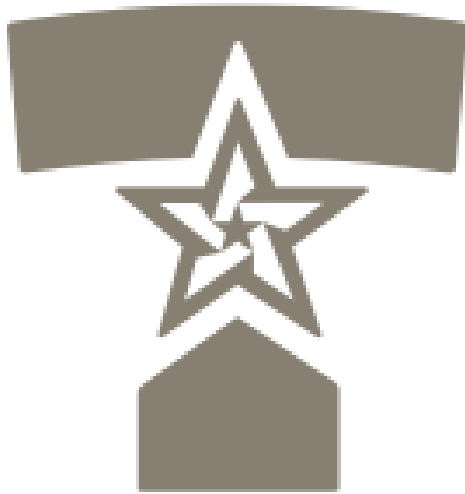


# **TEXAS STATE UNIVERSITY SYSTEM**



## **Supplemental Tax Sheltered Annuity Plan**

**February 2016**



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# Texas State University System Supplemental Tax Sheltered Annuity Plan

## Preamble

This plan ("the Plan") is for eligible employees, former employees and retirees of the Texas State University System, including all its component institutions, and is established under the authority of the Vernon's Texas Civil Statutes, Article 6228a-5. The Texas State University System is a unit of the State of Texas, and this Plan is not covered by ERISA (P.L. 93-406, 88 Stat. 829). This Plan serves as a restatement of any prior formal or informal plan or rules and regulations governing the Supplemental Tax Sheltered Annuity Plans ("TSA") at the Texas State University System or at any of its component institutions. This Plan shall be effective January 1, 2009.

## Section 1 Controlling Statutes

The Plan is intended to comply with Section 403(b) of the Internal Revenue Code ("the Code"), and the Income Tax Regulations, §1.403(b). References in this plan to specific parts of these laws, rules and regulations are for convenience only, and all relevant provisions are hereby incorporated by reference. In the event that any provision of the Plan or of any administrative procedure, rule or regulation established under the Plan is determined to be in conflict with the Code, the Income Tax Regulations or with any applicable law or regulation of the State of Texas, the provisions of the Code, the Income Tax Regulations or any applicable law or regulation of the State of Texas, or the Plan, shall prevail in that order of precedence. Where the law, including but not limited to the Code, the Income Tax Regulations, or applicable Texas Law governing the Plan is amended, modified or interpreted through subsequent legislation, or rulings or decisions, the Plan's provisions shall be construed, insofar as is feasible, as incorporating any such amendment, modification or interpretation of the law.

## Section 2 Definitions

2.1 The following definition, based on the rule in the Rules of the Texas Higher Education Coordinating Board, Texas Administrative Code, Title 19, Chapter 25, Rule §25.3, but with extensive modifications, is used herein to afford as much uniformity as is possible, and is to be used to the extent that the context does not clearly require another meaning.

**"Break in Service."**--A period following a participant's termination of all employment with all Texas public institutions of higher education that is at least one full calendar month for which no paycheck is issued, excluding the summer months for faculty members who were paid through the end of the spring semester immediately preceding the summer and who resume receiving salary with the same institution of higher education in the fall semester immediately following that summer, and excluding periods of leave-without-pay. For faculty members and others on contracts covering 11 months or less of each year, when such contracts are a standard practice of the Employer, a Break-in-Service cannot occur until after (a) the employee has been formally notified by the Employer that a new contract to begin on the normal starting date for such contracts will not be offered, or (b) the employee has irrevocably indicated in writing that he or

she will not accept a new contract from the most recent Employer, and will not accept a contract from any other Texas Public Institution of Higher Education to begin on approximately the same date as a new contract with the most recent Employer would have or (c) one full calendar month of the normal new contract period has elapsed without the employee earning or accruing any salary from the Employer.

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

2.2 **“Account”**: The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.

2.3 **“Account Balance”**: The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant’s Account under all Accounts, including the Participant’s Elective Deferrals and Roth 403(b) Contributions, 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, 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).

2.4 **“Administrator”**: The person(s) designated in Section 3 to administer the Plan.

2.5 **“Annuity Contract”**: 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 Texas and that includes payment in the form of an annuity.

2.6 **“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.

2.7 **“Custodial Account”**: 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.

2.8 **“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.

2.9 **“Compensation”**: 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.

2.10 **“Disabled”**: The definition of disability provided in the applicable Individual Agreement.

2.11 **“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.

2.12 **“Eligible Employee”**: Each individual who is employed by the Texas State University System or any of its component institutions, and who is eligible to participate in the this Plan in accordance with its provisions.

2.13 **“Employer”**: The component institution of the Texas State University System that employs a participant, or, in the case of a System Office employee, the Texas State University System, provided that if two or more such entities operate a common payroll, they shall be treated as a single Employer for the purposes of the Plan. In the event a participant is employed by two or more such entities that do not operate a common payroll, the employer, for the purposes of the Plan, shall be the entity under which the participant is enrolled for insurance benefits, or, if not so enrolled, the entity at which the participant was first hired.

2.14 **“Funding Vehicles”**: The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the Employer for use under the Plan.

2.15 **“Includible Compensation”**: 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 \$200,000 (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. The amount of Includible Compensation is determined without regard to any community property laws.

2.16 **“Individual Agreement”**: The agreement between a Vendor and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

2.17 **“Participant”**: An individual for whom contributions are currently being made, or for whom contributions have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

2.18 **“Plan”**: The Texas State University System Supplemental Tax Sheltered Annuity Plan.

2.19 **“Plan year”**: The year coincident with the Fiscal Year of the State of Texas, ending August 31 of each year. Vendors may, in their discretion and as necessary to enable the vendor and/or the participants to comply with the Code, supply participants with reports and other documents based on the calendar year.

2.20 "**Public Institution of Higher Education**" Public Institution of Higher Education means a State-sponsored organization of higher education that meets the requirements of section 170(b)(1)(A)(ii)(relating to educational organizations that normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where educational activities are regularly carried on).

2.21 "**Related Employer**": 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 Plan Administrator 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.

2.22 "**Related Entity**" For the purposes of the Plan, Related Entity means any other Texas Public Institution of Higher Education.

2.23 "**Severance from Employment**": For purpose of the Plan, Severance from Employment means Severance from all Employment with the Employer and any Related Entity. However, a Severance from Employment also occurs when an Employee ceases to be an employee of a Public Institution of Higher Education 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 Institution of Higher Education, or in a capacity that is not employment with a Public Institution of Higher Education, (*e.g.*, ceasing to be an employee performing services for a Public Institution of Higher Education but continuing to work for the same State or local government employer). For the purpose of the Plan, Severance from Employment does not occur before a former employee also has a "Break in Service" as defined in Section 2.1 of the Plan.

2.24 "**Vendor**": The provider of an Annuity Contract or Custodial Account.

2.25 "**Valuation Date**": The most recent date on which the vendor would ordinarily have provided the participant with a statement of the value of the account.

2.26 "**Vested**": A status such that an Account maintained on behalf of a Participant is non-forfeitable.

The following additional definitions apply to the Texas State University System and its components.

2.27 "**System**": The Texas State University System.

2.28 "**System Institution**": Any Public Institution of Higher Education that is governed by the Board of Regents of the Texas State University System.

2.29 "**Campus**": Any unit of the Texas State University System that operates a separate Human Resources office or a separate payroll.

2.30 “**Loan Committee**”: The ad hoc committee composed of the Director of Human Resources (or the equivalent position if no Director of Human Resources position exists) for the campus from which the loan application originated and two of his or her designees.

## **Section 3 Administration**

### **3.1 Plan Administrator**

The Plan Administrator shall be the Vice-Chancellor for Finance of the Texas State University System

### **3.2 Deputy Plan Administrators**

The Plan Administrator may appoint Deputy Plan Administrators to assist in the administration of the Plan on the System Campuses. The Plan Administrator may, but is not required to, delegate to Deputy Plan Administrators functions, including but not limited to, approving new participant contracts with vendors, approving transfers from one vendor to another, and certification of Severance from Employment for the purposes of distributions or rollover to an IRA.

### **3.3 Employer Specific Plan Administration**

The Plan Administrator may not exercise any of the discretionary provisions in the Plan in a manner that treats like situated employees differently; provided, however, that because each Employer has separate human resource and payroll administration and systems, decisions may be made, and procedures and options established, separately for each campus; and provided further that this shall not prohibit the Plan Administrator from establishing different rules, procedures and options for participants first enrolling in the plan after a specific date.

### **3.4 Administration and Compliance**

The administrative and compliance functions on each Campus may be performed by employees of that Campus, or the Plan Administrator may approve the appointment of qualified contractors to perform administrative and compliance functions on any Campus or Campuses. The functions to be carried out by such contractors shall be stated in the administrative procedures documents of the Campuses involved.

### **3.5 Administrative Procedure Documents**

Each Campus shall maintain an administrative procedure document or documents detailing all administrative procedures, including procedures employed by contractors, if any, that participants and vendors will need to follow in participating in the Plan on that Campus. The document or documents may be part of a larger Employee or Human Resources Policies and Procedures Manual, and may be provided in electronic form or on the Web, provided electronic or Web access is made available on Campus to all participants.



### **3.6 Vendor Lists.**

Each Employer shall maintain a vendor list that is specific to the Employer. Such list shall be considered a part of the procedures manual of the Campus or Campuses involved.

### **3.7 Information Sharing**

Each Vendor shall agree to provide the Administrator with all available information that may be reasonably necessary to enable the Administrator to administer the Plan in accordance with the Code, the Income Tax Regulations, and the applicable Rules and Regulations of the State of Texas. The Vendor must agree that such obligation shall extend until April 15 of the year after the year in which there last was an open Contract or Account governed by the Plan, even if the Vendor has not been authorized to open new Accounts or Contracts, or to accept new contributions for a longer period. This agreement shall be evidenced in writing in a form satisfactory to the Administrator, but may be part of another more comprehensive agreement.

## **Section 4 Participation and Vesting**

### **4.1 Eligibility to Elect to Participate**

The following employees are eligible to elect to participate in the Plan

- (a) Any regular employee employed one half time or more.
  
- (b) Any other employee expected to work 1000 hours or more in a year, but not including non-resident aliens as described in the Code, Section 410(b)(3)(c) nor students performing services described in the Code, Section 3121(b)(10).

### **4.2 Election to Participate and Continue or Resume Participation**

Employees shall be eligible to elect to participate from the first day that they are eligible to participate in the plan and, subject to payroll processing deadlines, may enroll at any time. Retirees and former employees may retain accounts previously funded under the plan and thereby continue to be participants in the Plan, but no additional funds may be contributed to such accounts after Severance from Employment has occurred, unless the participant is rehired and qualifies as an Eligible Employee again. Employees not meeting the definition of Severance from Employment by virtue of transferring directly to another Public Institution of Higher Education outside of the Texas State University System may not continue to make contributions under this Plan. Employees transferring to another Employer within the Texas State University System may continue to participate, but new contributions may only be made to Vendors and under an Individual Agreement approved by the Plan Administrator for such Employer.

### **4.3 Manner of Election to Participate**

An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral and/or Roth 403(b) Contributions in accordance with Section 11 on his or her behalf) and filing it with the 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 and/or Roth 403(b) Contributions are to be made and a designation of Beneficiary. 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. 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 Section 11. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the employee's election.

### **4.4 Vesting**

Participants shall be vested in the Plan immediately upon commencing participation.

### **4.5 Information Provided by the Employee**

Each Employee enrolling in the Plan shall 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.

### **4.6 Change in Elective Deferrals and/or Roth 403(b) Contributions Election**

Subject to the provisions of the applicable Individual Agreements, and subject to payroll processing deadlines, an Employee may at any time revise his or her participation election, 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. A change in the investment direction filed in good order prior to the payroll processing deadline for the campus at which the Participant is employed shall take effect as of the next payroll. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

### **4.7 Contributions Made Promptly**

All contributions 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.

## **4.8 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.

## **Section 5 Contributions**

### **5.1 Contributions**

The principal purpose of the Plan is to permit eligible employees to make elective contributions. However, employer discretionary contributions and benefits distributed under a plan authorized under Section 415(m) of the Code may be made to the Plan. Such employer contributions may be made up to five years after Severance from Employment.

### **5.2 Limitation on Contributions**

**(a) *Special Code Limitations.*** Notwithstanding any other provision of the Plan, no Elective Deferral or Roth 403(b) Contributions shall be made that would exceed the limitations under Sections 402(g), 414(v) and 415(c) of the Code. In determining the limit under Section 415(c), non-elective contributions to another Plan with the employer or to this Plan shall be considered first, and Elective Deferrals and/or Roth 403(b) Contributions shall be permitted only to the extent that the limits under Section 415(c), and 414(v) if applicable, are not exceeded.

**(b) *Basic Annual Limitation.*** Except as provided in Sections 5.2(c) and 5.2(d), the maximum amount of the Elective Deferral, and/or Roth 403(b) Contributions to the extent permitted under Section 11, 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 section 402(g)(1)(B) of the Code, provided, however, that if non-elective employer contributions are provided to the Participant under this or any other Plan or Plans under Section 403(b), or any plan or plans required to be aggregated with this plan for the purposes of Section 415, the maximum Annual Additions shall not exceed the lesser of the Section 415(c) limit and the Participant's Includible Compensation. For the purposes of this Section, "Annual Additions" means, for any Participant's Tax Year, the sum of Elective Deferrals, Roth 403(b) Contributions and Employer Contributions to the Plan made to the Participant's Account and the sum of any employee and employer contributions on behalf of such individual under all other 403(b) plans, or plans required to be aggregated with this plan for the purposes of Section 415, whether or not sponsored by the Employer.

**(c) *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 §1.403(b)-4(c)(3)(ii) of the Income Tax Regulations), the applicable dollar amount under Section 5.2(b) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:

- (1) \$3,000;
- (2) The excess of:
  - (A) \$15,000, over
  - (B) The total special 403(b) catch-up Elective Deferrals and/or Roth 403(b) Contributions made for the qualified employee by the qualified organization for prior years; or
- (3) The excess of:
  - (A) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over
  - (B) The total Elective Deferrals, and if applicable, Roth 403(b) Contributions made for the employee by the qualified organization for prior years.

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

**(d) Age 50 Catch-up 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, 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 for a year is \$5,000 for 2007, and is adjusted for cost-of-living after 2007 to the extent provided under the Code.

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

**(f) Special Rule for a Participant Covered by Another Section 403(b) Plan.** For purposes of this Section 5, 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 and/or Roth 403(b) Contributions 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 foregoing limitations of this Section 5. 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 5.2(c) only if the other plan is a §403(b) plan.

**(g) Correction of Excess Elective Deferrals and/or Roth 403(b) Contributions.** If the Elective Deferral and/or Roth 403(b) Contributions on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral and/or Roth 403(b) Contributions 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 and/or Roth 403(b) Contributions under section 402(g) of the Code for which the Participant

provides information that is accepted by the Administrator), then the Elective Deferral and/or Roth 403(b) Contributions, 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 Deferrals (and, if applicable, Roth 403(b) Contributions) will be distributed to the Participant, with allocable net income, no later than April 15 of the following taxable year or otherwise in accordance with Section 402(g) of the Code.

## **Section 6 Loans**

### **6.1 Availability of Loans**

Participants whose current Employer's predecessor Plan did not prohibit loans and who are enrolled in the Plan on its Effective Date, shall be permitted to take out loans under the Plan to the extent permitted by the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured; provided however that nothing in this provision shall restrict the ability of the Administrator to prohibit loans from being taken out by Participants enrolling or re-enrolling in the Plan after the effective date of the Plan, or from establishing a future date after which no new loans will be permitted for any participant.

### **6.2 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 Section 6.3, 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. The Administrator may decline to permit a loan if the Administrator is unable to obtain necessary information concerning a Participant's Account Balance or outstanding loans with any current or prior Vendor, or if the Administrator believes that a loan would be a violation of any provision of Section 403(b) of the Code or the Regulations §1.403(b)-1 through §1.403(b)-11.

### **6.3 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 approved 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 approved by the Administrator).

For purposes of Section 6.3, 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.

#### **6.4 Recordkeeping**

Participant's loan application cannot be considered without certification from the Vendor (and, if applicable, other Vendors with which the Participant has loan balances) of details and calculations required in sections 6.3(a)(i), 6.3(a)(ii), and 6.3(b). Plan Administrator may request additional relative details and/or calculations from Vendors, including but not limited to certifications from other Vendors that there has been no loan balance in the preceding year. If Vendor(s) cannot comply with these requirements, Participant may transfer account proceeds to an authorized Vendor for reapplication.

#### **6.5 Loan Application and Notice**

Records related to participant's loan application(s) and decisions thereon are maintained by Participant's campus, subject to Plan Administrator request.

### **Section 7 Benefit Distributions**

#### **7.1 Benefit Distribution at Severance from Employment**

Benefits may only be distributed as provided in the Code and Income Tax Regulations. If immediately after contributions under this Plan cease, a participant transfers directly to another Public Institution of Higher Education such that Severance from Employment as defined in this Plan does not occur, certification of Severance from Employment by the new employer, or any subsequent Public Institution of Higher Education to whom there was a direct transfer, is required before any benefit distribution may occur.

#### **7.1 Benefit Distributions At Severance from Employment or Other Distribution Event**

Except as permitted under Section 5.2(g) (relating to excess Elective Deferrals and/or Roth 403(b) Contributions), Section 7.4 (relating to hardship), or Section 10.3 (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 Participation has a Severance from Employment as defined in this Plan, dies, becomes Disabled, or attains age 59 1/2. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements. Notwithstanding the foregoing,

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. Distributions to participants under age 59 1/2 may be subject to additional tax as provided in the Code, Section 72(t)

## **7.2 Small Account Balances**

The terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed \$5,000 (determined without regard to any separate account that holds rollover contributions) and any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

## **7.3 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 §1.408-8 of the Income Tax Regulations, except as provided in §1.403(b)-6(e) of the Income Tax Regulations.

## **7.4 Hardship Withdrawals**

(a) Participants whose current Employer's predecessor Plan did not prohibit hardship withdrawals and who are enrolled in the Plan on its Effective Date, shall be permitted to take hardship withdrawals under the Plan to the extent permitted by the Individual Agreements controlling the Account assets from which the withdrawal is made; provided however that nothing in this provision shall restrict the ability of the Administrator to prohibit hardship distributions by Participants enrolling or re-enrolling in the Plan after the effective date of the Plan, or from establishing a future date after which no new hardship distributions will be permitted for any participant. No Elective Deferrals and/or Roth 403(b) Contributions shall be allowed under the Plan during the 6-month period beginning on the date the Participant receives a distribution on account of hardship.

(b) The Individual Agreements shall provide for the exchange of information among the Employer and the Vendors to the extent necessary to implement the Individual Agreements, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Participant's financial need (pursuant to §1.401(k)-1(d)(3)(iv)(E) of the Income Tax Regulations), the Vendor notifying the Employer of the withdrawal in order for the Employer to implement the resulting 6-month suspension of the Participant's right to make Elective Deferrals and Roth 403(b) Contributions under the Plan. In addition, in the case of a hardship withdrawal that is not automatically deemed to be necessary to satisfy the financial need (pursuant to §1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations), the Vendor shall obtain information

from the Employer or other Vendors to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need.

**7.5 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 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 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 8 Transfers, Rollovers and Exchanges**

### **8.1 Transfers/Contract Exchanges within the Plan**

A participant or beneficiary is permitted to change the investment of his or her Account Balance among the Vendors approved under the Plan for the Campus employing or formerly employing the participant, subject to the terms of the Individual Agreements. A participant transferring from one Campus to another is permitted to transfer funds to a Vendor on the approved list for the new Employer, subject to the terms of the Individual Agreement.

### **8.2 Plan-to-Plan Transfers to the Plan from other TSA Plans**

(a) The Administrator may, but is not required to, permit a Participant or class of Participants to transfer to this Plan of the Account Balance from another plan which is a plan established under and operated in conformity with Texas Law. Such a transfer is permitted only if (i) the participant transfers to the Employer without meeting the requirements for Severance from Service as defined in this Plan; (ii) the participant is vested in the other plan; (iii) the other plan provides for the direct transfer of each person's entire interest therein to the Plan, and (iv) the participant is an employee or former employee of the Employer. If the Account Balance is held in an account or contract of a Vendor which is already on the approved list of the campus at which the participant is employed, the transfer may be accomplished by the Vendor acknowledging in writing that the account or contract contains, or has been amended to contain, all the distribution restrictions required by Section 403(b) of the Code and will henceforth be part of and under the control of this Plan. Otherwise, the transfer may only be made by trustee to trustee transfer and only to a Vendor on the approved list of the Employer which employs the participant. 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 §1.403(b)-10(b)(3) of the Income Tax Regulations and to confirm that the other plan is a plan that satisfies Section 403(b) of the Code. The Administrator may require the plan administrator of the other plan to agree to exchange in the future any information that may become necessary to satisfy the requirements of the Code and the Income Tax Regulations.

(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) 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 to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan.

### **8.3 Plan-to-Plan Transfers from the Plan to another Texas TSA Plan**

(a) The Administrator may, but is not required to, permit a Participant or class of Participants who have transferred to another public institution of higher education in Texas without meeting the requirements for Severance from Service as defined in this Plan to elect to have the Participant's Account Balance transferred to another plan that satisfies Section 403(b) of the Code. A transfer is permitted only if it meets the requirements of §1.403(b)-10(b)(3) of the Income Tax Regulations. A transfer under this section 8.3 is permitted only if the Participant is an employee of the employer under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participant and the Participant has an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) The other 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 other plan shall impose restrictions on distributions to the Participant whose assets are transferred that are not less stringent than those imposed under the Plan.

(c) Upon the transfer of assets under this Section 8.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 8.3 (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 §1.403(b)-10(b)(3) of the Income Tax Regulations.

### **8.4 Rollover to an Individual Retirement Annuity or Individual Retirement Account**

An Employee who has a Severance from Employment, as defined in this Plan, or other distribution event, may elect to rollover all or any portion of his or her accounts to an Individual Retirement Annuity or Individual Retirement Account as provided in the Code and Income Tax Regulations.

## **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 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 the defined benefit governmental plan. A transfer under this Section 8.5(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under Section 8.5(a) 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) In addition, if a plan-to-plan transfer 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).

(d) A transfer may only be made if it is in compliance with §1.403(b)-10(b)(4) of the Income Tax Regulations.

## **Section 9 Investment of Contributions**

### **9.1 Manner of Investment**

All 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, their Beneficiaries and unvested Employer contributions 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 and shall be solely responsible for selecting 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. The System and the Employer have no fiduciary responsibility for the market value of a participant's investment or the financial stability of the companies chosen by the participant. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations. However, the Plan Administrator may, but is not required to, establish a limit on the number of changes that an employee may make, provided that the limit is at least two changes per year.

### **9.3 Current and Former Vendors**

The Administrator shall maintain a list of all Vendors approved for each Employer 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. In the case of a Vendor which is not eligible to receive contributions under 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 section 403(b) of the Code or other requirements of applicable law.

## **Section 10 Amendment and Plan Termination**

### **10.1 Termination of Contributions**

The System has adopted the Plan under the provisions of Texas Law with the intention and expectation that contributions will be continued indefinitely. However, the System has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions for any or all groups of employees under the Plan at any time that Texas Law is amended or repealed in a manner that permits or requires such action without any liability hereunder for any such discontinuance.

### **10.2 Amendment and Termination**

The System reserves the authority to amend this Plan at any time, or to terminate it if so authorized by any future amendment to or repeal of Texas Law.

### **10.3 Distribution upon Termination of the Plan**

The System may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements and Texas Law, all Accounts will be distributed, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Income Tax Regulations.

## **Section 11 Roth 403(b) Contributions**

### **11.1 Definitions**

(a) **“Roth 403(b) Contributions”** means contributions that are:

(i) made by the Employer to the Plan pursuant to a Compensation reduction agreement entered into by a Participant, which qualifies as a “designated Roth contribution” within the meaning of Code Section 402A;

(ii) irrevocably designated by the Participant at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of all or a portion of the Elective Deferrals the Participant is otherwise eligible to make under the Plan; and

(iii) treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

**(b) "Roth 403(b) Contributions Account"** means the account established and maintained by the Administrator for each Participant with respect to his total interest (including and earnings and losses attributable thereon) under the Plan resulting from Roth 403(b) Contributions.

## **11.2 Roth 403(b) Contributions**

For each Plan Year, each Participant who is in a Class of Participant that the Plan administrator has authorized to make Roth 403(b) contributions 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 Section 3.1, 3.2, and 3.3, and subject to any limitations imposed under applicable law or under any applicable collective bargaining agreement. Such contributions will be allocated to the Participant's Roth 403(b) Contributions Account.

## **11.3 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 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, 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 11.3(a), may be distributed from a Roth 403(b) Contributions Account subject to the distribution rules applicable to Elective Deferrals as described in Section 5.1. Such nonqualified distributions shall be subject to federal income tax to the extent that the amount distributed exceeds the value of the Roth 403(b) Contributions.

(c) In no event shall amounts held in a Roth 403(b) Contributions Account shall be used for a loan in accordance with Section 6, distributed due to a hardship withdrawal under Section 7.4, transferred in accordance with Sections 8.3 or 8.5.

## **Section 12 Miscellaneous**

### **12.1 Non-Assignability**

Except as provided in Section 12.2, 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.

### **12.2 Domestic Relations Orders**

Notwithstanding Section 12.1, 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") that is determined to be a Qualified Domestic Relations Order under applicable law. Each Vendor is solely responsible for determining whether a domestic relations order is qualified and payable.

### **12.3 Qualified Military Service**

Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

### **12.4 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 Treasury Regulations thereunder). A payee shall provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

### **12.5 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 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.

## **12.6 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. The Employer, as an agency of the State of Texas, is constitutionally unable to indemnify any party or hold them harmless, and Vendors shall not require an indemnification or hold harmless agreement as a condition for the return of mistaken contributions.

## **12.7 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 Employer's or the Administrator's records, (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 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.

## **12.8 Investment Advisory Fees**

To the extent permissible under the Code and the Income Tax Regulations, a participant may authorize the payment of Investment Advisory Fees from the participant's TSA Account. Investment advisory fees may be paid with tax-deferred funds in a TSA account in accordance with the following provisions

(a) The investment advisory fees for each fiscal year shall not exceed two percent of the annual value of the participant's account as of the last day of that fiscal year.

(b) The fees shall be paid directly to a registered investment advisor that provides advice to the participant.

(c) The investment advisor to whom the fees are paid shall be registered with the Securities and Exchange Commission and any other applicable federal or state agencies, and shall be engaged full-time in the business of providing investment advice.

(d) The participant and the investment advisor shall enter into a contract for a term of no more than one year. A contract that automatically renews each year shall be considered acceptable as long as both parties have the right to sever the relationship, with reasonable notification, at any time.

## **12.9 Incorporation of Individual Agreements**

The Plan, together with the 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 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.

#### **12.10 Governing Law.**

The Plan will be construed, administered and enforced according to the Code and the laws of the State of Texas.

#### **12.11 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.

#### **12.12 Gender**

Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

#### **12.13 No Right Other Than Provided by Plan.**

The establishment of this Plan and the purchase of any Annuity Contract or establishment of a Custodial Account under the Plan shall not be construed as giving to any Participant or Beneficiary or any other person any legal or equitable right against the Employer or its representatives, except as is expressly provided by this Plan. Under no circumstances shall this Plan constitute or modify a contract of employment or in any way obligate the Employer to continue the services of any Employee.

#### **12.14 Necessary Information**

All Employees shall provide the Employer and any life insurance company that issues an Annuity Contract hereunder and any custodian of a Custodial Account established under the Plan, with any information that may be needed for the proper and lawful operation and administration of the Plan; including, but not limited to, appropriate evidences of the Employee's age and marital status, his current address, the current address of his spouse, the current address of any other Beneficiary, and any information reasonably necessary on the Employee's participation in another Section 403(b) plan or any other plan required to be aggregated for the purposes of determining the maximum permissible deferral..

#### **12.15 Accounting**

Each Vendor shall supply the Employer with such information as may be reasonably required to administer the Plan in accordance with the Code, the Income Tax Regulations, and Texas Law. Normally, such reports will be required on the basis of the Plan year, which coincides with the Employer's (State) Fiscal Year.

Each Vendor shall provide each participant with reports complying with the relevant requirements of Rules of the Texas Higher Education Coordinating Board, Texas Administrative Code, Title 19, Chapter 25, Rules 25.6(c)(8) through 25.6(c)(14). Notwithstanding that these Rules are not statutorily applicable to the TSA Program, these rules are nonetheless hereby adopted by this Plan document for this Plan. Such reports may be based on the calendar year.

#### **12.16 Severability**

If any provision of the Plan shall be held invalid for any reason, that holding shall not affect the remaining provisions of the Plan which shall be construed and enforced as if the invalid provision had not been included in the Plan.

#### **12.17 Other Transactions that may be Permitted**

The Plan Administrator, may, but is not required to, permit any other transaction not specifically prohibited under this Plan that is permissible under the Code, the Income Tax Regulations and applicable Texas Law, or becomes permissible by reason of amendments to these controlling laws and regulations.