

**SOUTHERN OHIO EDUCATIONAL SERVICE CENTER**

**403(b) RETIREMENT PLAN**

Restated and Amended as of July 1, 2008

## TABLE OF CONTENTS

Parties to Agreement . . . . .	3
Recitals . . . . .	3
Article 1. Definitions . . . . .	4
Article 2. Participation and Contributions . . . . .	9
Article 3. Roth 403(b) Contributions . . . . .	13
Article 4. Employer Contributions . . . . .	16
Article 5. Limitations on Amounts Deferred . . . . .	20
Article 6. Loans . . . . .	23
Article 7. Benefit Distributions. . . . .	26
Article 8. Rollover to the Plan and Transfers . . . . .	32
Article 9. Accounts and Investment of Contributions . . . . .	39
Article 10. Administration. . . . .	42
Article 11. Amendment and Plan Termination . . . . .	46
Article 12. Pre-Authorization of Benefit Claims; Claims Procedures . . . . .	47
Article 13. Miscellaneous. . . . .	48
Execution . . . . .	52

**SOUTHERN OHIO EDUCATIONAL SERVICE CENTER 403(b) RETIREMENT  
PLAN**

Restated and Amended as of July 1, 2008

PARTIES TO AGREEMENT

THIS AGREEMENT, restated and amended effective as of July 1, 2008, is made by and between Southern Ohio Educational Service Center and the Participants who are parties to this Agreement by reason of a Salary Reduction Agreement entered into pursuant to the provisions of the Southern Ohio Educational Service Center 403(b) Retirement Plan (the "Plan") and/or the contribution by Southern Ohio Educational Service Center of amounts to the Plan on behalf of such Participant.

RECITALS

WHEREAS, the Plan was established by Southern Ohio Educational Service Center to provide retirement benefits for employees of Southern Ohio Educational Service Center; and

WHEREAS, Southern Ohio Educational Service Center is an eligible public education organization under section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended, and is authorized to offer a defined contribution tax-deferred annuity plan under section 403(b) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Plan is intended to satisfy the requirements of section 403(b) of the Internal Revenue Code of 1986, as amended, as a defined contribution tax-deferred annuity plan of a governmental entity; and

WHEREAS, this is the restatement and amendment of the Southern Ohio Educational Service Center 403(b) Retirement Plan, effective as of July 1, 2008;

NOW, THEREFORE, effective as of July 1, 2008, in consideration of the payments provided for and the mutual promises set forth, the parties agree as follows:

## ARTICLE 1.

### DEFINITIONS

Unless otherwise clearly apparent from the context, the following definitions shall be effective for terms used in this Plan:

- 1.1 **“Account”**: The account(s) or accumulation(s) maintained for the benefit of any Participant or Beneficiary under one or more Annuity Contract(s) or Custodial Account(s).
- 1.2 **“Account Balance”**: The value of the aggregate amount credited to the Participant under all Accounts, including the Participant’s Elective Deferrals, Roth 403(b) Contributions and any Employer Contributions to the extent such contributions are permitted under the terms of this Plan, the earnings or losses of each Annuity Contract or Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or the Participant’s Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then a separate Account Balance shall be maintained for each Beneficiary, subject to the terms of the Individual Agreements. The Account Balance includes any account established under Article 8 of the Plan for rollover contributions and plan-to-plan transfers made for a Participant, any account established for a Beneficiary after a Participant’s death, and any account or accounts established for an alternate payee (as defined in Code section 414(p)(8)), to the extent such contributions and the establishment of such accounts are permitted by the terms of this Plan and the Individual Agreements.
- 1.3 **“Administrator”**: The Southern Ohio Educational Service Center Finance Committee and its designee(s). If the Southern Ohio Educational Service Center Finance Committee is not functional or is not in existence, the Administrator will be the Southern Ohio Educational Service Center Board of Education and its designee(s). The Administrator may delegate any portion of its authority and/or administrative responsibilities to one or more designee(s), including any individual(s), committee(s), third party administrator(s), investment provider(s) and/or other service provider(s).
- 1.4 **“Annuity Contract”**: A nontransferable contract as defined in Code section 403(b)(1), established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in Ohio, the State in which the Employer is located, and that includes payment in the form of an annuity.

- The definition of Annuity Contract includes any separate life insurance contract issued before September 24, 2007, provided that the benefits provided under such life insurance contract satisfy the incidental benefit requirement of Treasury Regulations section 1.401-1(b)(1)(i), as required by Treasury Regulations section 1.403(b)-8(c)(2). Plan assets may not be invested in any separate life insurance contract issued on or after September 24, 2007.
- 1.5 **“Beneficiary”**: The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements. Each Participant may designate one or more beneficiar(ies) by completing and executing a written beneficiary designation form provided by the Administrator and filing such form with the Administrator.
- 1.6 **“Board”**: The Southern Ohio Educational Service Center Board of Education.
- 1.7 **“Code”**: The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- 1.8 **“Committee”**: The Southern Ohio Educational Service Center Finance Committee and its designee(s). If the Southern Ohio Educational Service Center Finance Committee is not functional or is not in existence, the Administrator will be the Southern Ohio Educational Service Center Board of Education and its designee(s).
- 1.9 **“Compensation”**: All cash compensation for services to the Employer, including salary, wages, fees, bonuses, extra duty pay and overtime pay, that is includible in the Employee’s gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee’s gross income for the calendar year but for a Compensation Reduction election under Code sections 125, 132(f), 401(k), 403(b) or 457(b) of the Code (including an election under Article 2 made to reduce compensation in order to have Elective Deferrals under the Plan).
- 1.10 **“Compensation Reduction”**: The amount deferred which results from the Participant’s election to reduce his Compensation under the Salary Reduction Agreement and which the Participant and the Employer mutually agree shall be deferred in accordance with this Plan or another employee benefit plan or program.
- 1.11 **“Contribution”**: The collective reference to all types of contributions permitted under the Plan, including Elective Deferrals and/or Roth 403(b) Contributions,

Rollover Contributions and/or Employer Contributions, to the extent permitted under Article 3, Section 8.1 and Article 4 of the Plan.

- 1.12 **“Custodial Account”**: The group or individual custodial account or accounts, as defined in Code section 403(b)(7), established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.
- 1.13 **“Disabled”**: The definition of disability provided in the applicable Individual Agreement.
- 1.14 **“Elective Deferral”**: The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.
- 1.15 **“Employee”**:  
  
Each individual who is a common law employee of the Employer performing services for a public school as an employee of the Employer. This definition is not applicable unless the employee’s Compensation for performing services for a public school is paid by the Employer.
- 1.16 **“Employer”**: The Southern Ohio Educational Service Center and its Related Employers, including any successors thereto.
- 1.17 **“Employer Contribution”**: If permitted under the terms of this Plan, any contribution made by the Employer in accordance with the provisions of Article 4 of the Plan.
- 1.18 **“Funding Vehicles”**: The Annuity Contract(s) and/or Custodial Account(s) issued for funding amounts held under the Plan, specifically approved by the Employer for use under the Plan and identified in Appendix A, Appendix B and/or Appendix C to this Plan, as may be modified from time to time.
- 1.19 **“Includible Compensation”**: An Employee’s actual wages in box 1 of Form W-2 for the most recent one-year period of service for the Employer that may be counted as a year of service under Code section 403(b)(3), as increased (up to the dollar maximum) by any Compensation Reduction election under Code section 125, 132(f), 401(k), 403(b) or 457(b) (including any Elective Deferral under the Plan). Includible Compensation includes any payments made to a Participant who has had a Severance from Employment, provided that deferrals from such amounts are permitted under Section 2.7 of the Plan, the Includible Compensation is paid by the later of 2-1/2 months after the Participant’s Severance from Employment or the end of the calendar year that contains the date of such Participant’s Severance from Employment and all other requirements have been

satisfied as set forth in section 1.415(c)-2(e)(3) of the Treasury Regulations. Includible Compensation includes any payments made to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code section 414(u)(5)) to the extent those payments do not exceed the amount the individual would have received if the individual had continued to perform services for the Employer rather than enter qualified military service and subject to the satisfaction of all other requirements set forth in section 1.415(c)-2(e)(4) of the Treasury Regulations. If the Plan permits Employer Contributions under Article 4 of the Plan, such Employer Contributions will be subject to a maximum of \$200,000 (or such higher maximum as may apply under Code section 401(a)(17)) for purposes of determining Includible Compensation. The amount of Includible Compensation is determined without regard to any community property laws.

- 1.20 **“Individual Agreement”**: The agreements between a Vendor and the Employer and/or a Participant that constitutes or governs a Custodial Account or an Annuity Contract. The terms of such Individual Agreement(s) are incorporated by reference herein.
- 1.21 **“Participant”**: An individual for whom Elective Deferrals, Roth 403(b) Contributions, Rollover Contributions and/or Employer Contributions, to the extent permitted under the Plan, are currently being made, or for whom Elective Deferrals, Roth 403(b) Contributions, Rollover Contributions and/or Employer Contributions, to the extent permitted under the Plan, have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.
- 1.22 **“Plan”**: The Southern Ohio Educational Service Center 403(b) Retirement Plan, as restated and amended in this document, and as amended from time to time.
- 1.23 **“Plan Year”**:  
  
The fiscal year commencing on July 1 and ending on June 30.
- 1.24 **“Related Employer”**: The Employer and any other entity which is under common control with the Employer under Code sections 414(b) or (c). For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.
- 1.25 **“Rollover Contribution”**: If permitted under the terms of this Plan, any rollover contribution that is received by the Plan for the benefit of any Participant in accordance with the provisions of Section 8.1 of the Plan.

- 1.26 **“Roth 403(b) Contribution”**: If permitted under the terms of this Plan, any contribution made by a Participant which is designated as a Roth 403(b) contribution in accordance with the provisions of Article 3 of the Plan and that qualifies as a Roth 403(b) contribution under Code section 402A.
- 1.27 **“Severance from Employment”**: For purposes of the Plan, Severance from Employment occurs on the date on which the Employee ceases to be employed by the Employer and any Related Entity as a result of the Employee’s death, retirement, termination of employment or other severance from employment. However, a Severance from Employment also occurs on any date on which the Employee ceases to be an employee of a public school Employer, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public school or in a capacity that is not employment with a public school (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).
- 1.28 **“Spouse”**: The legal spouse to whom a Participant is married under applicable state law on the date benefits are paid. However, if the Participant should die before the date benefits are paid, then the Spouse shall be the legal spouse to whom the Participant was married on the Participant’s date of death. A former spouse will be treated as the Spouse or surviving spouse to the extent required under a qualified domestic relations order as defined in Code section 414(p).
- 1.29 **“Treasury Regulations”**: The regulations promulgated by the Secretary of Treasury and issued under the Code.
- 1.30 **“USERRA”**: The Uniformed Services Employment and Reemployment Rights Act of 1994.
- 1.31 **“Valuation Date”**: Each business day of the Plan Year or such other valuation date as provided under the terms of the applicable Individual Agreement.
- 1.32 **“Vendor”**: The provider of an Annuity Contract or Custodial Account, or any entity expressly authorized by such provider to act on its behalf for the purposes of this Plan.
- 1.33 **“Vested”**: The nonforfeitable portion of any Account maintained on behalf of a Participant.

## ARTICLE 2.

### PARTICIPATION AND ELECTIVE DEFERRAL CONTRIBUTIONS

#### 2.1 **Eligibility.**

Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals, and Roth 403(b) Contributions to the extent permitted in Article 3 of the Plan, made on his or her behalf hereunder immediately upon becoming employed by the Employer. However, an Employee who normally works fewer than 20 hours per week is not eligible to participate in the Plan. An Employee normally works fewer than 20 hours per week if, for the 12 month period beginning on the date the Employee's employment commenced, the Employer reasonably expects the Employee to work fewer than 1,000 hours of service (as defined under Code section 410(a)(3)(C)) and, for each Plan Year ending after the close of that 12 month period, the Employee has worked fewer than 1,000 hours of service.

Notwithstanding the above, an Employee who is a student-teacher (i.e., a person providing service as a teacher's aid on a temporary basis while attending a school, college or university) is not eligible to participate in the Plan.

#### 2.2 **Compensation Reduction Election for Elective Deferrals; Election Required for Participation.**

An Employee elects to become a Participant by executing an election to reduce his or Compensation (and have that amount contributed as an Elective Deferral and/or Roth 403(b) Contribution in accordance with Article 3 of the Plan on his or her behalf) and filing it with the Administrator. This Compensation Reduction election shall be made on the Salary Reduction Agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than \$200.00, and may change such minimum to a lower amount from time to time. The Salary Reduction Agreement shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals (and/or Roth 403(b) Contributions, Employer Contributions and/or Rollover Contributions, to the extent permitted under Article 3, Article 4 and Section 8.1 of the Plan, respectively) are to be made and a designation of Beneficiary. A Salary Reduction Agreement must be fully completed and signed by the Employee and filed with the Administrator before the Employee can become a Participant in the Plan and receive contributions under the terms of the Plan. Any such Salary Reduction Agreement shall remain in effect until a new Salary Reduction Agreement is filed. Only an individual who performs services

for the Employer as an Employee may reduce his or her Compensation under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. All Elective Deferrals shall be made on a pre-tax basis. All Roth 403(b) Contributions shall be made in accordance with the terms of Article 3 of the Plan.

- 2.3 **Commencement of Participation.** An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a Salary Reduction Agreement with the Administrator, pursuant to Section 2.2. Such Salary Reduction Agreement shall become effective as of the first pay period or payment date for the calendar month following the month in which the Salary Reduction Agreement is executed and received by the Administrator or, if later, the first pay period or payment date that is at least one week after the date on which the Salary Reduction Agreement is received by the Administrator.

If an Employee does not elect to participate in the Plan at the time that he is first eligible to participate, he may elect at any time during the period that he remains eligible to participate in the Plan by executing and submitting a Salary Reduction Agreement to the Administrator. Such Salary Reduction Agreement shall become effective as of the date provided under Section 2.5 of the Plan for a change in Salary Reduction Agreement.

- 2.4 **Information Provided by the Employee.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including, without limitation, any information required under the Individual Agreements and information as to whether the Employee is or was a participant in any other Code section 403(b) plan.

- 2.5 **Change in Elective Deferrals Election; Other Change in Salary Reduction Agreement.**

Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her Salary Reduction Agreement, including a change of the amount of his or her Elective Deferrals (and/or Roth 403(b) Contributions), his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change of the amount of his or her Elective Deferrals (and/or Roth 403(b) Contributions) and/or a change in the investment direction shall take effect as of the first pay period or payment date that is at least one week after the date on which the Salary Reduction Agreement is received by the Administrator, which is a date provided by the Administrator and applied on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

- 2.6 **Contributions Made Promptly.** Elective Deferrals and/or Roth 403(b) Contributions under the Plan shall be transferred to the applicable Funding Vehicle as soon as such amounts can be segregated from the Employer's accounts, but no later than by the fifteenth (15<sup>th</sup>) business day following the end of the month in which such amounts would otherwise have been paid to the Participant, unless an earlier date is required by applicable state law.
- 2.7 **Sick Pay, Vacation Pay or Back Pay at Severance from Employment.**
- A Participant who is retiring or otherwise having a Severance from Employment shall have the right to elect to make a deferral from accrued sick pay, accrued vacation pay, back pay or other compensation if: (a) the pay is compensation that would have been paid to the Participant if the Participant continued in employment with the Participating Employer, absent a Severance from Employment, or the Participant would have been able to use the accrued leave if employment had continued; (b) the payments are paid by the later of 2-1/2 months after the date of Severance from Employment or the end of the calendar year that includes the date of Severance from Employment; and (c) the election to defer is made before the date on which the pay would otherwise have been payable.
- 2.8 **Vesting.** A Participant shall be 100% Vested in any Elective Deferral Contribution made to the Plan as of the date such contribution is made to the Plan.
- 2.9 **Termination of Salary Reduction Agreement.** A Participant may terminate his Salary Reduction Agreement with respect to Compensation not yet paid at any time by filing a written notice with the Administrator. Subsequent to termination of his Salary Reduction Agreement, an Employee may at any subsequent time commence participation in the Plan by executing and submitting a revised Salary Reduction Agreement pursuant to the terms of Section 2.5 of the Plan.
- 2.10 **Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Elective Deferrals (and/or Roth 403(b) Contributions) pursuant to a Salary Reduction Agreement upon resumption of employment with the Employer equal to the maximum Elective Deferrals (and/or Roth 403(b) Contributions) that the Employee could have elected during the period of the interruption or leave if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals (and/or Roth 403(b) Contributions), if any, actually made for the Employee during the period of the interruption or leave and any Elective Deferrals (and/or Roth 403(b) Contributions) made for the Employee pursuant to

Section 4.6 of the Plan. Except to the extent provided under Code section 414(u), this right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

2.11 **Leave of Absence**. Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals (and/or Roth 403(b) Contributions) under the Plan shall continue to the extent that Compensation continues.

2.12 **Automatic Enrollment for New Employees**.

No automatic enrollment will apply for new Employees.

## ARTICLE 3.

### ROTH 403(b) CONTRIBUTIONS

#### 3.1 **Roth 403(b) Contributions – General.**

Any Employee who is eligible to make contributions to the Plan under Section 2.1 of the Plan may elect to make Roth 403(b) Contributions to the Plan, provided that such Roth 403(b) Contributions are:

- (a) contributed to the Plan pursuant to a Compensation Reduction election executed by the Employee on a Salary Reduction Agreement in accordance with the provisions set forth in Article 2 of the Plan and which qualifies as a “designated Roth contribution” pursuant to the requirements of Code section 402A;
- (b) irrevocably designated by the Employee at the time of the Compensation Reduction election as a Roth 403(b) Contribution elective deferral that is being made in lieu of all or a portion of the Elective Deferrals the Employee is otherwise eligible to make under the Plan;
- (c) treated by the Employer as includible in the Employee’s income at the time the Employee would have received that amount in cash if the Employee had not made a Compensation Reduction election; and
- (d) permitted under the Individual Agreement(s) applicable to the Funding Vehicles selected by the Participant for the investment of the Roth 403(b) Contributions.

3.2 **Annual Contribution Limitations.** For each calendar year, each Participant may elect to make Roth 403(b) Contributions to the Plan up to the applicable limit under Code section 402(g) and as aggregated with Elective Deferrals as described in Sections 5.1, 5.2 and 5.3 of the Plan, and subject to any limitations imposed under applicable law or under any applicable collective bargaining agreement.

3.3 **Deposit Requirements.** Roth 403(b) Contributions shall be deposited with the Funding Vehicles and Accounts designated to receive such Roth 403(b) Contributions by the Participant on his or her Salary Reduction Agreement. Roth 403(b) Contributions shall be deposited with the applicable designated Funding Vehicles in accordance with Section 2.6 of the Plan.

- 3.4 **Vesting.** A Participant shall be 100% Vested in any Roth 403(b) Contributions made to the Plan as of the date such contribution is made to the Plan.
- 3.5 **Separate Accounting Requirements.** A Participant's Roth 403(b) Contributions shall be allocated to a separate account maintained for such deferrals as described herein. Contributions and withdrawals of Roth 403(b) Contributions, and earnings and losses thereon, shall be separately accounted for under each Participant's Account. Gains, losses and other credits and charges shall be separately allocated on a reasonable and consistent basis for each Participant's Roth 403(b) contributions. Except as provided in Section 3.7 of the Plan, no contributions other than Roth 403(b) Contributions and properly attributable earnings may be credited to each Participant's Roth 403(b) Contributions subaccount in each of the Participant's Accounts; such subaccount shall be referred to as the Participant's "Roth 403(b) Contributions Account".
- 3.6 **Correction of Excess Deferrals.** Excess deferrals shall be corrected by first distributing Roth 403(b) Contributions (plus earnings thereon) made during the calendar year and then by distributing a Participant's Elective Deferrals (plus earnings thereon) as provided in Section 5.6 of the Plan. However, if a highly compensated employee (as defined in Code section 414(q)) experiences an excess deferral in any calendar year, he may designate the extent to which the excess amount is composed by Elective Deferrals and Roth 403(b) Contributions, provided that both types of contributions were made by the Employee during the applicable calendar year. If the highly compensated employee does not designate which type of contributions are to be distributed, then Elective Deferrals shall be distributed first, followed by Roth 403(b) Contributions.
- 3.7 **Roth Contribution Rollovers into the Plan.**

Notwithstanding Section 8.1 of the Plan, direct rollovers of Roth 403(b) Contributions and Roth 401(k) contributions (and earnings thereon) to the Plan are permitted from another 403(b) plan with Roth 403(b) contribution features or a 401(k) plan with Roth 401(k) contribution features, provided that the Individual Agreement(s) applicable to the Funding Vehicle(s) selected by the Participant for the investment of such contributions permit such Roth contribution rollovers. Direct rollovers shall only be permitted if the transferring plan satisfies the conditions set forth in Code section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code section 402(c). In no event does the Plan accept a rollover contribution from a Roth IRA described in Code section 408A.

The Administrator and/or Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code section 402(c)(8)(B) and Code section 402A(e)(1).

The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

3.8 **Direct Roth Contribution Rollovers from the Plan.** Notwithstanding Section 7.8 of the Plan, Participants may only make a direct rollover of a distribution of Roth 403(b) Contributions (and earnings thereon) to another 403(b) plan with Roth 403(b) contribution features, a 401(k) plan with Roth 401(k) contribution features or a Roth IRA described in Code section 408A, and only to the extent the rollover is permitted under the rules of Code section 402(c).

3.9 **Distribution of Roth 403(b) Contributions.**

- (a) **Qualified Distributions.** Distributions from a Roth 403(b) Contributions Account will be tax-free for federal income tax purposes and designated as “Qualified Distributions” if:
  - (i) The amounts are held for a 5-year holding period, measured from the first year that the initial Roth 403(b) Contribution was made on behalf of the Participant to a Roth 403(b) Contributions Account under the Plan or, if a Roth contribution was rolled over into the Plan pursuant to Section 3.7 of the Plan, from the first year in which the Participant made a Roth contribution to such other plan, and
  - (ii) The distribution is due to a Participant’s attainment of age 59-1/2, death or in the event of the Participant’s becoming Disabled.
- (b) **Non-qualified Distributions.** Amounts distributed from a Roth 403(b) Contributions Account that are not considered “Qualified Distributions,” as defined in Section 3.9(a) of the Plan, may be distributed from a Roth 403(b) Contributions Account subject to the distribution rules applicable to Elective Deferrals as described in Section 7.1 of the Plan. Such “Non-qualified Distributions” shall be subject to federal income tax to the extent that the amount distributed exceeds the value of the Participant’s Roth 403(b) Contributions to the Plan.
- (c) In no event shall amounts held in a Roth 403(b) Contributions Account be used for a loan in accordance with Section 6 of the Plan, distributed due to a hardship withdrawal under Section 7.7 of the Plan, transferred in accordance with Sections 8.3 or 8.5 of the Plan or exchanged in accordance with Section 8.4 of the Plan.

## ARTICLE 4.

### EMPLOYER CONTRIBUTIONS

#### 4.1 Employer Contributions.

The Employer may, in its sole discretion, make Non-Elective Discretionary, Matching and/or Post-Retirement Employer Contributions (collectively referred to as Employer Contributions) to the Plan on behalf of Employees at such time and in such amount as determined by the Employer, deemed by the Board and/or provided for under any applicable collective bargaining agreement, subject to any limitations imposed under applicable law or under any applicable collective bargaining agreement. Such Employer Contributions shall be identified in Appendix E, Appendix F and/or Appendix G to this Plan, as may be modified from time to time.

- (a) “Employer Non-Elective Discretionary Contribution” means the Employer’s non-elective discretionary contribution made to the Plan in accordance with the formula set forth by the Employer in Appendix E to this Plan and allocated to such Employee in such manner and by such method as is set forth by the Employer in Appendix E to this Plan.
- (b) “Employer Matching Contribution” means the Employer’s contributions to the Plan that match a Participant’s Elective Deferrals and/or Roth 403(b) Contributions in accordance with the formula set forth by the Employer in Appendix F to this Plan and allocated to such Participant in such manner as is set forth by the Employer in Appendix F to this Plan.
- (c) “Employer Post-Retirement Contribution” means the Employer’s non-elective discretionary contribution made to the Plan on behalf of a former Employee in accordance with the formula set forth by the Employer in Appendix G to this Plan and allocated to such former Employee in such manner and by such method as is set forth by the Employer in Appendix G to this Plan, provided that such Employer Post-Retirement Contributions are:
  - (i) contributed to the Plan by a date no later than the end of the fifth calendar year following the year in which the former Employee’s Severance from Employment occurred;
  - (ii) contributed to the Plan by a date no later than the end of the month which includes the date of death of the former Employee;

- (iii) 100% vested at all times; and
- (iv) based on Includible Compensation, as defined in Code section 403(b)(3) and Treasury Regulations section 1.403(b)-4(d), and subject to the limitations of Code section 415(c)(1), as described in Section 4.5 of the Plan.

Subject to the restrictions of Section 4.1(c)(i) and (ii) above, amounts not contributed to the Plan by the Employer on behalf of any former Employee due to the annual contribution limitations of Code section 415(c)(1), as described in Section 4.5 of the Plan, shall be contributed in the next calendar year (and succeeding calendar year) until the Employer contributes to the Plan all amounts to be contributed on behalf of such former Employee.

4.2 **Investment of Employer Contributions.** Employer Contributions made to the Plan shall be invested in the Funding Vehicle(s) as selected by the Participant in his or her Salary Reduction Agreement, in accordance with the provisions of Sections 2.2, 2.3, 2.4 and 2.5 of the Plan and as permitted by the applicable Individual Agreements. Such Employer Contributions shall be allocated to the Participant's Employer Contributions Account in each Funding Vehicle in which such contributions are invested. The Participant's "Employer Contributions Account" shall hold the Participant's total Vested interest (including any earnings and losses attributable thereto) under the Plan resulting from Employer Contributions.

4.3 **Deposit of Employer Contributions.** Employer Contributions made to the Plan shall be transferred to the applicable Funding Vehicle(s) within a reasonable period of time following the date of contribution, but in no event later than thirty (30) days following the end of the Plan Year to which such contributions are attributable.

4.4 **Vesting.**

A Participant shall be 100% Vested in any Employer Non-Elective Discretionary Contribution, Employer Matching Contribution and Employer Post-Retirement Contribution made to the Plan as of the date such contribution is made to the Plan.

4.5 **Maximum Annual Additions.**

- (a) The maximum permissible Annual Additions that may be contributed or allocated to each Participant's Account under the Plan for any calendar year shall not exceed the lesser of:
  - (v) \$40,000, as adjusted for increases in the cost of living under Code section 415(d), or
  - (vi) 100 percent of the Participant's Includible Compensation for the calendar year.
- (b) For purposes of this section, "Annual Additions" means, for any calendar year, the sum of Elective Deferrals (except age 50 catch-up annual deferral contributions, to the extent permitted under section 5.3 of the Plan), Roth 403(b) Contributions and Employer Contributions made to the Participant's Account under the Plan and the sum of any employee and employer contributions made on behalf of such individual under any Code section 401(a) qualified defined contribution plan, simplified employee pension plan (as defined in Code section 408(k)) or individual medical account (as defined in Code section 415(1)(2)) sponsored by the Employer or any other Code section 403(b) plan, whether or not sponsored by the Employer.
- (c) If a Participant has a "controlling interest" in another employer and participates in that employer's qualified 401(a) defined contribution plan, an individual medical account (as defined in Code section 415(1)(2)) or simplified employee pension (as defined in Code section 408(k)) which provides Annual Additions, the amount of Annual Additions which may be credited to a Participant's Account for any calendar year will not exceed the maximum permissible amount described in subsection (a), taking into account contributions that have been allocated to such other plans as described in this subsection.
- (d) If the Annual Additions are greater than the maximum permissible amount described in subsection (a) in a calendar year, no amount shall be contributed to the Participant's Account under the Plan for that calendar year. If there is any such excess amount under the Plan, the Administrator shall direct the Vendor as to the appropriate method of correction of such excess amounts in accordance with the Code and applicable Treasury Regulations. If timely correction of such excess is not made, such excess shall remain in the Plan and will be separately accounted for in accordance with Treasury Regulations section 1.403(b)-4(f) and Code section 403(c).

- 4.6 **USERRA Make-Up Contributions.** If Employer Contributions are made to the Plan for a period during which a Participant's employment was interrupted by qualified military service under Code section 414(u) or the Participant was on a leave of absence for qualified military service under Code section 414(u), upon the Participant's resumption of employment with the Employer, the Employer shall make a contribution to the Plan on behalf of the Participant in an amount equal to that the Participant would have received if he or she had not been on a leave of absence under Code section 414(u). Such amounts shall be determined in accordance with USERRA and regulations thereunder. Pursuant to Section 5.7 of the Plan, any additional Employer Contributions made to the Plan in accordance with USERRA shall not be subject to the annual contribution limits set forth in Section 4.5 of the Plan for the calendar year in which such amounts are contributed, but will be subject to the limits set for the calendar year to which the contributions relate.

## ARTICLE 5.

### LIMITATIONS ON AMOUNTS DEFERRED

- 5.1 **Basic Annual Limitation.** Except as provided in Sections 5.2 and 5.3 of the Plan, the maximum amount of the Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan) under the Plan for any calendar year shall not exceed the lesser of:
- (a) the applicable dollar amount or
  - (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under Code section 402(g)(1)(B), which is \$15,500 for 2008, and is adjusted for cost-of-living thereafter to the extent provided under Code section 415(d).

5.2 **Special Section 403(b) Catch-Up Limitation for Employees With 15 years of Service.**

Because the Employer is a "qualified organization" (within the meaning of Treasury Regulations section 1.403(b)-4(c)(3)(ii)), the applicable dollar amount under Section 5.1(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:

- (a) \$3,000;
- (b) The excess of:
  - (i) \$15,000, over
  - (ii) The total special 403(b) catch-up elective deferrals made for the qualified employee by the Employer for prior years; or
- (c) The excess of:
  - (i) \$5,000 multiplied by the number of years of service of the Employee with the Employer, over
  - (ii) The total Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan) made for the Employee by the Employer for prior years.

For purposes of this Section 5.2, a “qualified employee” means an Employee who has completed at least fifteen (15) years of service taking into account only employment with the Employer.

5.3 **Age 50 Catch-Up Annual Deferral Contributions.**

An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan), up to the maximum age 50 catch-up Elective Deferrals (and/or Roth 403(b) Contributions) for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan) for a year is \$5,000 for 2008, and is adjusted for cost-of-living thereafter to the extent provided under the Code.

5.4 **Coordination.** Amounts in excess of the limitation set forth in Section 5.1 of the Plan shall be allocated first to the special 403(b) catch-up under Section 5.2 of the Plan, to the extent permitted under the Plan, and next as an age 50 catch-up contribution under Section 5.3 of the Plan, to the extent permitted under the Plan. However, in no event can the amount of the Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan) for a calendar year be more than the Participant’s Includible Compensation for the calendar year.

5.5 **Special Rule for a Participant Covered by Another Section 403(b) Plan.** For purposes of this Article 5, if the Participant is or has been a participant in one or more other plans under Code section 403(b) (and any other plan that permits elective deferrals under Code section 402(g) and/or Roth contributions under Code section 402A), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article 5. For this purpose, the Administrator shall take into account any other such plan maintained by the Employer and any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Entity shall be taken into account for purposes of Section 5.2 of the Plan only if the other plan is a Code section 403(b) plan.

5.6 **Correction of Excess Elective Deferrals.** If the Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan) on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan) on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts

deferred by the Participant under another plan of the Employer under Code section 403(b) (and any other plan that permits elective deferrals under Code section 402(g) and/or any other plan that permits Roth contributions under Code section 402A for which the Participant provides information that is accepted by the Administrator), then the Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan), to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant. Excess Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan) (as adjusted for any income or loss in value, if any, allocable thereto) shall be distributed to the Participant not later than the first April 15 following the end of the calendar year in which the excess deferral was made or as otherwise required in accordance with Code section 402(g). Notwithstanding the foregoing, if Roth 403(b) Contributions are permitted in Article 3 of the Plan, the correction of excess amounts shall be made pursuant to Section 3.6 of the Plan.

- 5.7 **USERRA.** Any additional Elective Deferrals, Roth 403(b) Contributions and/or Employer Contributions made to the Plan in accordance with USERRA, pursuant to the provisions Code section 414(u) and Section 2.10 of the Plan (and Section 4.6 of the Plan to the extent Employer Contributions are permitted under the Plan), shall not be subject to the limits set forth in this Article 5 (and Section 3.2 of the Plan to the extent Roth 403(b) Contributions are permitted under the Plan and Section 4.5 of the Plan to the extent Employer Contributions are permitted under the Plan) for the calendar year in which such amounts are contributed, but will be subject to the limits set for the calendar year to which the contributions relate.
- 5.8 **Reduction of Deferral Contributions.** The Administrator may reduce any Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan) selected by the Participant that are in excess of any limitation set forth in the Plan.

## ARTICLE 6

### LOANS

#### 6.1 Loans.

Loans shall be permitted under the Plan to the extent permitted by the Individual Agreement(s) controlling the Account assets from which the loan is made and by which the loan will be secured.

Notwithstanding the above, no loan shall be made under the Plan to a Participant after the date of the Participant's Severance from Employment with the Employer.

#### 6.2 Terms of Loans.

- (a) If loans are permitted by this Article 6 of the Plan, and to the extent permitted by the Individual Agreement(s) controlling the Account assets from which the loan is made, the Vendor shall determine the terms of the loan, such as the repayment period of the loan, the security for the loan, the amount and method of repayment and the rate of interest to be paid on such loan. The Vendor shall set forth in writing the rules and regulations with respect to loans which are to provide, at a minimum, the following: (i) the identity of the person or position authorized to administer the loan program; (ii) the procedure for applying for loans; (iii) the basis on which loans will be approved or denied; (iv) limitations (if any) on the types and amount of loans offered; (v) the procedure for determining a reasonable rate of interest; (vi) the types of collateral which may secure a loan; (vii) available methods by which the loan can be repaid; and (viii) the events constituting default and the steps that will be taken to preserve Plan assets in the event of a default.
- (b) If loans are permitted by this Article 6 of the Plan, the Administrator shall determine the process for pre-authorization of the loan, such as confirmation that the loan is permitted under the terms of the Plan and the loan satisfies the limitations on the maximum loan amount available under Article 6 of the Plan. The Administrator shall set forth in writing the rules and regulations with respect to the pre-authorization of loans which are to provide, at a minimum, the following: (i) the identity of the person or position authorized to pre-authorize loans under the Plan; (ii) the procedure for applying for the pre-authorization of loans; (iii) the basis on which the pre-authorization of loans will be approved or denied; and (iv) the limitations on the maximum loan amount available under the Plan.

- (c) If loans are permitted by this Article 6 of the Plan, and to the extent permitted by the Individual Agreement(s) controlling the Account assets from which the loan is made, loans will be made only in the event that the loans: (i) are evidenced by an enforceable agreement; (ii) bear a reasonable rate of interest; (iii) are adequately secured; (iv) are amortized evenly and at least quarterly, and (v) (except in the case of a loan used to acquire a principal residence) are repayable within 5 years;

Rules and procedures promulgated and provided by the Vendor and/or contained in the Individual Agreement(s) and rules and procedures for pre-authorization of loans promulgated and provided by the Administrator shall be deemed a part of the Plan for purposes of Code section 403(b) and its regulations and shall be deemed to comply in every way with Code section 72(p) and its related regulations.

6.3 **Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 6.4 of the Plan, including the collection of information from Vendor(s), and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator shall also take such steps as may be appropriate to collect information from Vendor(s), and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

6.4 **Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of:

- (a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is pre-authorized by the Administrator (not taking into account any payments made during such one-year period); or
- (b) one-half of the value of the Participant's Vested Account Balance (as of the Valuation Date immediately preceding the date on which such loan is pre-authorized by the Administrator).

For purposes of this Section 6.4, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a Vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

- 6.5 **Loan Repayments by Payroll Reduction.** To the extent permitted by the Administrator and to the extent permitted by the Individual Agreement(s) controlling the Account assets from which the loan is made and/or the Vendor(s) of such Individual Agreement(s), loan repayments may be made by payroll reduction subject to an authorization by the Participant to have such loan repayment amounts deducted from the Participant's Compensation on an after-tax basis and remitted by the Administrator to the applicable Funding Vehicle.
- 6.6 **New Loan Restriction in Event of Outstanding Defaulted Prior Loan.** Notwithstanding any other provision of the Plan or the Individual Agreement(s), no loan may be made to a Participant under the Plan if the Participant has an outstanding balance due on a defaulted prior loan made under the Plan or any other plan maintained by the Employer or any Related Employer, as described in Section 6.4 of the Plan, at the time of the Participant's request for the new loan. However, the new loan may be made to the Participant if the Participant is repaying the defaulted prior loan by making loan repayments by payroll reduction at the time of the Participant's request for the new loan, subject to the provisions of Section 6.5 of the Plan and as permitted by the Administrator and the applicable Individual Agreement for loans made under the Plan and as permitted under and subject to the provisions of such other plan for loans made under any other plan.
- 6.7 **Loan Repayments for Participants in Military Service.** Notwithstanding any other provision of the Plan or the Individual Agreement(s), loan repayments by a Participant whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may be suspended as permitted under Code section 414(u)(4) and the terms of any loan shall be modified to conform to the requirements set forth in USERRA and its regulations.

## ARTICLE 7.

### BENEFIT DISTRIBUTIONS

- 7.1 **Benefit Distributions At Severance from Employment or Other Distribution Event.** Except as permitted under Section 3.6 (relating to excess Roth 403(b) Contributions, to the extent permitted under the Plan and/or excess Elective Deferrals), Section 5.6 (relating to excess Elective Deferrals and/or excess Roth 403(b) Contributions, to the extent permitted under the Plan), Section 7.6 (relating to withdrawals of amounts rolled over into the Plan, to the extent permitted under the Plan), Section 7.7 (relating to hardship withdrawals, to the extent permitted under the Plan), or Section 11.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59 ½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreement(s). Notwithstanding the foregoing and in accordance with the terms of the Individual Agreement(s), Elective Deferrals made to an Annuity Contract and corresponding earnings as of December 31, 1988 are "grandfathered" and withdrawal restrictions do not apply to the extent that such amounts can be appropriately identified by the Vendor.
- 7.2 **Benefit Distribution Election.** A Participant (or his or her Beneficiary in the event of the Participant's death) may elect to commence distribution of benefits under the Plan in the event of the Participant's Severance from Employment, death, disability or attainment of age 59 ½ or at any time after the earliest of these events by filing the appropriate request for pre-authorization of distribution with the Administrator and the appropriate benefit distribution election form(s) with the Vendor of the Individual Agreement(s) which control the Account assets. However, in no event may the distribution of benefits commence later than the date described in Section 7.5 of the Plan.
- 7.3 **Form and Time of Payment.** The form and time of benefit distribution payment are subject to the terms of the Individual Agreement(s) which control the Account assets. The procedures which the Participant must follow to elect a form and/or time of benefit distribution payment, to the extent such election(s) are available, are subject to the terms of the Individual Agreement(s) which control the Account assets and are promulgated by the Vendor of such Individual Agreement(s). The amount of a benefit distribution payment is subject to the terms of the Individual Agreement(s) which control the Account assets.

7.4 **Small Account Balances.**

If permitted by the Individual Agreement(s) controlling the Account assets, benefit distribution(s) may be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but such payment may not be made without the consent of the Participant or Beneficiary if the Account Balance exceeds \$1,000 (determined without regard to any separate account that holds Rollover Contributions under Section 8.1, to the extent Rollover Contributions to the Plan are permitted under Section 8.1 of the Plan).

7.5 **Minimum Distributions.** Each Individual Agreement shall comply with the minimum distribution requirements of Code section 401(a)(9) and the regulations thereunder. For the purposes of applying the distribution rules of Code section 401(a)(9), each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Treasury Regulations section 1.408-8, except as provided in Treasury Regulations section 1.403(b)-6(e).

In no event shall any distribution under this Article 7 begin later than the later of:

- (a) April 1 of the calendar year following the calendar year in which the Participant attains age 70 ½ or
- (b) April 1 of the calendar year following the calendar year in which the Participant has a Severance from Employment with the Employer.

7.6 **In-Service Distributions From Rollover Account.**

If a Participant has a separate account attributable to Rollover Contributions to the Plan to the extent such Rollover Contributions to the Plan are permitted under Section 8.1 of the Plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account, to the extent such distribution from the rollover account is permitted by the applicable Individual Agreement.

7.7 **Hardship Withdrawals.**

- (a) **General.** Hardship withdrawals shall be permitted under the Plan to the extent permitted by the Individual Agreement(s) controlling the Account assets to be withdrawn to satisfy the hardship. A hardship withdrawal shall only be permitted if the withdrawal is made on account of an immediate and heavy financial need as defined in Section 7.7(a)(1) of the Plan and is in an amount necessary to satisfy the financial need as defined in Section 7.7(a)(2) of the Plan, notwithstanding the terms of any

Individual Agreement(s) controlling the Account assets that may permit hardship withdrawals in other circumstances than those defined in Sections 7.7(a)(1) and (2) of the Plan.

Notwithstanding the above, no hardship withdrawal shall be permitted under the Plan to a Participant after the date of the Participant's Severance from Employment with the Employer.

- (1) **Immediate and heavy financial need.** In accordance with the financial need safe harbor rules described in Treasury Regulations section 1.401(k)-1(d)(3)(iii)(B) and to the extent permitted by the Individual Agreement(s) controlling the Account assets to be withdrawn to satisfy the hardship, a Participant may make a hardship withdrawal only in the event of an immediate and heavy financial need arising from:
- (i) Expenses for (or necessary to obtain) medical care that would be deductible under Code section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income) incurred by the Participant, his or her Spouse, any of his or her dependents (as defined in Code section 152) or the Participant's "Primary Beneficiary";
  - (ii) Costs directly related to the purchase of a principal residence of the Participant (excluding mortgage payments);
  - (iii) The payment of tuition, related educational fees and room and board expenses for the next 12 months of post-secondary education for the Participant, his or her Spouse, children, dependents (as defined in Code section 152, without regard to Code sections 152(b)(1), 152(b)(2) and 152(d)(1)(B)) or the Participant's "Primary Beneficiary";
  - (iv) Payments necessary to prevent the eviction of the Participant from his or her principal residence or foreclosure on the mortgage on that principal residence;
  - (v) Payments for burial or funeral expenses for the Participant's deceased parent, Spouse, children, dependents (as defined in Code section 152, without regard to Code section 152(d)(1)(B)) or the Participant's "Primary Beneficiary";

- (vi) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or
- (vii) Any other event described under the financial need safe harbor rules set forth in Treasury Regulations section 1.401(k)-1(d)(3)(iii)(B), as amended.

For purposes of this section, a "Primary Beneficiary" is an individual who is named as a Beneficiary and has an unconditional right to all or a portion of the Account balance upon the death of the Participant.

- (2) **Amount necessary to satisfy financial need.** In accordance with the necessary amount safe harbor rules described in Treasury Regulations section 1.401(k)-1(d)(3)(iv)(E) and to the extent permitted by the Individual Agreement(s) controlling the Account assets to be withdrawn to satisfy the hardship, a hardship withdrawal will be deemed necessary to satisfy a financial need only if:
  - (i) the Participant has obtained all other distributions (excluding hardship withdrawals) and nontaxable (at the time of the loan) loans currently available under the Plan and all other plans maintained by the Employer and any Related Employer; and
  - (ii) the amount of the hardship withdrawal may not exceed the amount required to satisfy the financial need, as determined pursuant to Section 7.7(a)(1) of the Plan. For this purpose, the amount required to satisfy the financial need may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution.
- (b) **Maximum distributable amount.** A hardship withdrawal is limited to the amount of the Participant's total Elective Deferrals to the Plan as of the date of the hardship withdrawal (not including any income thereon), reduced by the amount of previous distributions of Elective Deferrals, and subject to limitations set forth in the provisions of the Individual

Agreement(s) controlling the Account assets to be withdrawn to satisfy the hardship.

- (c) **Suspension of Elective Deferrals (and/or Roth 403(b) Contributions).** The Participant shall not be permitted to make Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted in Article 3 of the Plan) to the Plan or to make any other elective deferrals and/or Roth contributions to any other plan as defined in Treasury Regulations section 1.401(k)-1(d)(3)(iv)(F) maintained by the Employer or a Related Employer during the six (6) month period beginning on the date the Participant receives a hardship withdrawal from the Plan or any other plan maintained by the Employer or a Related Employer. In addition, the maximum amount of Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted in Article 3 of the Plan) that the Participant may make to the Plan for the calendar year in which the suspension ends shall be the elective deferral limit in effect under Code section 402(g) and as set forth in Article 5 of the Plan for that calendar year, less the amount of Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted in Article 3 of the Plan) that the Participant made to the Plan for the calendar year in which the suspension took effect.
- (d) **Exchange of Information.** The Individual Agreement(s) shall provide for the exchange of information among the Employer and the Vendors to the extent necessary to implement the provisions of the Plan and the Individual Agreements. Pursuant to such requirement for exchange of information, the Vendor shall notify the Administrator of the hardship withdrawal in order for the Administrator to implement the resulting six (6) month suspension of the Participant's right to make Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted in Article 3 of the Plan) as provided under Section 7.7(c) of the Plan. In addition, the Vendor shall advise the Administrator of any rollover accounts or other Account Balances and loans currently available to the Participant under the Individual Agreement(s) held by the Vendor in order for the Administrator to determine amounts currently available to the Participant under the Plan to satisfy the financial need as provided under Section 7.7(a)(2) of the Plan.

## 7.8 **Rollover Distributions.**

- (a) A Participant or the Beneficiary of a deceased Participant (or a Participant's Spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Code section 414(p)) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible distribution (as defined in Code section 402(c)(4)) from the

Plan paid directly to an eligible retirement plan (as defined in Code section 402(c)(8)(B)) specified by the Participant, Beneficiary or alternate payee in a direct rollover. If any portion of an eligible rollover distribution is attributable to a distribution from a Roth 403(b) Contributions Account as defined in Section 3.5 of the Plan and as permitted under Article 3 of the Plan, such portion may be paid only to an eligible retirement plan that is another designated Roth account or a Roth IRA. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the Spouse of the Participant nor the Spouse or former spouse of the Participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Code section 408(d)(3)(C)).

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

## ARTICLE 8.

### ROLLOVER TO THE PLAN AND TRANSFERS

#### 8.1 Eligible Rollover Contributions to the Plan.

- (a) **Eligible Rollover Contributions.** To the extent permitted in the Individual Agreement(s), an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such Rollover Contributions shall be made in the form of cash only. The Administrator and/or Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code section 402 and to confirm that such plan is an eligible retirement plan within the meaning of Code section 402(c)(8)(B).

Provisions regarding the rollover of Roth contributions to the Plan are set forth in Section 3.7 of the Plan.

- (b) **Eligible Rollover Distributions.** For purposes of Section 8.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include:
- (1) a payment if it is part of a series of equal (or almost equal) payments that are made at least once a year and that will last for:
    - (i) the life of the Participant (or the joint lives of the Participant and the Participant's Beneficiary),
    - (ii) the life expectancy of the Participant (or the joint life and last survivor expectancy of the Participant and the Participant's Beneficiary) or
    - (iii) any installment payment for a period of ten (10) years or more;
  - (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the Participant;
  - (3) for any other distribution, the portion, if any, of the distribution that

is a required minimum distribution under Code section 401(a)(9);

- (4) corrective distribution of excess contributions under a qualified cash or deferred arrangement described in Treasury Regulations section 1.401(k)-2(b)(2) and excess aggregate contributions described in Treasury Regulations section 1.401(m)-2(b)(2), together with the income allocable to these distributions;
- (5) loans that are treated as deemed distributions pursuant to Code section 72(p) and
- (6) similar items designated by the Commissioner of Internal Revenue in revenue rulings, notices and other guidance published in the Internal Revenue Bulletin.

In addition, an eligible retirement plan means an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), a qualified trust described in Code section 401(a), an annuity plan described in Code sections 403(a) or 403(b), or an eligible governmental plan described in Code section 457(b), that accepts the eligible rollover distribution.

- (c) **Separate Accounts**. The Vendor(s) providing the Funding Vehicle(s) in which the eligible rollover distribution is invested shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

## 8.2 **Plan-to-Plan Transfers to the Plan.**

- (a) At the direction of the Employer, for a class of Employees who are participants or beneficiaries in another plan under Code section 403(b), the Administrator may permit a transfer of assets to the Plan as provided in this Section 8.2 of the Plan. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an Employee or former Employee of the Employer. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Treasury Regulations section 1.403(b)-10(b)(3) and to confirm that the other plan is a plan that satisfies Code section 403(b).

- (b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer in accordance with Treasury Regulations section 1.414(l)(1).
- (c) To the extent provided in the Individual Agreement(s) holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral, Roth 403(b) Contribution (to the extent permitted under Article 3 of the Plan), Employer Contribution (to the extent permitted under Article 4 of the Plan) and/or Rollover Contribution (to the extent permitted under Section 8.1 of the Plan) by the Participant under the Plan, except that (1) the Individual Agreement(s) which hold any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under Code section 403(b), the Individual Agreement(s) must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed under the transferor plan and (2) the transferred amount shall not be considered an Elective Deferral and/or Roth 403(b) Contribution under the Plan in determining the maximum annual addition under Article 4 of the Plan or the maximum deferral under Article 5 of the Plan or an Employer Contribution in determining the maximum annual addition under Article 4 of the Plan.

### 8.3 **Plan-to-Plan Transfers from the Plan.**

- (a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another plan that satisfies Code section 403(b) in accordance with Treasury Regulations section 1.403(b)-10(b)(3). A transfer is permitted under this Section 8.3(a) of the Plan only if the Participants or Beneficiaries are employees or former employees of the employer (or the business of the employer) under the receiving plan and the receiving plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount credited under the receiving plan immediately after the transfer at least equal to the amount transferred in accordance with Treasury Regulations section 1.414(l)(1).
- (b) The receiving plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under Code section 403(b), the receiving plan shall impose restrictions on distributions to the

Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the receiving plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the Plan as the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

- (c) Upon the transfer of assets under this Section 8.3 of the Plan, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the benefit of the Participant or Beneficiary. The Administrator and/or Vendor may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 8.3 of the Plan (for example, to confirm that the receiving plan satisfies Code section 403(b) and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulations section 1.403(b)-10(b)(3).

#### 8.4 **Contract and Custodial Account Exchanges.**

- (a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Funding Vehicle(s) offered by the Vendor(s) specifically approved by the Employer to receive contributions under Articles 2, 3 and/or 4 and/or Section 8.1 of the Plan and identified in Appendix A to this Plan, as may be modified from time to time, subject to the terms of the Individual Agreement(s). An investment change that includes the exchange or transfer of an investment to a Funding Vehicle offered by a Vendor identified in Appendix C to this Plan, as may be modified from time to time, is not permitted, even if the Participant or Beneficiary requesting the exchange or transfer is currently making Plan Contributions to such Funding Vehicle listed in Appendix C to the Plan.
- (b) An investment change that includes an investment with a Funding Vehicle offered by a Vendor that has not been approved by the Employer to receive contributions under Articles 2, 3 and/or 4 and/or Section 8.1 of the Plan (referred to as an exchange) is not permitted, unless the following conditions are satisfied:
  - (1) The Funding Vehicle(s) offered by the Vendor are specifically approved by the Employer to receive exchanges under the Plan during the specific time period(s) approved by the Employer and are identified in Appendix B to this Plan, as may be modified from

time to time and subject to the terms of the Individual Agreement(s). However, a Participant is not permitted to make an investment change to a Funding Vehicle offered by a Vendor that has not been approved by the Employer to receive contributions under Articles 2, 3 and/or 4 and/or Section 8.1 of the Plan, even if such Funding Vehicle is identified in Appendix B to this Plan, after the date of the Participant's Severance from Employment with the Employer.

- (2) The Participant or Beneficiary must have an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both Code section 403(b) Annuity Contracts or Custodial Accounts immediately before the exchange), as determined in accordance with applicable regulations.
- (3) The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.
- (4) The Employer enters into an agreement with the receiving Vendor for the other Annuity Contract or Custodial Account under which the Employer and the Vendor will from time to time in the future provide each other with the following information:
  - (i) Information necessary for the resulting Annuity Contract or Custodial Account, or any other Annuity Contract or Custodial Accounts to which contributions have been made by the Employer, to satisfy Code section 403(b), including the following:
    - (I) the Employer or Administrator providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 7.1 of the Plan);

- (II) the Vendor notifying the Administrator of any hardship withdrawal under Section 7.7 of the Plan if the withdrawal results in a 6-month suspension of the Participant's right to make Elective Deferrals and/or Roth 403(b) Contributions, if applicable, under the Plan; and
  - (III) the Vendor providing information to the Administrator or other Vendors concerning the Participant's or Beneficiary's Code section 403(b) Annuity Contracts or Custodial Accounts or qualified employer plan benefits (to enable the Administrator and/or a Vendor to determine the amount of any Plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Section 7.7 of the Plan): and
- (ii) Information necessary in order for the resulting Annuity Contract or Custodial Account and any other Annuity Contract or Custodial Account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following:
  - (I) the amount of any Plan loan that is outstanding to the Participant in order for the Administrator and/or a Vendor to determine whether an additional Plan loan satisfies the loan limitations of Section 6.4 of the Plan, so that any such additional loan is not a deemed distribution under Code section 72(p)(1) and
  - (II) information concerning the Participant's or Beneficiary's Roth 403(b) Contributions and/or after-tax employee contributions to the extent permitted under the Plan in order for a Vendor to determine the extent to which a distribution is includible in gross income.
- (c) If any Vendor ceases to be eligible to receive contributions under Articles

2, 3 and/or 4 and/or Section 8.1 of the Plan, the Employer shall enter into an information sharing agreement with the Vendor as described in Section 8.4(b)(4) if the Employer's existing contract or agreement with the Vendor does not provide for the exchange of information described in Sections 8.4(b)(4)(i) and (ii) of the Plan.

**8.5 Permissive Service Credit Transfers.**

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 8.5(a) of the Plan may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 8.5(a) of the Plan only if the transfer is either for the purchase of a permissive service credit (as defined in Code section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code section 415 does not apply by reason of Code section 415(k)(3).
- (c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan as the transferor plan, the receiving plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the Plan as the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

## ARTICLE 9.

### ACCOUNTS AND INVESTMENT OF CONTRIBUTIONS

- 9.1 **Manner of Investment.** All Elective Deferrals, Roth 403(b) Contributions to the extent permitted under Article 3 of the Plan, Employer Contributions to the extent permitted under Article 4 of the Plan and other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicle(s) and all income attributable to such amounts, property or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts which have been specifically approved by the Employer for use under the Plan and identified in Appendix A, Appendix B and/or Appendix C to this Plan, as may be modified from time to time. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.
- 9.2 **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Plan (as specifically approved by the Employer for use under the Plan and identified in Appendix A, Appendix B and/or Appendix C to this Plan, as may be modified from time to time) and under the Annuity Contract or Custodial Account selected by the Participant or Beneficiary in accordance with the terms of the Individual Agreements. Transfers and exchanges among Annuity Contracts and Custodial Accounts may be made to the extent permitted under the terms of Article 8 of the Plan, the Individual Agreement(s) and the applicable Treasury Regulations.
- 9.3 **Current and Former Vendors.** The Administrator shall maintain a list of all Funding Vehicles(s) and/or Vendor(s) available under the Plan, including those eligible to receive Elective Deferrals, Roth 403(b) Contributions and Employer Contributions, to the extent permitted under the Plan, and those eligible to receive contract exchanges, to the extent permitted under Section 8.4(b) of the Plan, which shall be identified and listed in Appendix A, Appendix B and/or Appendix C to this Plan, as may be modified from time to time. Such lists are hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy Code section 403(b) or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Elective Deferrals (and/or Roth 403(b) Contributions and/or Employer Contributions, as applicable) under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals (and/or Roth 403(b) Contributions and/or Employer Contributions, as applicable) under the Plan and a Vendor holding assets under the Plan in accordance with Sections 8.2

or 8.4 of the Plan), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Code section 403(b) or other requirements of applicable law.

9.4 **Valuation of Accounts.** The value of the Account of a Participant or Beneficiary shall be determined pursuant to the terms of Individual Agreement(s) for the Funding Vehicle(s) in which Plan assets are invested for the benefit of the Participant or Beneficiary.

9.5 **Funding Vehicles.**

- (a) Contributions made to the Plan are invested in one or more of the Funding Vehicles made available to Participants or Beneficiaries under the Plan. The Funding Vehicles are to be determined by the Administrator and may change from time to time. The Funding Vehicles made available under the Plan shall be listed as provided in Section 9.3 of the Plan. The Participant shall select the Funding Vehicle(s) in which his Account funds will be invested at the time that the Participant first commences participation in the Plan as provided for in Section 2.2 of the Plan and may make changes to his or her Funding Vehicle selections as provided for in Section 2.5 of the Plan.
- (b) The available Funding Vehicle(s), and the rules for allocating a Participant's Account assets among such options, shall be determined by the Administrator. The Administrator may, in accordance with any Board policy regarding the selection and/or deselection of Funding Vehicles under the Plan, eliminate one or more of the Plan's investment Funding Vehicles or offer additional Funding Vehicles from time to time with respect to future periods.
- (c) If the Participant fails to make an election for a Funding Vehicle, with respect to Contributions other than Contributions made pursuant to automatic enrollment to the extent permitted under Section 2.12 of the Plan, no amounts shall be deferred from the Participant's salary pursuant to the Participant's Salary Reduction Agreement for Elective Deferrals (and/or Roth 403(b) Contributions, as applicable), no Rollover Contributions shall be accepted by the Plan and no Employer Contributions (as applicable) shall be made to the Plan for the benefit of the Participant until the Participant properly selects one or more Funding Vehicle investment options.
- (d) The Employer, Related Employer(s), Board, Administrator, Plan and their boards, agents, officers, employees or advisors shall not be liable for any Funding Vehicle investment selection offered to the Participants, any

Funding Vehicle investment option selection made by any Participant, following any Funding Vehicle investment option direction given by any Participant, and any increase or decrease in the amount credited to a Participant's Account as a result of the performance or lack thereof of any Funding Vehicle investment option, by whomever chosen, and shall not be liable for any tax obligations on the part of the Participant with respect to the deferral of compensation under this Plan.

9.6 **Investment Rules**. The following rules shall govern all aspects of this Article 9:

- (a) Any investment direction given by a Participant shall continue in effect until changed by such Participant as provided hereunder.
- (b) In the absence of an effective instruction from any Participant for investment of funds as provided in this Article 9 or pending investment in accordance with such instruction, with respect to Contributions other than Contributions made pursuant to automatic enrollment to the extent permitted under Section 2.12 of the Plan, no Elective Deferral contribution, Roth 403(b) Contribution, Rollover Contribution or Employer Contribution, as applicable, shall be made until an effective investment instruction is received from the Participant.
- (c) The Administrator shall prescribe such other rules as it deems appropriate regarding investments hereunder, including, but not limited to, the number of investment options a Participant may select and procedures for the selection of investment options by a Participant

## ARTICLE 10.

### ADMINISTRATION

- 10.1 **Responsibility for Plan Administration.** The Administrator shall be the Committee (or its duly authorized designee(s)). A third party administrator designated by the Administrator may carry out certain responsibilities of the Administrator, as authorized by the Committee. The Administrator may designate persons in the employment of the Employer to discharge the administrative responsibilities of the Administrator under the Plan.
- 10.2 **Agents of the Administrator.** The Administrator may delegate specific responsibilities to other persons or entities as the Administrator shall determine. The Administrator may authorize one or more of such other persons or entities, or any agent, to execute or deliver any instrument or to make any payment on its behalf or otherwise act as the duly authorized representative of the Administrator. The Administrator may employ and rely on the advice of counsel, accountants, third party administrators and such other persons as may be necessary in administering the Plan. The allocation of any administrative responsibilities made in any service agreement or other agreement between the Administrator, the Employer, one or more Vendor(s) and/or a third party administrator or other third party shall be incorporated by reference herein.
- 10.3 **Administrative Powers of the Plan Administrator.** The Administrator may from time to time establish rules for the administration of the Plan. The Administrator shall have the exclusive right and discretionary authority, to the fullest extent provided by law, to interpret and enforce the terms of the Plan and all appropriate rules and regulations for the administration of this Plan, provided that it acts consistently with the provisions of the Plan and Code section 403(b) and any regulations promulgated thereunder, and to decide or resolve any and all questions, including interpretations of this Plan, as may arise in connection with the Plan. The Administrator shall have the absolute power, authority and discretion to administer and interpret the Plan. Such interpretations of the terms of the Plan as are made by the Administrator shall be binding upon any persons having an interest in or under the Plan. All such interpretations and decisions shall be uniformly and consistently applied to all Employees, Participants and Beneficiaries in similar circumstances.
- 10.4 **Administrative Procedures.** The Administrator may adopt such rules as it deems necessary, desirable or appropriate. All rules and decisions of the Administrator shall be uniformly and consistently applied to all Employees, Participants and Beneficiaries in similar circumstances.

- 10.5 **Reliance on Reports, Certificates and Other Information.** The Administrator, Employer and all Vendors, and their designees, including any third party administrator and/or recordkeeper, shall be entitled to rely conclusively upon all information which may be furnished by an Employee, Participant, Beneficiary, the Employer, and any Related Employer and shall have no duty or responsibility to verify such information. The Administrator, Employer and all Vendors, and their designees, including any third party administrator and/or recordkeeper, shall be entitled to rely conclusively upon all valuations, certificates, opinions and reports which may be furnished by a Vendor, third party administrator or recordkeeper, accountant, controller, legal counsel or other person who is employed or engaged for such purposes.
- 10.6 **Administrative Duties of the Plan Administrator.** The Administrator shall have such duties and powers as may be necessary to discharge its duties under the terms of the Plan, including, but not by way of limitation, the following:
- (a) To prepare and distribute, in such manner as the Administrator determines to be appropriate, information explaining the Plan;
  - (b) To determine all questions relating to the eligibility of individuals to participate in the Plan and/or to remain a Participant hereunder and to receive benefits under the Plan;
  - (c) To receive from the Employer, Related Employers, Employees, Participants and Beneficiaries such information as shall be necessary for the proper administration of the Plan;
  - (d) To prescribe procedures to be followed by Employees enrolling in the Plan and making elections for Elective Deferrals and/or Roth 403(b) Contributions, as applicable, and requests for Rollover Contributions;
  - (e) To authorize the receipt by the Plan of Elective Deferrals, Roth 403(b) Contributions, Rollover Contributions, Employer Contributions, and any other amount subject to the terms of the Plan;
  - (f) To authorize the disbursement from the Plan of benefit distributions, withdrawals, Plan rollover distributions, excess contribution corrective distributions, Plan loans, Plan transfers and any other amount subject to the terms of the Plan;
  - (g) To authorize contract exchanges and any other changes among investment options available under the Plan and as selected by Participants and Beneficiaries, subject to the terms of the Plan;

- (h) To authorize the disbursement of amounts to pay Plan expenses, subject to the terms of the Plan and as deemed necessary and appropriate by the Administrator;
- (i) To furnish to the Participants and Beneficiaries, upon request or as deemed necessary or advisable by the Administrator, periodic statements or other similar summaries of Plan benefits as are reasonable and appropriate;
- (j) To interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof and Code section 403(b) and its regulations;
- (k) To written procedures to be followed by Participants or Beneficiaries filing applications or claims for benefits;
- (l) To maintain all necessary records for the administration of the Plan;
- (m) To receive, review and keep on file (as the Administrator deems convenient or appropriate) reports of Plan contributions, contract exchanges, benefit payments and disbursements for expenses;
- (n) To review on a periodic basis the investment fund options made available under the Plan and to select or deselect one or more investment fund options from time to time in accordance with any Board policy regarding such selection and deselection of investment fund options and as deemed appropriate and necessary by the Administrator; and
- (o) To furnish to the Employer, upon request or as deemed necessary or advisable by the Administrator, such periodic reports with respect to the administration of the Plan as are reasonable and appropriate.

10.7 **Member's Own Participation.** No member of the Committee may act, vote or otherwise influence a decision of the Committee specifically relating to his or her own participation, including his or her individual right or claim to any benefit, under the Plan.

10.8 **Indemnification of Administrator.** To the extent permitted by applicable law or unless otherwise agreed pursuant to a written agreement, the Employer shall indemnify and hold harmless the Board, Committee and Administrator and their individual members and their designees, against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to this Plan, except in the case of gross negligence or willful misconduct

by the Board, Committee and/or Administrator or any of their members or designees.

## ARTICLE 11.

### AMENDMENT AND PLAN TERMINATION

- 11.1 **Termination of Contributions.** The Board on behalf of the Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer and its Board has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.
- 11.2 **Amendments and Termination.** The Board on behalf of the Employer reserves the right and authority to amend or terminate this Plan at any time, provided, however, that no amendment shall reduce the amount of the Participant's Vested Account Balance, as determined as of the date of the amendment, except as permitted under the Code and applicable regulations promulgated thereunder.
- 11.3 **Distribution upon Termination of the Plan.** The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreement(s), all Accounts shall be distributed as soon as administratively practicable under the Plan, provided that the Employer and any Related Employer on the date of termination do not make contributions to any Code section 403(b) annuity contract or custodial account that is not part of the Plan during the period beginning on the date of Plan termination and ending twelve (12) months after the distribution of all assets from the Plan, except as permitted by Treasury Regulations section 1.403(b)-10(a).
- 11.4 **Effect of Payment.** The payment of the Participant's Account Balance to the Participant, his legal representative, Beneficiary or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder and shall completely discharge all obligations to the Participant and his Beneficiar(ies) under the Plan.

## ARTICLE 12.

### PRE-AUTHORIZATION OF BENEFIT CLAIMS; CLAIMS PROCEDURES

- 12.1 **Pre-Authorization of Benefit Claims; Claims for Benefits.** Any Participant or Beneficiary who believes he or she is entitled to a benefit under the Plan may file a written request for pre-authorization of such benefit claim with the Administrator, subject to the procedures promulgated by the Administrator.

Once a pre-authorization has been obtained from the Administrator, the Participant or Beneficiary must also submit a distribution request to the Vendor holding the Funding Vehicle(s) in which the Participant's Account assets are invested in order to make a claim for payment of a Plan benefit. The distribution request forms and procedures for requesting the distribution of benefits from such Funding Vehicle(s) shall be subject to the procedures promulgated by the Vendor holding such Funding Vehicle(s) and the terms of the Individual Agreement(s).

- 12.2 **No Employer Liability for Payment of Benefits.** The Employer shall have no liability for the payment of benefits under the Plan provided that the Vendor(s) of the applicable Funding Vehicle(s) in which the Account assets are held receive written direction for the payment of benefits in accordance with Article 7 of the Plan. Each Participant and Beneficiary shall look solely to the Vendor(s) of the applicable Funding Vehicle(s) for receipt of payments or benefits under the Plan.

## ARTICLE 13.

### MISCELLANEOUS

- 13.1 **Non-Assignability.** Except as provided in Sections 13.2 and 13.3 of the Plan, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- 13.2 **Domestic Relations Orders.**
- Notwithstanding the provisions of Section 13.1 of the Plan, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments or the marital property rights of a Spouse or former spouse, child or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order") and is determined by the Administrator and/or Vendor to satisfy the requirements of a qualified domestic relations order as set forth in Code section 414(p) and related regulations, subject to the terms of the Individual Agreement(s), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan, subject to the terms of the Individual Agreement(s). The Administrator and/or Vendor shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.
- 13.3 **IRS Levy.** Notwithstanding the provisions of Section 13.1 of the Plan, if a Participant or Beneficiary is entitled to a distribution in accordance with Section 7.1 of the Plan, the Administrator and/or Vendor holding the Funding Vehicle(s) controlling the Account assets of the Participant or Beneficiary may authorize distribution and such Vendor may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator and/or such Vendor finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.
- 13.4 **Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act

- (FICA) taxes with respect to Elective Deferrals (and Roth 403(b) Contributions, if applicable), which constitute wages under Code section 3121). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Code section 3401 and the Treasury Regulations thereunder). A payee shall provide such information as the Administrator and/or Vendor may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.
- 13.5 **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator and/or Vendor holding the Funding Vehicle(s) controlling the Account assets of the Participant or Beneficiary, benefits will be paid to the legal guardian, legal representative, court appointed representative or the person having care and custody of such Participant or Beneficiary, subject to the terms of the Individual Agreement(s). Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.
- 13.6 **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.
- 13.7 **Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the records of the Employer or Administrator, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within six (6) months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Funding Vehicle shall continue to hold the benefits due such person.
- 13.8 **Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of Code section 403(b) and the Treasury Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Code section 403(b).

In such event, the Individual Agreements shall be interpreted, to the extent possible, in a manner to conform to the Plan and applicable requirements, provided however that the Plan may not enlarge the rights of the Employer, Administrator or a Participant or Beneficiary under the Individual Agreement.

- 13.9 **Non-Guarantee of Employment.** Nothing contained in this Plan shall be construed as a contract of employment between the Employer and the Employee or Participant, as a right of the Employee or Participant to continue in the employment of the Employer or as a limitation of the right of the Employer to discharge the Employee or Participant with or without cause. Nothing herein shall be construed to modify the terms of any employment contract or agreement for services between the Employee or Participant and the Employer, as this Plan is intended to be a supplement thereto.
- 13.10 **Furnishing Information.** A Participant and his or her Beneficiary shall cooperate with the Administrator by furnishing any and all information requested by the Administrator and take such other actions as may reasonably be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder.
- 13.11 **Governing Law.** The Plan will be construed, administered and enforced according to the Code and the laws of the State in which the Employer has its principal place of business.
- 13.12 **Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.
- 13.13 **Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.
- 13.14 **Notice.** Any notice or filing required or permitted to be given to the Administrator under this Plan shall be sufficient if in writing and hand-delivered, or sent by first class, registered or certified mail, to the address below:

Southern Ohio Educational Service Center 403(b) Retirement Plan Administrator  
c/o Gatekeeper Administration & Consulting, L.L.C.  
1338 West Forest Meadows Drive, Suite 220  
Flagstaff, AZ 86001

Any legal notice of the Employer under this Plan shall be sufficient if in writing and hand-delivered, or sent by registered or certified mail, to the address below:

Southern Ohio Educational Service Center  
3321 Airborne Road

Wilmington, OH 45177

Such notice shall be deemed given as of the date of delivery or, if delivery is made by registered or certified mail, as of the date shown on the postmark on the receipt for registration or certification.

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing and hand-delivered, or sent by mail or electronic mail, to the last known address of the Participant.

- 13.15 **Successors.** This Plan and all rights of each Participant hereunder shall inure to the benefit of and be enforceable by the Participant's Beneficiary, personal or legal representatives, or estate, to the extent any such person succeeds to the Participant's interests under this Plan. No rights or obligations of the Employer under this Plan may be assigned or transferred except that the Employer shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Employer expressly to assume and agree to perform the Employer's obligations under this Plan in the same manner and to the same extent that the Employer would have been required to perform it if no such succession had taken place. As used in this Plan, the "Employer" shall mean both the Employer as defined above and any successor to its business and/or assets (by merger, purchase or otherwise) which executes and delivers the agreement provided for in this Section 13.15 of the Plan or which otherwise becomes bound by all the terms and provisions of this Plan by operation of law or otherwise.
- 13.16 **Severability; No Waiver.** If any provision of the Plan is held invalid or unenforceable for any reason, its invalidity or unenforceability will not affect any other provision of the Plan, and the Plan will be construed and enforced as if such provision had not been included. The failure of the Employer, Administrator or any Employee, Participant and/or Beneficiary to insist upon strict compliance with any provisions of, or to assert any right under, this Plan shall not be deemed to be a waiver of such provision or right or of any other provision of or right under this Plan.
- 13.17 **Court Order.** The Administrator may authorize any payments directed by court order in any action in which the Plan, the Employer or the Administrator has been named as a party.

IN WITNESS WHEREOF, the undersigned has executed this Plan document on behalf of the Employer this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**SOUTHERN OHIO EDUCATIONAL  
SERVICE CENTER**

By: \_\_\_\_\_

Title: \_\_\_\_\_