

403(b) Plan Document  
For  
Public Education Organizations

This plan document includes the IRS model language set forth in Rev. Proc. 2007-71 and has been modified to delete certain optional features and include provisions that were not included in the IRS model language. It is expected that school districts will, with the assistance of counsel, modify this plan document by selecting certain options as provided in the Adoption Agreement, the terms of which are incorporated into this plan document.

## **Section 1 - Definitions**

The following words and terms, when used in the Plan, have the meaning set forth below.

- 1.1 **Account** means the account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.
- 1.2 **Account Balance** means the value of the aggregate amount credited to each Participant's Account under all Accounts, including the Participant's Elective Deferrals, the earnings or loss of each Annuity Contract or a 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. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, if such contributions are authorized under the Adoption Agreement, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).
- 1.3 **Administrator** means, unless otherwise indicated in the Adoption Agreement, Bay Bridge Administrators, LLC. Notwithstanding this appointment, the Employer may delegate, by separate agreement, any administrative responsibilities hereunder to one or more persons, committees, Vendor, or other organization.
- 1.4 **Annuity Contract** means a nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in the state in which the Employer or Participant, as applicable, resides and that includes payment in the form of an annuity.
- 1.5 **Beneficiary** means 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.
- 1.6 **Custodial Account** means the group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.
- 1.7 **Code** means 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 **Compensation** means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, 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 section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election under Section 2 of the Plan made to reduce compensation in order to have Elective Deferrals under the Plan).
- 1.9 **Disabled** means the definition of disability provided in the applicable Individual Agreement.
- 1.10 **Elective Deferral** means 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, unless the Plan permits Roth 403(b) Contributions under Section 10.
- 1.11 **Employee** means each individual, whether appointed or elected, 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. Further, a person occupying an elective or appointive public office is not an Employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a state or local government.
- 1.12 **Employer** means the public education organization identified in the Adoption Agreement as the Employer.
- 1.13 **Employer Contributions** means any nonelective contributions made to the Plan by the Employer as provided in the Adoption Agreement.
- 1.14 **Funding Vehicles** means the Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and authorized by Employer for use under the Plan.
- 1.15 **Includible Compensation** means an Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$245,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). Beginning in 2009 and thereafter, such term also includes any "differential pay" that may be received from the Employer while performing qualified military service under section 414(u) of the Code. The amount of Includible Compensation is determined without regard to any community property laws.
- 1.16 **Individual Agreement** means an agreement between a Vendor and the Employer or a Vendor and a Participant that constitutes or governs a Custodial Account or an Annuity Contract.
- 1.17 **Participant** means an individual for whom Elective Deferrals or other contributions permitted under the Plan are currently being made, or for whom such contributions have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.
- 1.18 **Plan** means the name given to this Plan by the Employer in the Adoption Agreement.
- 1.19 **Plan Year** means the calendar year.

- 1.20 **Related Employer** means the Employer and any other entity which is under common control with the Employer under section 414(b) or (c) of the Code. 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.
- 1.21 **Roth 403(b) Contribution** means, if authorized in the Adoption Agreement, any contribution made by a Participant which is designated as a Roth 403(b) Contribution in accordance with Section 10 of the Plan that qualifies as a Roth 403(b) Contribution under section 402A of the Code.
- 1.22 **Severance from Employment** means severance from employment with the Employer and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public school, 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).
- 1.23 **Vendor** means the provider of an Annuity Contract or Custodial Account, or any organization acting on their behalf under this Plan. By accepting contributions under the Plan by or on behalf of Employees, Vendor specially agrees to adhere to the terms of this Plan document.
- 1.24 **Valuation Date** means each business day of the Plan Year.

## **Section 2 - Participation and Contributions**

- 2.1 **Eligibility.** Unless otherwise provided in the Adoption Agreement, each Employee willing to contribute at least \$200 per Plan Year, shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the Employer. However, an Employee who is a student-teacher (i.e., a person providing service as a teacher's aide on a temporary basis while attending a school, college or university) or a student-worker is not eligible to participate in the Plan.
- 2.2 **Contributions.** (a) Elective Deferral Contributions. An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed to the Plan as an Elective Deferral on his or her behalf) and filing it with the appropriate Administrator. This Compensation reduction election shall be made on the 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, and may change such minimum to a lower amount from time to time. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made. Any such election shall remain in effect until a new election 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. Unless otherwise provided

in the Plan or Adoption Agreement, all Elective Deferrals shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the employee's election.

(b) Roth 403(b) Contributions. If authorized in the Adoption Agreement and if permitted under an Employee's Individual Agreement(s), an Employee may elect to make Roth 403(b) Contributions to the Plan in accordance with Section 10 of the Plan. The Participant's election to make Roth 403(b) Contributions shall be made on the agreement provided by the Administrator and shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made. Any such election shall remain in effect until a new election is filed.

(c) Employer Contributions. (1) If authorized in the Adoption Agreement, the Employer may make nonelective Employer contributions to Accounts of designated Employees. Employer contributions shall be determined in accordance with the Adoption Agreement. Contributions made under this Section 2.2(c) shall be deposited into each Participant's Account in accordance with Sections 2.4 and 2.5 of the Plan.

(2) Employer may make contributions into the 403(b) Accounts of former Employees, provided that any such contributions satisfy all of the following conditions:

- a. Contributions may not be made later than the fifth calendar year following the year in which the former Employee ceased to be an Employee.
- b. Contributions shall be made in accordance with applicable IRS guidance.
- c. Contributions shall be 100% vested at all times.
- d. Contributions shall be based on "includible compensation" as defined in section 403(b)(3) of the Code as modified by IRS regulations and shall be subject to the limitations of section 415(c)(1) of the Code.

Subject to (2)b. above, amounts not contributed by Employer to any former Employee's 403(b) Account due to the contribution limitations of section 415(c) of the Code shall be contributed in the next Plan Year (and each succeeding Plan Year) until the Employer contributes all amounts due to Participant. No contributions may be made after the last day of the fifth year following the Plan Year in which the Participant's Severance from Employment occurred.

2.3 **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 any information required under the Individual Agreements.

2.4 **Change in Elective Deferral Election.** Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals, a change in the allocation of his or her Elective Deferrals to reflect pre-tax or Roth 403(b) Contributions (if permitted under the Plan), and/or a change to previous investment

directions. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

- 2.5 **Contributions Made Promptly.** Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant, unless an earlier date is required by applicable state law. Employer contributions shall be transferred to the applicable Funding Vehicle within a reasonable period of time but in no event later than thirty (30) days after the end of the Employer's standard work year for which such contributions were owed.
- 2.6 **Leave of Absence.** If an Employee is absent from work by leave of absence, Elective Deferrals under the Plan shall cease and a new election must be filed upon returning to work to make Elective Deferrals.

### **Section 3 - Limitations on Amounts Deferred**

- 3.1 **Basic Annual Limitation.** Except as provided in Sections 3.2 and 3.3, the maximum amount of the Elective Deferral 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. The "applicable dollar amount" is the amount established under section 402(g)(1)(B) of the Code, which is \$16,500 for 2011, and is adjusted for cost-of-living thereafter as provided under section 415(d) of the Code.
- 3.2 **Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service.** If authorized in the Adoption Agreement, the applicable dollar amount under Section 3.1(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:
    - (1) \$15,000, over
    - (2) The total special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or
  - (c) The excess of:
    - (1) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over
    - (2) The total Elective Deferrals made for the employee by the qualified organization for prior years.

For purposes of this Section 3.2, a "qualified employee" means an employee who has completed at least 15 years of service taking into account only employment with the Employer.

- 3.3 **Age 50 Catch-up Elective Deferral Contributions.** An Employee who is a Participant who will attain age 50 or more by the end of the tax year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5,500 for 2013, and is adjusted for cost-of-living thereafter as provided under the Code.
- 3.4 **Coordination.** If the Adoption Agreement authorizes contributions under Section 3.2 of the Plan, amounts in excess of the limitation set forth in Section 3.1 shall be allocated first to the special 403(b) catch-up under Section 3.2 and next as an age 50 catch-up contribution under Section 3.3. However, in no event can the amount of the Elective Deferrals for a year be more than the Participant's Includible Compensation for the year.
- 3.5 **Special Rule for a Participant Covered by Another Section 403(b) Plan.** For purposes of this Section 3, if the Participant is or has been a participant in one or more other plans under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the Elective Deferral limitations of this Section 3. For this purpose, the Administrator shall take into account any other such plan maintained by 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 3.2 only if the other plan is a section 403(b) plan.
- 3.6 **Correction of Excess Elective Deferrals.** If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral 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 section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, 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 in accordance with applicable IRS guidance.
- 3.7 **Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period 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, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, 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).

- 3.8 **Annual Contribution Limits.** The aggregate annual amount contributed into a Participant's Account shall not exceed the amount permitted under section 415(c) of the Code. If any Employer Contributions cause a Participant's 403(b) Contract to exceed the annual contribution limitation of section 415(c)(1) of the Code, the excess contributions shall be segregated and treated in a manner consistent with applicable IRS guidance on excess "annual additions."

#### **Section 4 - Loans**

- 4.1 **Loans.** If authorized in the Adoption Agreement, loans shall be permitted under the Plan to the extent permitted by and in accordance with the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured. An Employee who has previously defaulted on a loan from any retirement plan or deferred compensation arrangement sponsored by the Employer and who has not repaid the loan, in full, shall not be permitted to take a loan from his Account under the Plan.
- 4.2 **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 Sections 4.1 and 4.3, including the collection of information from Vendors, 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 Vendors 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.
- 4.3 **Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of (a) or (b) below:
- (a) \$50,000, reduced by the greater of:
    - (1) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or
    - (2) 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 approved by the Administrator (not taking into account any payments made during such one-year period).
  - (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 approved by the Administrator).

For purposes of this Section 4.3, 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.

- 4.4 **Loan Repayments For Employees in Military Service.** Notwithstanding any other provision of the Plan or any Annuity Contract or Custodial Account, loan repayments by eligible uniformed services personnel maybe suspended as permitted under section 414(u)(4) of the Code and the terms of any loan shall be modified to conform therewith.

## **Section 5 - Benefit Distributions**

- 5.1 **Benefit Distributions At Severance from Employment or Other Distribution Event.** Except as permitted under Section 3.6 (relating to excess Elective Deferrals), Section 5.3 (relating to withdrawals of amounts rolled over into the Plan), or Section 5.4 (relating to Hardship Distributions), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participation has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements. Notwithstanding the above, a Participant who is on active duty for a period of at least 30 days while performing qualified military service and who is receiving differential pay from the Employer while on active duty may elect to receive a distribution of the Participant's deferrals into the Plan as permitted under section 414(u) of the Code. If a distribution of the Participant's deferrals is taken, then no deferrals into the Plan may be made by the Participant for a period of at least six (6) months from the date of the distribution.
- 5.2 **Minimum Distributions.** Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of Treas. Reg. §1.408-8, except as provided in Treas. Reg. § 1.403(b)-6(e). For the calendar year 2009 only, a Participant who would have been required to receive a distribution under this Section 5.2 but for the enactment of WRERA ("2009 mandatory distribution"), and who would have satisfied that requirement by receiving a distribution from the Plan will not receive a 2009 mandatory distribution. However, the Participant may affirmatively elect to receive such amount in 2009 which shall not be a mandatory distribution under this Section of the Plan.
- 5.3 **In-Service Distributions From Rollover Account.** If the Funding Vehicles in which a Participant's Account is invested has established and maintains a separate account attributable to rollover contributions to the Plan and if permitted by the applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in such rollover account.



5.4 **Hardship Distributions.** If authorized under the Adoption Agreement, (a) hardship distributions shall be authorized under the Plan to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship. No Elective Deferrals to any retirement or deferred compensation plan sponsored by the Employer shall be allowed during the six (6) month period beginning on the date the Participant receives a distribution on account of hardship.

(b) No hardship distribution is permitted unless the Vendors agree to the exchange of information between the Administrator and the Vendors to the extent necessary to implement the Individual Agreements. Notwithstanding any Individual Agreement, the Plan only permits hardship distributions that satisfy the “safe harbor” standards with respect to establishing an immediate and heavy financial need (under Treas. Reg. §1.401(k)-1(d)(3)(iii)(B)). For purposes of satisfying the lack of other resources requirement (under Treas. Reg. §1.401(k)-1(d)(3)(iv)(E)), the Plan shall follow the provisions of the applicable Individual Agreements, except that all Participants shall suspend Elective Deferrals for a period of six (6) months following the date of the hardship distribution. Vendor shall notify Employer of any hardship distributions in order for the Employer to implement the resulting 6-month suspension of the Participant’s right to make Elective Deferrals under the Plan.

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

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

## **Section 6 – Rollovers, Exchanges and Transfers**

6.1 **Eligible Rollover Contributions to the Plan.** To the extent provided in the Individual Agreements, any Employee or 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 Vendor may require such documentation from the

distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. However, unless Roth 403(b) Contributions are authorized under the Adoption Agreement, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code or a Roth IRA described in section 408A of the Code.

6.2 **Eligible Rollover Distributions.** For purposes of Section 6.1, 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 any installment payment payable over a period of ten (10) years or more, any distribution made as a result of a financial hardship or other distribution which is made upon hardship of the employee, or for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, for purposes of Section 6.1, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accept eligible rollover distributions.

6.3 **Separate Accounts.** Unless otherwise provided by the terms of applicable Individual Agreements, Vendors shall provide separate accounting for any eligible rollover distributions paid to the Plan.

6.4 **Plan-to-Plan Transfers to the Plan.** (a) If authorized under the Adoption Agreement, the Administrator may permit a transfer of assets to the Plan as provided in this Section 6.4. Such a transfer is permitted only if the other 403(b) plan provides for the direct plan-to-plan transfer of each Employee's interest therein to the Plan and the Participant is an Employee or former Employee of the Employer. The Administrator or any Vendor accepting a transfer may require such documentation from the other 403(b) plan as it deems necessary to effectuate the transfer in accordance with Treas. Reg. §1.403(b)-10(b)(3) and other applicable IRS guidance and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.

(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.

(c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution

restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions that are not less stringent than those imposed on the transferor plan and the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

6.5 **Plan-to-Plan Transfers from the Plan.** (a) If authorized under the Adoption Agreement, Participants and Beneficiaries may elect to have all or any portion of their Account Balance transferred to another plan that satisfies section 403(b) of the Code in accordance with Treas. Reg. § 1.403(b)-10(b)(3). A transfer is permitted under this Section 6.5(a) only if the Participants or Beneficiaries are Employees or former Employees of the Employer under the receiving plan and the other 403(b) plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for the Account of each Participant and Beneficiary after the transfer to at least equal the Account value immediately prior to the transfer.

(b) The other 403(b) plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, it 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 other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in 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 6.5, 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 Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.5 (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to Treas. Reg. §1.403(b)-10(b)(3).

6.6 **Contract and Custodial Account Exchanges.** (a) If authorized in the Adoption Agreement, a Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Vendors under the Plan, subject to the terms of the Individual Agreements. However, unless otherwise indicated on the Adoption Agreement, exchanges are not permitted to Vendors that are not eligible to receive contributions under Section 2. If the Adoption Agreement authorizes exchanges to a Vendor that is not eligible to receive contributions under Section 2, the conditions in paragraphs (b) through (d) of this Section 6.6 must be satisfied.

(b) 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 section 403(b) Annuity Contracts or Custodial

Accounts immediately before the exchange).

(c) 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.

(d) The Employer enters into an agreement with the receiving Vendor for the other 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:

(1) Information necessary for any current or former Vendor to which Plan contributions have been made in order to satisfy section 403(b) of the Code, including the following:

- A. Employer shall provide 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 5);
- B. if hardship distributions are authorized in the Adoption Agreement, Vendor shall notify Employer of any hardship distribution under Section 5.4 of the Plan; and
- C. Vendor shall provide information to the Employer or other Vendors concerning the Participant's or Beneficiary's Annuity Contracts or Custodial Accounts or qualified employer plan benefits (to enable 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 distribution rules of Section 5.4); and

(2) Information necessary for the resulting Annuity Contract or Custodial Account and any other 403(b) contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following:

- A. the amount of any plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional Plan loan satisfies the loan limitations of Section 4.3, so that any such additional loan is not a deemed distribution under section 72(p)(1) of the Code; and
- B. information concerning the Participant's or Beneficiary's Roth 403(b) Contributions and after-tax employee contributions in order for a Vendor to determine the extent to which a distribution is includible in gross income.

(e) If any Vendor ceases to be eligible to receive Elective Deferrals under the Plan, the Vendor shall enter into an information sharing agreement as described in Section 6.6(d) to the extent the Employer's relationship with the Vendor does not provide for the exchange of information described in Section 6.6(d)(1) and (2).

6.7 **Permissive Service Credit Transfers.** (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) 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 such defined benefit governmental plan. A transfer under this Section 6.7(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under this Section 6.7 only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

(c) If a plan-to-plan transfer under this Section 6.7 does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

## **Section 7 - Investment of Contributions**

7.1 **Manner of Investment.** All Elective Deferrals, Roth 403(b) Contributions, Employer Contributions or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. 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.

7.2 **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers and exchanges among Annuity Contracts and Custodial Accounts may be made under this Section 7.2 as authorized under the Adoption Agreement and to the extent provided in the Individual Agreements as permitted under applicable Income Tax Regulations.

7.3 **Current and Former Vendors.** The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. If a Vendor is not eligible to receive Elective Deferrals, Roth 403(b) Contributions or Employer Contributions under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals under the Plan and a Vendor holding assets under the Plan in accordance with Section 6.4 or 6.6), Employer shall keep Vendor informed of the name and contact

information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

## **Section 8 - Amendments to the Plan**

- 8.1 **Termination of Contributions.** The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer 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.
- 8.2 **Amendment.** The Employer reserves the authority to amend this Plan at any time, provided that any amendment which reduces the contractual rights or benefits under an Individual Agreement shall apply prospectively only except as required under the Code and applicable regulations.

## **Section 9 – Miscellaneous**

- 9.1 **Non-Assignability.** Except as provided in Section 9.2 and 9.3, 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.
- 9.2 **Domestic Relation Orders.** Notwithstanding Section 9.1, 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"), 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. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.
- 9.3 **IRS Levy.** Notwithstanding Section 9.1, the Administrator may direct payment from a Participant's or Beneficiary's Account in the amount that the Administrator 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.
- 9.4 **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, which constitute wages under section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Employment Tax Regulations thereunder). A payee shall provide such information as the Administrator or Vendor may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

- 9.5 **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, benefits will be paid in conformity with applicable Annuity Contracts or Custodial Accounts. If the applicable Annuity Contracts or Custodial Accounts do not address the issue of payments to minors and incompetents, then the Administrator shall direct payment of the benefit to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. 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.
- 9.6 **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one (1) 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 to the party that made the contribution.
- 9.7 **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. If, after sending the communication by certified mail to the last known address shown on the records of the Employer or the Administrator and not receiving a response within six (6) months, then the terms of the Funding Vehicle holding the Accounts of the Participant that govern payment of benefits to Participants and Beneficiaries who cannot be located shall be followed.
- 9.8 **Incorporation of Individual Agreements.** The Plan, together with the Adoption Agreement and any Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Adoption Agreement and applicable Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code. In such event, the Individual Agreements shall be interpreted, to the extent possible, in a manner to conform to the Plan and applicable requirements.
- 9.9 **Expenses of the Plan.** As of any Valuation Date, each Participant Account shall reflect any contributions made by or on behalf of the Participant, less any distributions or withdrawals, and shall be adjusted in accordance with the terms of the Funding Vehicles

selected by the Participant to reflect any appreciation or depreciation in the fair market value of the Participants' Accounts. The fair market value of each Participant's Account shall represent the fair market value of all property held for each Participant, plus cash and accrued earnings, less accrued expenses and proper charges against each Participant's Account as of each valuation. Participant Accounts shall be charged with the costs attributable to each Funding Vehicle in which his or her Account is invested and may be charged with administrative expenses that are directly attributable to a Participant's Account or are prorated and allocated to Participants Accounts under an administrative service agreement between Administrator and Employer, Vendors and/or Funding Vehicles.

- 9.10 **Governing Law.** The Plan shall be construed, administered and governed in all respects in accordance with the laws of the State of the Employer's principal address as indicated on the Adoption Agreement to the extent such laws are not superseded by federal law. Notwithstanding the preceding, a spouse and spousal rights under the Plan shall be determined in a manner consistent with the requirements of United States v. Windsor.
- 9.11 **Construction.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof. Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.
- 9.12 **Indemnification.** If Employer appoints an Employee or a committee of Employees to act as the Administrator of the Plan, Employer shall indemnify any such Employee acting on its behalf in this capacity. Such individuals shall be indemnified from any and all liability that may arise by reason of his action or failure to act concerning this Plan, excepting any willful misconduct or criminal acts.
- 9.13 **No Employer Liability.** Employer shall have no liability for the payment of benefits under the Plan. Each Participant shall look solely to the providers of applicable Annuity Contracts and Custodial Accounts for receipt of payments or benefits under the Plan.
- 9.14 **Qualified Military Service Benefits.** Notwithstanding any other provision of this Plan, any Participant whose employment is interrupted by qualified uniformed service in the military under section 414(u) of the Code shall be entitled to all rights, benefits and protections afforded to such individuals thereunder, and such provisions are incorporated into this Plan. Uniformed services by any individual shall be determined as described in Section 3401(h)(2)(A) of the Code.

## **Section 10 – Roth 403(b) Contribution Provisions**

- 10.1 **General Application.** This Section 10 shall apply only if the Employer has elected to permit Roth 403(b) Contributions under the Plan as indicated on the Adoption Agreement.



- 10.2 **Roth 403(b) Contributions.** Participants may make Roth 403(b) Contributions to their Accounts under the Plan if authorized by the Employer on the Adoption Agreement. Unless otherwise provided, such contributions shall be treated as Elective Deferrals and are therefore subject to the requirements and limitations imposed by section 402(g) of the Code. A Participant's Roth 403(b) Contributions shall be allocated to a separate account maintained for such deferrals as described in Section 10.3.
- 10.3 **Separate Accounting Requirements.** Contributions and withdrawals of Roth 403(b) Contributions, and earnings or losses thereon, shall be credited and debited to each Participant's Account and shall be separately accounted for under each Employee's Account. Gains, losses, and other credits or charges shall be separately allocated on a reasonable and consistent basis for each Participant's Roth 403(b) Contributions. Except as provided in Section 10.6, no contributions other than Roth 403(b) Contributions and properly attributable earnings may be credited to each Participant's Roth subaccount.
- 10.4 **Deposit Requirements.** Roth 403(b) Contributions shall be deposited with the applicable Funding Vehicles as soon as practicable in accordance with Section 2.5 of the Plan, unless an earlier date is required under state law.
- 10.5 **Direct Roth Rollovers From the Plan.** Notwithstanding Section 5.5 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, to a Roth 401(k) plan with Roth contribution features or to a Roth IRA described in Section 408A of the Code, and only to the extent the Rollover is permitted under the rules of section 402(c) of the Code.
- 10.6 **Roth Rollovers Into the Plan.** Notwithstanding Section 6.1 of the Plan, and unless otherwise indicated on the Adoption Agreement, direct rollovers of Roth 403(b) Contributions and Roth 401(k) contributions and earnings thereon from another 403(b) plan with Roth 403(b) Contribution features or from a Roth 401(k) plan with Roth contribution features are permitted, provided that the Funding Vehicles selected by a Participant will accept Roth 403(b) and/or 401(k) rollovers. Direct rollovers shall only be permitted if the transmitting plan satisfies the conditions set forth in section 402A(e)(1) of the Code and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.
- 10.7 **Correction of Excess Deferrals.** Excess Deferrals shall be corrected by first distributing the amount of Roth 403(b) contributions (plus earnings thereon) made during the Plan Year needed to correct the excess and then by distributing a Participant's pre-tax Elective Deferrals (plus earnings thereon). However, if a highly compensated employee (as defined in Section 414(q) of the Code) experiences an Excess Deferral in any Plan Year, he may designate the extent to which the excess amount is composed of Elective Deferrals and excess Roth 403(b) Contributions, provided that both types of contributions were made by the Employee during the applicable Plan Year. If the highly compensated employee does not designate which type of contributions are to be distributed, then pre-tax Elective Deferrals shall be distributed first, followed by Roth 403(b) Contributions.

- 10.8 **Definition of Roth 403(b) Contributions.** A Roth 403(b) Contribution is an Employee contribution that is designated irrevocably by the Employee on his enrollment form to be a Roth 403(b) Contribution and is treated by the Employer as includible in the Employee's income.
- 10.9 **Roth Caveat.** Employer, Administrator and providers of Annuity Contracts and Custodial Accounts shall utilize good faith compliance efforts to conform to the requirements applicable to Roth 403(b) Contributions based on applicable IRS guidance related to Roth 403(b) Contributions. The Plan shall be administered and interpreted in the manner necessary to ensure compliance with such guidance.

The Employer has evidenced its intent to adopt this Plan by executing the Adoption Agreement which is a part of this 403(b) Plan document. This Plan document, the Adoption Agreement, and any underlying Annuity Contracts and Custodial Accounts provided by the Vendors authorized by the Employer, as well as necessary forms and administrative policies and procedures incorporated by the Employer, an Administrator or any Funding Vehicle shall constitute the entire Plan.