Demotion;
7. Discharge.

15.3 PROCEDURES

Except in the case of all warnings under subparagraph 1 and 2 above, if the administration determines that probable cause for discipline exists, the faculty unit member will be furnished written notice of the allegation supporting the determination and the administration's 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 of the disciplinary action it will pursue. 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 designated to any other person.

The administration may suspend a faculty unit member with pay, pending notification of the discipline to be imposed, if the character of the charges and the nature of the conduct warrant such action. Suspension may be without pay where the nature of the misconduct involves injury to or gross interference with others or otherwise compromises the public's confidence in the ability of faculty unit member to discharge the responsibilities of his or her position.

In all cases, the burden to prove the charges will rest with the administration.

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. An effort will be made to provide notice of intent to utilize the provisions of this article, as soon as practicable.

In addition to the rights afforded a faculty unit member under the provisions of Article VII, Contract Disputes, of this agreement, wherein the burden of proof will rest upon the Board, every faculty unit member whose contract will be significantly modified, terminated, not renewed, lengthened or shortened, shall be afforded, on written notice to the Board to be mailed no later than fifteen (15) days from the administration's notice of intention, an opportunity for an appropriate hearing before the Board in executive session. Such hearing shall be held at the next scheduled monthly meeting of the Board following the running of the fifteen (15) day notice period, or at a specific meeting to be scheduled, noticed and held no earlier than fifteen (15) days following the administration's notice of intended reduction as above provided.

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. The retention priorities outlined in this section will govern to the extent that faculty unit members will only be entitled to preference when their performance equals or exceeds that of persons in lower retention categories as documented

on the annual performance reviews for the three most recent years, if available, and taking into account differences in performance expectations among ranks.

- 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.
2. Among faculty unit members having equal retention priority the faculty unit member with greatest seniority will have retention priority over colleagues whose performance ratings are lower. 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 two (2) 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.

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. 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 shall 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.

18.2 OFFICE SECURITY

The institution will furnish the faculty unit member a lockable desk or a lockable file. 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 TELEPHONE SERVICE

Each institution will provide access to telephone service for faculty unit members under the general guidelines that institutions at which needs are demonstrated will provide improved service and privacy of conversations with consideration given to budgetary constraints and departmental priorities.

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 shall 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

Higher education faculty unit members may select the materials and texts for the courses for which they are professionally responsible, provided that these are consistent with the course descriptions and not in conflict with the continuity of the curriculum. Every reasonable effort will be made to provide adequate equipment and materials required for each approved course of study.

XIX. SALARY PROVISIONS

19.1 SALARY PROVISIONS

Allocation priorities applicable to all sums appropriated to support salary increases for continuing faculty unit members for all successive fiscal years, 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%.
 - e.
- 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, i.e., teaching, scholarship and service, 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. 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 | 1.05 |
| Associate Professor | 1.04 |
| Assistant Professor | 1.03 |
| Instructor | 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 points for each individual unit member within a rating group will be added together to form the grouping's total salary points.

- viii. The total 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 performance salary points 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. 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.
- 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
 dollars distributed pursuant to § 19.6

market increase (identifying the percentage of the Oklahoma salary survey 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

Each institution 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, faculty unit members will receive an explanation of how their individual salary increases were determined. The notification shall 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 average salary that was employed in calculating the market raise.
- 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.

19.2 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 shall 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 INCREMENTS

A faculty unit member who is to be promoted will receive a promotion 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 promotion increments:

Instructor to Assistant Professor -- 6%
Assistant Professor to Associate Professor -- 8%
Associate Professor to Professor -- 10%

19.5 OVERLOAD, SUMMER TERM AND SELF-SUPPORT

During any academic term in which faculty unit members teach four courses of undergraduate instruction, or three courses if at least one course is a graduate course, they may be offered additional course assignments to be taught on overload, or self-support bases. 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 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.

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 request an opportunity 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. 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 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 HIGHER EDUCATION SALARY COMMITTEE

A joint COHE/BOR standing committee shall be formed for the purpose of identifying warranted salary adjustments among faculty unit members. Such committee shall be formed and shall operate under the following guidelines:

1. The committee shall consist of four (4) members; two (2) appointed by COHE and two (2) appointed by the Board;
2. Expenses of members shall be the responsibility of the appointing parties;
3. The committee, in consultation with local administrations and local COHE organizations, will investigate roles that market data and other appropriate factors might play in the determination of salary increases for individual faculty unit members;
4. By October 1 of each year the committee will recommend to the executive director of the Board and the COHE UniServ director a model or models for the distribution of salary dollars.

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. The student association on each campus may appoint a student observer to be present at committee meetings. Plans and policies so developed shall 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 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 shall 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.

19.9 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 shall so provide and existing policies and coverages are deemed amended accordingly.

20.3 FRINGE BENEFITS COMMITTEE

A committee will be established to conduct an annual review of fringe benefits provided to faculty unit members and make recommendations to the executive director and COHE concerning fringe benefits. The committee will consist of two (2) faculty unit members appointed by COHE and two (2) administrators appointed by the Board. Meetings of this committee will be scheduled by mutual agreement.

The committee will make its report to COHE and the Board not later than October 15, and May 15 of each subsequent year.

20.4 EARLY RETIREMENT PROGRAM

The parties agree to charge a special committee to review the current legislation in order to determine how to reinstitute an early retirement program for faculty unity members. When the necessary legislation is passed, the parties intend that the program shall be available upon the effective date of that legislation, notwithstanding any other term or condition herein.

20.5 PHASED RETIREMENT PROGRAM

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

- a. 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
- b. 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.

20.6 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, shall accrue annual leave credit on the following schedule for each month of service:

<u>Years of Service</u>	<u>Rate of Accrual</u>	<u>Maximum Allowed</u>
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 may be granted sabbatical leave after six (6) or more consecutive years of full-time employment in the system. A faculty unit member 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 shall 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 § 19.1(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 shall 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 shall 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 shall 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 shall 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 cochairperson. The cochairpersons 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 cochairpersons.

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

Each system-wide committee provided by this agreement will be constituted by October 1 and will complete its duties prior to April 1. The committees included in this provision will be the Fringe Benefits Committee, Salary Committee, System Workload Committee, and any other system wide committee(s) agreed to by the parties.

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 intrainstitutional 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

Unless otherwise provided, where notice is required to be given, it will be sufficient:

1. In the case of faculty unit members, if sent by certified mail to their last reported residential address or if hand delivered directly to the affected faculty unit member;
2. In the case of COHE, if sent by certified mail to the institutional COHE president at the last reported residential address, or COHE, 3710 S. West Avenue., Sioux Falls, SD 57105, or hand-delivered to the institutional COHE president or to an employee of the Sioux Falls COHE office;
3. In the case of the Board, if sent by certified 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;
4. In the case of institutional presidents, if sent by certified mail to their respective institutional addresses, or hand-delivered to an employee of the respective president's 's office;

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.

Notice will be required only when the words "notice" or "notification" appear in this agreement.

Where notice is required to be given by a date certain, it will be effective if postmarked by the United States Postal Service by midnight of the day prior to the specified date. Where notice is required to be given within a certain time period, it will be effective if postmarked by the United States Postal Service by midnight of the last day of such time period.

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 H 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 I) 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 2008, 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 2008, 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 2008, to negotiate with respect to a successor agreement.

If a successor agreement has not been ratified by the 30th day of June 2008, the parties may mutually agree to extend the force and effect of this agreement.