

**MONTANA UNIVERSITY SYSTEM 403(b) PLAN**

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## **MONTANA UNIVERSITY SYSTEM 403(b) PLAN**

### **ARTICLE I.** **PLAN ESTABLISHMENT AND RESTATEMENT**

#### **Section 1.01. Plan Establishment.**

(a) The Board of Regents of Montana University System ("Board"), created pursuant to Article X, section 9, subsection (2) of the Constitution of the State of Montana, established the Montana University System 403(b) Plan ("Plan"), effective January 1, 1980, under which employees of certain institutions of higher education within the meaning of Section 170(b)(1)(A)(ii) of the Internal Revenue Code ("Code") may voluntarily choose to supplement their retirement benefits.

(b) The Plan is, and is intended to remain, a defined contribution plan under Code Section 403(b). The Plan is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(c) The Plan was most recently restated effective July 1, 2021.

#### **Section 1.02. Plan Restatement.**

(a) The Plan is now being amended and restated effective January 1, 2023, except as otherwise specifically provided herein, to incorporate the prior amendments to the Plan and to make other desired changes.

(b) Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2023, and to transactions under the Plan on and after January 1, 2023. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2023, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

**Section 1.03. Plan Funding.** The Plan is funded exclusively through the purchase of Investment Arrangements from the Vendor(s) identified in Appendix A attached hereto, as that Appendix may be modified from time to time. The terms and conditions of the Investment Arrangements shall be considered part of, and shall be construed as having been incorporated into, this Plan. To the extent there is any conflict between the terms of any such Investment Arrangements and the terms of the Plan, however, the terms of the Plan shall govern, except as otherwise specifically provided herein.

**ARTICLE II.**  
**RULES OF CONSTRUCTION AND DEFINITIONS**

**Section 2.01. Rules of Construction and Governing Law.**

(a) This Plan shall be interpreted, enforced and administered in accordance with the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the laws of the State of Montana without regard to conflict of law principles.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and *vice versa*, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate, and *vice versa*.

(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute a defined contribution plan under the provisions of Code Section 403(b), (ii) be a governmental plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with all applicable requirements of the Code, shall prevail over any different interpretation.

**Section 2.02. Definitions.** When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "Account" means the separate accounts maintained for any Participant or Beneficiary under an Investment Arrangement. The following Accounts shall be established for a Participant or Beneficiary, if applicable:

(1) A Pre-Tax Elective Deferral Account to reflect the Participant's interest in an Investment Arrangement attributable to their Pre-Tax Elective Deferrals pursuant to Section 3.02. Such Account may be further divided into a Pre-1987 Pre-Tax Elective Deferral Account reflecting Pre-Tax Elective Deferrals made to the Plan prior to 1987 and a Post-1986 Pre-Tax Elective Deferral Account reflecting Pre-Tax Elective Deferrals made to the Plan after 1986, including any earnings on the Pre-1987 Elective Deferrals.

(2) A Roth Elective Deferral Account to reflect the Participant's interest in an Investment Arrangement attributable to their Roth Elective Deferrals pursuant to Section 3.03.

(3) A Supplemental Employer Contribution Account to reflect the Participant's interest in an Investment Arrangement attributable to their Supplemental Employer Contributions pursuant to Section 3.04.

(4) A Rollover Contribution Account to reflect the Participant's interest in an Investment Arrangement attributable to their Rollover Contributions pursuant to Section 3.05.

(b) "Account Balance" means the total benefit to which a Participant or the Participant's Beneficiary is entitled under an Investment Arrangement, taking into account all Contributions made to the Investment Arrangement and all earnings or losses (including expenses) that are allocable to the Participant's Accounts, any Rollover Contributions held under the Participant's Rollover Contribution Account, and any distribution made to the Participant, the Participant's Beneficiary, or any Alternate Payee. The Account Balance includes any part of the Participant's Account that is treated under the Plan as a separate contract to which Code Section 403(c) (or another applicable provision of the Code) applies. A separate Account shall be established for an Alternate Payee.

(c) "Accumulated Benefit" means the sum of a Participant's or Beneficiary's Account Balances under all Investment Arrangements under the Plan.

(d) "Administrator" means the Office of the Commissioner of Higher Education, Employee Benefits; provided, however, that to the extent that the Office of the Commissioner of Higher Education, Employee Benefits has delegated any of its responsibilities as Administrator to any other person or persons, the term Administrator shall be deemed to refer to that person or persons. Functions of the Administrator, including those described in the Plan, may be performed by Vendors, designated agents of the Administrator, or others (including Employees a substantial portion of whose duties is administration of the Plan) pursuant to the terms of Investment Arrangements, written service agreements or other documents under the Plan. For this purpose, an Employee is treated as having a substantial portion of their duties devoted to administration of the Plan if the Employee's duties with respect to administration of the Plan are a regular part of the Employee's duties and the Employee's duties relate to Participants and Beneficiaries generally (and the Employee only performs those duties for himself or herself as a consequence of being a Participant or Beneficiary).

(e) "Alternate Payee" means a Spouse, former Spouse, child, or other dependent of a Participant who is recognized by a qualified domestic relations order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant, as defined in Code Section 414(p)(8).

(f) "Annuity Contract" means a nontransferable group or individual contract as defined in Code Sections 403(b)(1) and 401(g), established for each Participant by the Administrator, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity.

(g) "Beneficiary" means the designated person(s) or entity(ies) entitled to receive benefits under the Plan after the death of a Participant, as identified under the terms governing each Investment Arrangement or in other records maintained under the Plan. Unless otherwise provided under the terms governing the applicable Investment Arrangement, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's surviving Spouse shall be the Beneficiary. If there is no surviving Spouse, the Participant's estate

shall be the Beneficiary. The Administrator's determination of the persons who qualify as Beneficiaries under this Plan shall be binding on all interested parties. Beneficiary also means an Alternate Payee.

(h) "Board" means the Board of Regents of the Montana University System.

(i) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(j) "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 and amounts that would be cash compensation includible in gross income but for a reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including a Compensation Reduction Election under the Plan). Compensation does not include amounts "picked up" by the Employer within the meaning of Code Section 414(h). Compensation includes any compensation described in subsection (1) or (2), provided it is paid by the later of 2½ months after the Employee's Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer:

(1) a payment that would have been paid to the Employee prior to a Severance from Employment if the Employee continued in employment with the Employer and that otherwise satisfies the definition of Compensation; and

(2) a payment for unused accrued *bona fide* sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the Employee's Severance from Employment, and only if the Employee separately elects for such payment to be reduced on their Salary Deferral Agreement pursuant to Section 3.02.

Any payment that is not described in subsection (1) or (2) is not considered Compensation if paid after Severance from Employment. Thus, for example, Compensation does not include amounts paid after Severance from Employment that are severance pay or unfunded nonqualified deferred compensation. To the extent applicable, the amount of Compensation of each Participant taken into account in determining allocations shall not exceed the limit set forth in Code Section 401(a)(17), as increased by the Cost of Living Adjustment in effect for such calendar year.

(k) "Compensation Reduction Election" means an election by an Employee to reduce their Compensation and have that amount contributed as an Elective Deferral on their behalf to one or more Investment Arrangements pursuant to a Salary Deferral Agreement.

(l) "Contributions" mean Pre-Tax Elective Deferrals, Roth Elective Deferrals, Supplemental Employer Contributions, and Rollover Contributions.

(m) "Cost of Living Adjustment" means the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 402(g), 414(v), 415(d), or 401(a)(17) for any applicable year.



(n) "Custodial Account" means the group or individual custodial account or accounts, as defined in Code Section 403(b)(7), established for each Participant by the Administrator, or by each Participant individually, to hold assets of the Plan.

(o) "Designated Beneficiary" means an individual Beneficiary within the meaning of Code Section 401(a)(9)(E)(i).

(p) "Disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long continued and indefinite duration, as defined under Code Section 72(m)(7). The permanence and degree of such impairment shall be supported by medical evidence. For purposes of Annuity Contracts distributing amounts not attributable to Elective Deferrals, Disabled shall have the meaning described in this paragraph (0) unless an alternative definition is provided in the Investment Arrangement.

(q) "Elective Deferral" means a Participant's Pre-Tax Elective Deferrals and Roth Elective Deferrals which the Employer contributes to the Plan at the election of the Participant pursuant to a written Salary Deferral Agreement in lieu of receiving cash Compensation, and any other amount that constitutes an elective deferral under Code Section 402(g)(3).

(r) "Eligible Designated Beneficiary" means a Designated Beneficiary who meets the additional criteria under Code Section 401(a)(9)(E)(ii).

(s) "Employee" means a common law employee of the Employer, but shall not include: (i) a student performing services described in Code Section 3121(b)(10); or (ii) an individual who is designated in good faith as an independent contractor, as determined by the Employer in its sole and absolute discretion, regardless of whether such individual is later determined to be a common law employee for tax purposes.

(t) "Employer" means: (i) the System, as defined in Section 20-25-201, MCA; (ii) the Office of the Commissioner of Higher Education; and (iii) any community college district defined in Section 20-15-102, MCA that elects to participate in the Plan.

(u) "Former Vendor" means any provider that was approved by the Administrator to offer annuity contracts or custodial accounts under the Plan, but that ceases to be eligible to receive new Contributions under the Plan, but only so long as the provider continues to hold Plan assets.

(v) "HEART" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

(w) "Includible Compensation" means an Employee's compensation received from the Employer that is includible in the Participant's gross income for federal income tax purposes (computed without regard to Code Section 911, relating to United States citizens or residents living abroad), including differential wage payments under Code Section 3401(h), for the most recent period that is a Year of Service. Includible Compensation also includes any Elective Deferral or other amount contributed or deferred by the Employer at the election of the Employee that would be includible in gross income but for the rules of Code Section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). Includible Compensation does not include any compensation

received during a period when the Employer was not an eligible employer within the meaning of Treasury Regulation Section 1.403(b)-2(b)(8). The amount of Includible Compensation is determined without regard to any community property laws. Includible Compensation does not include any amounts "picked-up" by the Employer within the meaning of Code Section 414(h). Includible Compensation includes any compensation described in subsection (1) or (2), provided the compensation is paid by the later of 2½ months after the Employee's Severance from Employment with the Employer or the end of the calendar year in which the Employee has a Severance from Employment with the Employer:

(1) a payment that would have been paid to the Employee prior to a Severance from Employment if the Employee continued in employment with the Employer and that is regular compensation for services during the Employee's regular working hours, compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

(2) a payment for unused accrued *bona fide* sick, vacation, or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would have been included in the definition of Includible Compensation if paid prior to the Employee's Severance from Employment.

Except as provided in Treasury Regulation Section 1.401(a)(17)-1(d)(4)(ii), the amount of Includible Compensation of each Participant taken into account in determining Contributions shall not exceed the limits under Code Section 401(a)(17), as increased by the Cost of Living Adjustment in effect for such calendar year.

(x) "Investment Arrangement" means an Annuity Contract or Custodial Account that satisfies the requirements of Treasury Regulation Sections 1.403(b)-3 and 1.403(b)-8 and that is issued or established for funding amounts held under the Plan and specifically approved by the Administrator for use under the Plan in the Administrator's sole and absolute discretion.

(y) "Investment Options" mean the investment funds available under the Investment Arrangements provided by the Vendor(s) and specifically approved by the Administrator in its sole and absolute discretion, for use under this Plan.

(z) "Mandatory Employer Retirement Plan" means the Montana Teachers' Retirement System, the Montana Public Employees' Retirement System, or the Montana University System Retirement Plan.

(aa) "MCA" means the Montana Code Annotated, as amended from time to time.

(bb) "Participant" means 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 their entire benefit under the Plan.

(cc) "Plan" means the Montana University System 403(b) Plan, as amended from time to time.

(dd) "Plan Year" means the calendar year.

(ee) "Pre-Tax Elective Deferral" means an Elective Deferral made to the Plan by the Employer at the election of a Participant pursuant to a Salary Deferral Agreement in accordance with Section 3.02.

(ff) "Qualified Distribution" means a distribution from a Roth Elective Deferral Account after the Participant has satisfied a five year tax holding period and has attained age 59 ½, died, or become Disabled, in accordance with Code Section 402A(d). The five year tax holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Elective Deferral under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed.

(gg) "Related Employer" means any entity which is under common control with the Employer under Code Section 414(b), (c), (m), or (o). The Administrator shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under IRS Notice 89-23, 1989-1 C.B. 654.

(hh) "Rollover Contribution" means the contributions made to the Plan pursuant to Section 3.05.

(ii) "Roth Elective Deferral" means an Elective Deferral that is: (i) designated irrevocably by the Participant at the time of the Compensation Reduction Election as a Roth Elective Deferral that is being made in lieu of all or a portion of the Pre-Tax Elective Deferrals the Participant is otherwise eligible to make under the Plan; and (ii) 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 Compensation Reduction Election.

(jj) "Salary Deferral Agreement" means an agreement entered into between an Employee and the Employer pursuant to Section 3.02. Such agreement shall not be effective with respect to Compensation made available prior to the effective date of such agreement and shall be binding on the parties and irrevocable with respect to Compensation earned while it is in effect.

(kk) "Service Completion Date" means the date on which a Participant Vests in their Supplemental Employer Contribution Account as set forth in an Addendum to the Plan, Board resolution, or employment agreement, as applicable.

(ll) "Severance from Employment" means that the Employee ceases to be employed by the Employer and any Related Employer that is eligible to maintain a Code Section 403(b) plan under Treasury Regulation Section 1.403(b)-2(b)(8) (an "eligible employer"), even if the Employee remains employed with another entity that is a Related Employer where either (i) such Related Employer is not an eligible employer or (ii) the Employee is employed in a capacity that is not employment with an eligible employer.

(mm) "Spouse" means the person to whom an Employee is legally married under the law of any State.

(nn) "State" means a state, a political subdivision of a state, or any agency or instrumentality of a state. State includes the District of Columbia pursuant to Code Section

7701(a)(10). An Indian tribal government is treated as a State pursuant to Code Section 7871(a)(6)(B) for purposes of Code Section 403(b)(1)(A)(ii).

(oo) "Supplemental Employer Contribution" means contributions made to the Plan by the Employer on behalf of an Employee pursuant to Section 3.04.

(pp) "System" means the Montana University System.

(qq) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(rr) "Vendor" means the provider of an Annuity Contract or Custodial Account as selected by the Administrator and listed in Appendix A, as modified from time to time in the Administrator's sole and absolute discretion. A modification of Appendix A is not an amendment of the Plan.

(ss) "Vest" or "Vested" means the interest of the Participant in their Account that is unconditional, legally enforceable, and nonforfeitable.

(tt) "Year of Service" means each full year during which an individual is a full-time Employee of the Employer, plus fractional credit for each part of a year during which the individual is either a full-time Employee of the Employer for a part of a year or a part-time Employee of the Employer. The Employee must be credited with a full Year of Service for each year during which the Employee is a full-time Employee and a fraction of a year for each part of a work period during which the Employee is a full-time or part-time Employee of the Employer. An Employee's number of Years of Service equals the aggregate of the annual work periods during which the Employee is employed by the Employer. The work period is the Employer's annual work period.

### **ARTICLE III.** **ELIGIBILITY AND CONTRIBUTIONS**

**Section 3.01. Eligibility.** An Employee may elect to have Elective Deferrals made on their behalf immediately upon becoming employed by the Employer.

#### **Section 3.02. Compensation Reduction Election.**

(a) **General Rule.** An Employee becomes a Participant by executing an election to reduce their Compensation (and have that amount contributed as an Elective Deferral on their behalf to one or more Investment Arrangements) and filing it with the Employer. The Compensation Reduction Election shall be made on a Salary Deferral Agreement provided by the Employer 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 different amount (but not in excess of \$200) from time to time. The Employee must also execute an agreement provided by the Vendor designating the Investment Options under the Investment Arrangements to which Elective Deferrals are to be made and designating a Beneficiary, and file it with the Vendor. Any such elections or designations shall remain in effect until a new election is filed with the Administrator or Vendor, as applicable. An Employee shall become a Participant as soon as administratively practicable following the date

indicated under the Employee's election. A Pre-Tax Elective Deferral Account and/or Roth Elective Deferral Account will be established for each Participant.

(b) Information Provided by the Employee. Each Participant shall provide at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the administration of the Plan, including any information required by the Vendor or under the terms of the Investment Arrangement.

(c) Change in Compensation Reduction Election. Subject to the terms governing the applicable Investment Arrangement, a Participant may change their Compensation Reduction Election, choice of Investment Arrangements, Investment Options, and designated Beneficiary. A change in the Compensation Reduction Election shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in Investment Arrangements, Investment Options, or Beneficiary designation will take effect when the election is accepted by the Vendor.

(d) Contributions Made Promptly. Elective Deferrals to the Plan shall be transferred to the Vendor within 15 business days following the month in which the amounts would have been paid to the Employee.

(e) Leave of Absence. If an Employee is absent from work due to a leave of absence, Elective Deferrals (unless a Compensation Reduction Election is otherwise revised) and Supplemental Employer Contributions, if applicable, under the Plan shall continue to the extent that Compensation continues.

(f) Compliance with Code Section 403(b)(12). The Administrator shall take any actions necessary to comply with the nondiscrimination rules of Code Section 403(b)(12) and the regulations thereunder as applicable to the Plan.

### **Section 3.03. Roth Elective Deferrals.**

(a) General Application. Subject to the terms of the Investment Arrangements, a Participant may designate all or a portion of the Participant's Elective Deferrals as Roth Elective Deferrals. Any Roth Elective Deferrals under an Investment Arrangement shall be allocated to a separate Account maintained under the Investment Arrangement for a Participant's Roth Elective Deferrals. Unless specifically stated otherwise, Roth Elective Deferrals shall be treated as Elective Deferrals for all purposes under the Plan.

(b) Separate Accounting.

(1) Contributions and withdrawals of Roth Elective Deferrals shall be credited and debited to the Roth Elective Deferral Account maintained for the Participant under the Investment Arrangement.

(2) A record of the amount of the Roth Elective Deferrals in each Roth Elective Deferral Account shall be maintained.

(3) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Elective Deferral Account and the Participant's other Accounts.

(4) No Contributions other than Roth Elective Deferrals and properly attributable earnings shall be credited to a Participant's Roth Elective Deferral Account.

**Section 3.04. Supplemental Employer Contributions.** The Employer may make a Supplemental Employer Contribution to the Plan in an amount and for such Employees as designated by the Board in its sole and absolute discretion, and set forth in an Addendum to the Plan, Board resolution, or employment agreement. Supplemental Employer Contributions shall be subject to the applicable limits under Code Section 415(c), and may be made each Plan Year through the end of the fifth calendar year following the year in which the Employee has a Severance from Employment in accordance with Code Section 403(b)(3) and Treasury Regulation Section 1.403(b)-4(d). Supplemental Employer Contributions shall be allocated to the Supplemental Employer Contribution Account of the Participant as of the date of contribution.

**Section 3.05. Eligible Rollover Contributions to the Plan.**

(a) **Eligible Rollover Contributions.** To the extent provided under the terms governing the applicable Investment Arrangement, a Participant who is entitled to receive an Eligible Rollover Distribution from another Eligible Retirement Plan may request to have all or a portion of the Eligible Rollover Distribution paid to the Plan as a Rollover Contribution. Such rollover contributions shall be made in the form of cash only. The Vendor shall require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an Eligible Retirement Plan.

(b) **Eligible Rollover Distribution.** For purposes of paragraph (a), an Eligible Rollover Distribution means any distribution of all or any portion of a Participant's benefit under another Eligible Retirement Plan, except that an Eligible Rollover Distribution does not include (i) any installment payment for a period of ten years or more, (ii) any distribution made upon hardship, or (iii) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9).

(c) **Eligible Retirement Plan.** For purposes of paragraph (a), an Eligible Retirement Plan means a qualified trust described in Code Section 401(a) (excluding after-tax contributions), an annuity plan described in Code Section 403(a) or 403(b) (excluding after-tax contributions), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a SIMPLE IRA described in Code Section 408(p)(1) provided that the Rollover Contribution is made after the two year period described in Code Section 72(t)(6), or an eligible governmental plan described in Code Section 457(b).

(d) **Roth Rollover Contributions.** The Plan shall accept a Rollover Contribution from a Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) only if it is a direct rollover and only to the extent the rollover is permitted under the rules of Code Section 402(c). A separate Rollover Contribution Account shall be maintained to reflect any direct rollover to the Plan of an eligible Roth Rollover Contribution as herein provided.

(e) Information Regarding Participant Basis Required. A rollover of an Eligible Rollover Distribution that includes Roth Elective Deferrals shall only be accepted if the Vendor obtains information regarding the Participant's tax basis under Code Section 72 in the amount rolled over.

(f) Separate Accounts. The Vendor shall establish and maintain separate accounts for the Participant for any Eligible Rollover Distribution.

#### **ARTICLE IV.** **LIMITATIONS ON CONTRIBUTIONS**

**Section 4.01. Basic Annual Limitation for Elective Deferrals.** Except as provided in Sections 4.02 and 4.03, the maximum amount of the Elective Deferrals under the Plan for any calendar year shall be limited to the applicable dollar amount as provided in Code Section 402(g)(1)(B), as increased by the Cost of Living Adjustment in effect for such calendar year.

**Section 4.02. Special 403(b) Plan Elective Deferral Catch-up Limitation for Employees With 15 Years of Service.** Because the Employer is a qualified organization within the meaning of Treasury Regulation Section 1.403(b)-4(c)(3)(ii), the applicable dollar amount under Section 4.01 for any "Qualified Employee" is increased (to the extent provided under the terms governing the applicable Investment Arrangement) 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 Employer for all prior years of employment with the Employer; or
- (c) The excess of:
  - (1) \$5,000 multiplied by the number of Years of Service of the Qualified Employee with the Employer, over
  - (2) the total Elective Deferrals made for the Qualified Employee by the Employer for all prior years of employment with the Employer.

For purposes of this Section 4.02, a "Qualified Employee" means an Employee who has completed at least 15 Years of Service.

**Section 4.03. Age 50 Catch-up Elective Deferrals.**

(a) A Participant who will attain age 50 or more by the end of the calendar year, and who is contributing up to the applicable dollar amount under Section 4.01, may make additional Elective Deferrals up to the applicable dollar amount under Code Section 414(v), as increased by the Cost of Living Adjustment in effect for such calendar year. Effective January 1, 2025, or as

soon as administratively practicable thereafter, the adjusted dollar amount under Code Section 414(v)(2)(E), as increased by the Cost of Living Adjustment in effect for such calendar year, shall apply to Participants who will attain age 60 but will not attain age 64 by the end of the calendar year.

(b) Effective January 1, 2026, or such later effective date determined by the Secretary of the Treasury through guidance and subject to such guidance, with respect to a Participant whose wages within the meaning of Code Section 3121(a) for the preceding calendar year from the Employer exceed the limitation under Code Section 414(v)(7)(A), paragraph (a) shall apply only if the Participant elects or is deemed to have elected the additional amount of Elective Deferrals to be made as Roth Elective Deferrals. The wage limitation under this paragraph (b) shall be increased by the Cost of Living Adjustment in effect for such calendar year.

**Section 4.04. Elective Deferral Catch-up Provision Coordination.** Elective Deferrals in excess of the limitation set forth in Section 4.01 will be allocated first to the special 403(b) catch-up under Section 4.02 (if applicable) and next as an age 50 catch-up contribution under Section 4.03 (if applicable). However, in no event can the amount of the Elective Deferrals for a year be more than the Participant's Compensation for the year.

**Section 4.05. Special Rule for a Participant Covered by Another Defined Contribution Plan.** For purposes of this Article IV, if the Participant is or has been a participant in one or more other plans under Code Section 403(b) (and any other plan that permits elective deferrals under Code Section 402(g)), then this Plan and all such other plans shall be considered as one plan for purposes of applying the limitations in this Article IV. 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 their participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Employer shall be taken into account for purposes of Section 4.02 only if the other plan is a 403(b) plan.

**Section 4.06. Correction of Excess Elective Deferrals.**

(a) If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described in this Article IV, or the Elective Deferral on behalf of a Participant for any calendar year exceeds these limitations when combined with other amounts deferred by the Participant under another plan of the Employer under Code Section 403(b) (and any other plan that permits elective deferrals under Code Section 402(g) for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of the applicable limitations (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant by no later than the April 15th following the calendar year in which the excess Elective Deferral was made, provided that the Participant notifies the Employer in writing of the excess amounts by no later than the preceding March 1st. A Participant shall be deemed to have notified the Employer of excess Elective Deferrals to the extent the Participant has excess Elective Deferrals for the calendar year calculated by taking into account only Elective Deferrals under this Plan and amounts deferred by the Participant to other plans of the Employer. Any tax consequences resulting from a Participant's failure to notify the Employer under this Section are the sole responsibility of the Participant. Subject to the terms of the



Investment Arrangements, if a Participant who made both Pre-Tax Elective Deferrals and Roth Elective Deferrals for a calendar year has excess Elective Deferrals for that year, the excess Elective Deferrals shall be distributed out of the Participant's Roth Elective Deferral Account unless the Participant elects to instead have the excess amounts distributed out of the Pre-Tax Elective Deferral Account.

(b) Notwithstanding paragraph (a), to the extent that the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above only when combined with other amounts deferred by the Participant under a plan of a Related Employer, then the plan of the Related Employer is responsible for distributing the excess amounts for the year.

#### **Section 4.07. Annual Additions Limitation.**

(a) Limitations on Aggregate Annual Additions.

(1) General Limitation on Annual Additions. A Participant's Annual Additions under the Plan for a Limitation Year may not exceed the Maximum Annual Addition as set forth in Section 4.07(b)(4).

(2) Aggregation of 403(b) Plans of the Employer. If Annual Additions are credited to a Participant under any 403(b) plans of the Employer in addition to this Plan for a Limitation Year, the sum of the Participant's Annual Additions for the Limitation Year under this Plan and such other 403(b) plans may not exceed the Maximum Annual Addition as set forth in Section 4.07(b)(4).

(3) Aggregation Where Participant is in Control of Any Employer. If a Participant is in control of any employer for a Limitation Year, the sum of the Participant's Annual Additions for the Limitation Year under this Plan, any other 403(b) plans of the Employer, any defined contribution plans maintained by controlled employers, and any 403(b) plans of any other employers may not exceed the Maximum Annual Addition as set forth in Section 4.07(b)(4) below. For purposes of this subsection, a Participant is in control of an employer based upon the rules of Code Sections 414(b), 414(c), and 415(h), and a defined contribution plan means a defined contribution plan that is qualified under Code Section 401(a) or 403(a), a Code Section 403(b) plan, or a simplified employee pension within the meaning of Code Section 408(k).

(4) Annual Notice to Participants. The Administrator shall provide written or electronic notice to Participants that explains the limitation in Section 4.07(a)(3) in a manner calculated to be understood by the average Participant and informs Participants of their responsibility to provide information to the Administrator that is necessary to satisfy Section 4.07(a)(3). The notice will advise Participants that the application of the limitations in Section 4.07(a)(3) will take into account information supplied by the Participant and that failure to provide necessary and correct information to the Administrator could result in adverse tax consequences to the Participant, including the inability to exclude contributions to the Plan under Code Section 403(b). The notice will be provided annually, beginning no later than the year in which the Employee becomes a Participant.

(5) Coordination of Limitation on Annual Additions Where Participant is in Control of Employer. If the Participant is in control of an employer, Annual Additions which may be credited to a Participant under this Plan for any Limitation Year shall not exceed the Maximum Annual Addition under Section 4.07(b)(4), reduced by the Annual Additions credited to the Participant under any defined contribution plans maintained by controlled employers and 403(b) plans of any other employers. Contributions to the Participant's Accounts under this Plan shall be reduced to the extent necessary to prevent this limitation from being exceeded.

(6) Coordination of Limitation on Annual Additions Where Employer Has Another 403(b) Plan. If Annual Additions are credited to the Participant for the Limitation Year under another 403(b) plan of the Employer, the Annual Additions which may be credited to the Participant for the Limitation Year shall be limited to the extent necessary to prevent exceeding the Maximum Annual Addition under Section 4.07(b)(4) as follows: first, under the other 403(b) plan; and, second, this Plan.

(7) Excess Annual Additions.

(i) If, notwithstanding Sections 4.07(a)(1) through 4.07(a)(6), a Participant's Annual Additions under this Plan, or under this Plan and plans aggregated with this Plan under Sections 4.07(a)(2) and 4.07(a)(3), result in an Excess Annual Addition for a Limitation Year, the Excess Annual Addition will be deemed to consist of the Annual Additions last credited, except Annual Additions to a defined contribution plan qualified under Code Section 401(a) or a simplified employee pension maintained by an employer controlled by the Participant will be deemed to have been credited first.

(ii) Any Excess Annual Addition attributable to this Plan will be corrected in the manner described in Section 4.07(a)(8).

(8) Correction of Excess Annual Additions. A Participant's Excess Annual Additions for a taxable year are includible in the Participant's gross income for that taxable year. A Participant's Excess Annual Additions attributable to this Plan shall be credited in the year of the excess to a separate account under the Plan for such Excess Annual Additions which shall be maintained by the Vendor until the Excess Annual Additions are distributed. This separate account will be treated as a separate contract to which Code Section 403(c) (or another applicable provision of the Code) applies. Amounts in the separate account may be distributed at any time, notwithstanding any other provisions of the Plan. Excess Annual Additions shall be corrected as permitted under the Employee Plans Compliance Resolution System (or similar Internal Revenue Service correction program).

(b) Definitions.

(1) "Annual Additions" means the following amounts credited to a Participant under the Plan or any other plan aggregated with the Plan under Sections 4.07(a)(2) and 4.07(a)(3):

(i) employer contributions, including elective deferrals (other than age 50 catch-up elective deferrals described in Code Section 414(v) and contributions that have been distributed to the Participant as excess elective deferrals);

(ii) after-tax employee contributions;

(iii) forfeitures;

(iv) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan, and amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in Code Section 419(e); and

(v) allocations under a simplified employee pension.

Amounts described in (i), (ii), (iii), and (v) are Annual Additions for purposes of both the dollar limitation under Section 4.07(b)(4)(i) and the percentage of compensation limitation under Section 4.07(b)(4)(ii). Amounts described in (iv) are Annual Additions solely for purposes of the dollar limitation under Section 4.07(b)(4)(i).

(2) "Excess Annual Addition" means the excess of the Annual Additions credited to the Participant for the Limitation Year under the Plan and plans aggregated with the Plan under Sections 4.07(a)(2) and 4.07(a)(3) over the Maximum Annual Addition for the Limitation Year under Section 4.07(b)(4).

(3) "Limitation Year" means the calendar year. However, if the Participant is in control of an employer pursuant to Section 4.07(a)(3) above, the Limitation Year shall be the Limitation Year in the defined contribution plan controlled by the Participant.

(4) "Maximum Annual Addition" means that the Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

(i) The dollar amount under Code Section 415(c)(1)(A), as increased by the Cost of Living Adjustment for the applicable calendar year; or

(ii) 100% of the Participant's Includible Compensation for the Limitation Year.

## **ARTICLE V.** **VESTING**

**Section 5.01. General Rule.** Except as provided in Section 5.02, a Participant (or in the event of the Participant's death, the Beneficiary) shall be 100% Vested in their Accounts at all times.

### **Section 5.02. Vesting of Supplemental Employer Contributions.**

(a) Unless paragraph (b) applies, a Participant (or in the event of the Participant's death, the Beneficiary) shall be 100% Vested in their Supplemental Employer Contribution Account at all times.

(b) If a Service Completion Date is specified in the Addendum to this Plan, the Board resolution, or the employment agreement that sets forth the Supplemental Employer Contributions being made to the Plan on behalf of the Participant, then the Participant shall Vest in their Supplemental Employer Contribution Account if he or she remains continuously employed until the Service Completion Date; provided, however, that a Participant shall Vest in their Supplemental Employer Contribution Account at such earlier date that he or she:

- (1) becomes Disabled;
- (2) dies; or
- (3) is terminated from employment by the Employer without Cause.

For this purpose, Cause shall have the meaning set forth in the Participant's employment agreement with the Employer or, if not so defined, shall mean: (i) gross negligence or gross neglect of duties; (ii) conviction of a felony or of a gross misdemeanor in connection with the Participant's employment; or (iii) fraud, disloyalty, dishonesty, or willful violation of any law or significant policy committed in connection with the Participant's employment and resulting in a material adverse effect on the Board, System, or Employer.

**Section 5.03. Forfeitures.** If upon Severance from Employment a Participant has not Vested in their Account under Section 5.02, the Account shall be forfeited. Forfeitures shall be used to reduce future Supplemental Employer Contributions or to pay Plan expenses.

## **ARTICLE VI.** **LOANS**

### **Section 6.01. Loans.**

(a) Participants who are Employees may obtain loans under the Plan to the extent (i) a Vendor has been approved by the Administrator to allow loans under the Plan and (ii) a loan is permitted by the terms governing the applicable Investment Arrangement; provided, however, that: (A) effective February 1, 2018, a loan is not permitted from an Account held by Former Vendor; (B) loans are not permitted from a Roth Elective Deferral Account or a Supplemental Employer

Contribution Account; and (C) no loans are permitted for former Employees who have had a Severance from Employment with the Employer.

(b) Loans shall be subject to all applicable requirements and restrictions of the Code, including the provisions of Code Section 72(p) and the regulations thereunder.

(1) Loans shall be made available to all Participants who are Employees on a reasonably equivalent basis.

(2) Loans will be adequately secured and bear a reasonable rate of interest.

(3) Loans will be evidenced by a legally enforceable agreement specifying the amount and date of the loan and the repayment schedule.

(4) Any loan by its terms will require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan. If such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant, the amortization period shall not extend beyond 15 years from the date of the loan.

(5) An assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan under this paragraph.

(6) The terms governing the applicable Investment Arrangements shall determine the method of repayment of the loan.

(c) Loans will be subject to separate loan procedures issued by the Vendor under the Plan. Participants shall not have more than three loans outstanding at a time. Participants may be charged a reasonable processing fee per loan.

#### **Section 6.02. Maximum Loan Amount.**

(a) No loan to any Participant can be made to the extent that such loan when added to the outstanding balance of all other loans to the Participant or Beneficiary would exceed the lesser of

(1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the plan on the date the loan is made, or

(2) one-half the present value of the nonforfeitable accrued benefit of the Participant.

For purposes of this limitation, all loans from all plans of the Employer and Related Employers are aggregated; provided, however, that the amount of any loan cannot exceed the amount otherwise permitted under the terms of the Plan.

**Section 6.03. Assignment.** An assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan under this Article VI.

**Section 6.04. Governing Terms.** The terms governing the applicable Investment Arrangement shall determine the method of repayment of loans.

**Section 6.05. Information Coordination Concerning Loans.** The Vendor shall be 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, unless otherwise delegated under separate agreement, the Administrator will take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 6.02, including the collection of information from Former Vendors, and transmission of information requested by the Vendor or Former Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator will also take such steps as may be appropriate to collect information from the Former Vendors, and to transmit any information to the Vendor or Former Vendor, concerning any failure by a Participant to timely repay any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator may delegate this responsibility to a Vendor or to another service provider pursuant to Article X of the Plan.

## **ARTICLE VII.** **DISTRIBUTIONS**

### **Section 7.01. Commencement of Distributions.**

(a) Except as otherwise permitted under the Plan, distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant:

- (1) has a Severance from Employment;
- (2) dies;
- (3) becomes Disabled;
- (4) attains age 59½; or
- (5) has a financial hardship as set forth in Section 7.06;

provided, however, that distributions of Supplemental Employer Contributions cannot be made earlier than the date on which the Participant has a Severance from Employment.

(b) The distribution restrictions in paragraph (a) do not apply to Pre-Tax Elective Deferrals to the Plan prior to January 1, 1989 (not including earnings thereon) provided that such Pre-Tax Elective Deferrals are separately accounted for under the Plan.

(c) Subject to the terms governing the applicable Investment Arrangement, Participants may elect to have either Roth Elective Deferrals or Pre-Tax Elective Deferrals distributed from the

Plan first. Unless provided otherwise under the terms governing the applicable Investment Arrangement, if the Participant fails to make an election, Pre-Tax Elective Deferrals will be distributed from the Plan first.

(d) The Employer shall certify to the Vendor whether the Participant has had a Severance from Employment, dies, or becomes Disabled. Distributions shall otherwise be made in accordance with the terms governing the applicable Investment Arrangements.

**Section 7.02. In-Service Distributions of Rollover Contribution Account.** If a Participant has a Rollover Contribution Account then, to the extent permitted by the terms governing the applicable Investment Arrangement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Contribution Account.

**Section 7.03. Form of Distribution.** A Participant may elect to receive their Account under any payment option available under and subject to the terms governing the applicable Investment Arrangement.

**Section 7.04. Small Account Balances.**

(a) To the extent permitted by the Investment Arrangement, a lump sum payment of a Vested Account may be made without the consent of the Participant or Beneficiary if their Account balance does not exceed \$1,000 (determined without regard to their Rollover Contribution Account), unless the Participant elects to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in a lump sum.

(b) To the extent permitted by the Investment Arrangement, a lump sum payment of a Vested Account may be made without the consent of the Participant or Beneficiary if their Account balance exceeds \$1,000 but does not exceed \$5,000 (\$7,000 effective January 1, 2024), determined without regard to their Rollover Contribution Account, provided that such distribution shall be made in a direct rollover to an individual retirement plan designated by the Administrator, unless the Participant elects to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly in a lump sum.

**Section 7.05. Required Distribution Rules.**

(a) The provisions of this Section 7.05 take precedence over any inconsistent provisions of the Plan or of any Investment Arrangement. All distributions under this Plan shall be made in accordance with a reasonable, good faith interpretation of Code Section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G) and the changes under the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, SECURE 2.0 of 2022, and Treasury Regulation Sections 1.401(a)(9)-1 through -9, as each may be amended from time to time. For purposes of applying the distribution rules of Code Section 401(a)(9), each Investment Arrangement is treated as an individual retirement account and distributions shall be made in accordance with the provisions of Treasury Regulation Section 1.408-8, except as provided in Treasury Regulation Section 1.403(b)-6(e).

(b) Distributions may only be made over one of the following periods (or a combination thereof):

- (1) The life of the Participant;
- (2) The life of the Participant and a Designated Beneficiary;
- (3) A period certain not extending beyond the life expectancy of the Participant;

or

- (4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and Designated Beneficiary;

provided, however, that distributions under this paragraph (b) that are paid in calendar years 2024 and later during the lifetime of the Participant shall be determined without regard to the Participant's Roth Elective Deferral Account or to any subaccount of the Participant's Rollover Contribution Account holding Roth Rollover Contributions and earnings thereon.

(c) A Participant's Accounts shall be distributed to the Participant beginning no later than April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains the applicable age within the meaning of Code Section 401(a)(9)(C)(v) or (ii) the calendar year in which the Participant has a Severance from Employment.

(d) Notwithstanding anything to the contrary in this Section 7.05, if the Vendor(s) separately accounts for Contributions made prior to January 1, 1987, then distribution of such Contributions (but not any interest accumulated with respect thereto) need not commence until April 1 of the calendar year following the calendar year in which the Participant attains age 75.

(e) Subject to regulations or other guidance issued under Code Section 401(a)(9), upon the death of the Participant before distribution of their Account(s) has begun under paragraph (c) or (d), as applicable, the following distribution provisions shall take effect:

(1) The portion of the Participant's Account(s) payable to a Beneficiary that is not a Designated Beneficiary shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(2) The portion of the Participant's Account(s) payable to a Designated Beneficiary who is not an Eligible Designated Beneficiary shall be distributed by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(3) The portion of the Participant's Account(s) payable to an Eligible Designated Beneficiary shall be distributed, pursuant to the election of the Eligible Designated Beneficiary, either (i) by December 31 of the calendar year containing the tenth anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the Eligible Designated Beneficiary or over a period not exceeding the life expectancy of the Eligible Designated Beneficiary. If the Eligible Designated Beneficiary



does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (i). Notwithstanding the foregoing, if the Eligible Designated Beneficiary is the surviving Spouse, the Spouse may elect to delay payment under item (ii) until December 31 of the calendar year in which the Participant would have attained the applicable age within the meaning of Code Section 401(a)(9)(C)(v), and, effective January 1, 2025, the Spouse will be deemed to have elected payments consistent with an election under Code Section 401(a)(9)(B)(iv).

(f) Subject to regulations or other guidance issued under Code Section 401(a)(9), upon the death of the Participant after distribution of their Account(s) have begun under paragraph (c) or (d), as applicable, any remaining portion of their Account(s) shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death; provided, however, that the portion of the Participant's Account(s) payable to a Designated Beneficiary who is not an Eligible Designated Beneficiary shall be distributed in its entirety by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

(g) Upon the death of an Eligible Designated Beneficiary, or the attainment of age 21 of an Eligible Designated Beneficiary who is a minor child of the Participant, before distribution of the Participant's entire Account(s) under paragraphs (e) or (f), the remainder of the Participant's Account(s) shall be distributed by December 31 of the calendar year containing the tenth anniversary of the Eligible Designated Beneficiary's death, or by December 31 of the calendar year in which the child attains age 31, as applicable.

(h) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as a distribution required under this Section 7.05.

(i) Each Vendor shall be separately and solely responsible for complying with the provisions of this Section 7.05 with respect to its Investment Arrangements under the Plan. The Vendor(s) shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions at least 60 days prior to the date distributions must begin.

#### **Section 7.06. Hardship Withdrawals.**

(a) To the extent (i) a Vendor has been approved by the Administrator to allow hardship withdrawals under the Plan and (ii) a hardship withdrawal is permitted by the terms governing the applicable Investment Arrangement, distribution of Elective Deferrals (prior to January 1, 2024, excluding any earnings on such Elective Deferrals after December 31, 1988) may be made to a Participant who is an Employee in the event of hardship. A hardship distribution is not permitted from a Supplemental Employer Contribution Account. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy the immediate and heavy financial need. Participants may be charged a reasonable processing fee per hardship withdrawal.

(b) The following are the only financial needs considered immediate and heavy:

(1) expenses incurred or necessary for medical care described in Code Section 213(d) (without regard to whether the expenses exceed 7.5% of adjusted gross income) of

the Participant, the Participant's Spouse or dependents (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(2) the purchase (excluding mortgage payments) of a principal residence for the Participant;

(3) payment of tuition and related educational fees and room and board expenses for the next 12 months of post-secondary education for the Participant, the Participant's Spouse or dependents (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(4) payments necessary to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;

(5) payments for funeral or burial expenses for the Participant's deceased parent, Spouse, any dependent (as defined in Code Section 152, but without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B));

(6) expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under Code Section 165 (determined without regard to Code Section 165(h)(5) and whether the loss exceeds 10% of adjusted gross income);

(7) expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; and

(8) such other circumstances as the Commissioner of Internal Revenue determines constitute financial hardship under Code Section 401(k) or the Treasury Regulations thereunder.

(c) A distribution will be considered necessary to satisfy an immediate and heavy financial need of the Participant only if:

(1) The distribution is not in excess of the amount of the immediate and heavy financial need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution);

(2) The Participant has obtained all distributions currently available under the Plan or any other plans maintained by the Employer, other than hardship distributions; and

(3) For distributions made on or after January 1, 2020, the Participant represents that he or she has insufficient cash or other liquid assets to satisfy the need.

(d) A Participant must provide substantiation of the reason for and the amount of the immediate and heavy financial need to the Vendor; provided, however, that unless it has actual

knowledge to the contrary, a Vendor can rely on the Participant's self-certification that the withdrawal satisfies paragraphs (b) and (c). The Vendor shall approve all hardship distributions under this Section 7.06.

(e) The Administrator shall take such steps as may be appropriate to collect information from Former Vendors, and to transmit any information to any Vendor or Former Vendor, in order to coordinate the limitations on hardship withdrawals. The Administrator may delegate this responsibility to the Vendor or to another service provider pursuant to Article X of the Plan.

**Section 7.07. Death Benefits.** If a Participant dies before the entire distribution of their Account has been made, their remaining Account, if any, will be distributed to their Beneficiary as soon as administratively feasible after the Participant's death, unless the Beneficiary elects a later payment date on the appropriate form as designated and furnished by the Vendor, subject to the minimum distribution requirements of Code Section 401(a)(9) and regulations thereunder. A Beneficiary may elect to receive the deceased Participant's Account under any payment option available under and subject to the terms governing the applicable Investment Arrangement.

**Section 7.08. Rollover Distributions from the Plan.**

(a) **Direct Rollovers.** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution that is equal to at least \$500 paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. If an Eligible Rollover Distribution is less than \$500, a Distributee may not make the election described in the preceding sentence to roll over only a portion of the Eligible Rollover Distribution.

(b) **Definitions.**

(1) "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse and the Employee's or former Employees' Spouse or former Spouse who is the Alternate Payee, are Distributees with regard to the interest of the Spouse or former Spouse. A Distributee also includes the Participant's non-Spouse designated Beneficiary. In the case of a non-Spouse Beneficiary, the Direct Rollover may be made only to a an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is established on behalf of the Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). The determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A-17 and 18, 2007 I.R.B. 395.

(2) "Direct Rollover" means an Eligible Rollover Distribution by the Plan to the Eligible Retirement Plan specified by the Distributee.

(3) "Eligible Rollover Distribution," as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

- (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a period of ten years or more;
- (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9) (other than amounts that would have been required but for a statutory waiver of the Code Section 401(a)(9) requirements);
- (iii) any hardship distribution;
- (iv) the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities);
- (v) any distribution(s) that is reasonably expected to total less than \$200 during a year; and
- (vi) other items designated by regulations, or by the commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (i) an individual retirement account or annuity described in Code Section 408(a) or 408(b), respectively, or (ii) a qualified plan described in Code Section 401(a) or 403(a) or a tax-sheltered annuity described in Code Section 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(4) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means a qualified plan described in Code Section 401(a), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an individual retirement account or annuity described in Code Section 408(a) or 408(b), a simple retirement account described in Code Section 408(p)(1) following the two-year period described in Code Section 72(t)(6), an eligible plan under Code Section 457(b) which is maintained by a State and which agrees to separately account for amounts transferred into such plan from this Plan, or a Roth individual retirement account described in Code Section 408A(e), that accepts the Distributee's Eligible Rollover Distribution. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee.

(c) Written Explanation of Right to Direct Rollover. The Vendor shall provide, within a reasonable time period before making an Eligible Rollover Distribution, a written explanation to the Participant that satisfies the requirements of Code Section 402(f).

(d) Roth Elective Deferrals.

(1) A Direct Rollover of a distribution from a Roth Elective Deferral Account under the Plan will be made only to another Roth Elective Deferral Account under an applicable retirement plan described in Code Section 402A(e)(1) or to a Roth IRA described in Code Section 408A, and only to the extent the rollover is permitted under the rules of Code Section 402(c).

(2) The Plan will not provide for a Direct Rollover for distributions from a Participant's Roth Elective Deferral Account if the amounts of the distributions that are Eligible Rollover Distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's Roth Elective Deferral Account is not taken into account in determining whether distributions from a Participant's other Accounts are reasonably expected to total less than \$200 during a year.

(3) The provisions of the Plan that allow a Participant to elect a Direct Rollover of only a portion of an Eligible Rollover Distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from the Participant's Roth Elective Deferral Account as a separate distribution from any amount distributed from the Participant's other Accounts in the Plan, even if the amounts are distributed at the same time.

**Section 7.09. Permissive Service Credit Transfers.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Accumulated Benefit transferred to the defined benefit governmental plan; provided, however, that no portion of the Participant's Accumulated Benefit attributable to Roth Elective Deferrals may be transferred under this Section. A transfer under this Section may be made before the Participant has had a Severance from Employment.

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

**Section 7.10. In-Plan Roth Rollovers.**

(a) Subject to the terms of the Investment Arrangements: (i) any amount held in a Pre-Tax Elective Deferral Account or Supplemental Employer Contribution Account is eligible for direct transfer to a Roth Elective Deferral Account even if not otherwise distributable under Section 7.01, and (ii) any amount held in a subaccount of the Participant's Rollover Contribution Account holding pre-tax Rollover Contributions and earnings is eligible for a direct transfer to a subaccount of the Participant's Rollover Contribution Account holding Roth Rollover Contributions and earnings. Such transfer shall be treated as a qualified rollover contribution (within the meaning of Code Section 408A(e)) to such Account.

(b) A Participant's election under this Section 7.10 shall be subject to the Individual Arrangements, the reasonable administrative procedures established by the Administrator, Code Section 402A(c)(4) and the regulations thereunder, and subsequent guidance from the Internal Revenue Service.

(c) The taxable portion of the Participant's Accounts transferred to a Roth Elective Deferral Account or to a subaccount of the Participant's Rollover Contribution Account holding Roth Rollover Contributions and earnings pursuant to this Section 7.10 shall be included in the Participant's gross income in the tax year in which the transfer occurs.

## **ARTICLE VIII.**

### **ACCOUNTING**

**Section 8.01. Participant Accounts.** The Vendor(s) shall establish and maintain adequate records to reflect the Accounts of each Participant and Beneficiary. Credits and charges shall be made to such Accounts to reflect additions, distributions, and withdrawals, and to reflect gains or losses pursuant to the terms of each Investment Arrangement. The maintenance of individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

**Section 8.02. Participant Statements.** The Vendor(s) shall provide to each Participant a quarterly statement reflecting the value of the Participant's Account as of the end of each quarter, and shall provide similar information to the Administrator upon its request.

**Section 8.03. Value of Account.** The value of the Account of a Participant as of any valuation date is the value of the Account Balance as determined by the Vendor. All transactions and Account records shall be based on fair market value.

## **ARTICLE IX.**

### **INVESTMENT OF CONTRIBUTIONS**

**Section 9.01. Manner of Investment.** All Elective Deferrals, Supplemental Employer Contributions, Rollover Contributions, or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Investment Arrangements, and all income attributable to such amounts, property, or rights will be held and invested in one or more Annuity Contracts or Custodial Accounts.

**Section 9.02. Exclusive Benefit.** 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 Beneficiaries.

**Section 9.03. Investment of Contributions.**

(a) Each Participant or Beneficiary shall direct the investment of their Account among the Investment Options available under the Investment Arrangement in accordance with the terms governing the Investment Arrangement.

(b) In the event that an Employee fails to designate the Investment Options under the Investment Arrangement to which Contributions are to be made, the Contributions shall be invested in a default fund selected by the Administrator in its sole and absolute discretion.

(c) Neither the Board nor the System is acting as an investment advisor as investments of Contributions are solely the responsibility of the Participant.

**Section 9.04. Information Sharing.** Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy Code Section 403(b) or other requirements of applicable law.

**Section 9.05. Investment Changes.** A Participant or Beneficiary is permitted to change the investment of their Accumulated Benefit among the Vendors of Investment Arrangements approved for use under the Plan. An investment change from a Former Vendor to a current Vendor is permitted, but in no event is an investment change from a Vendor to a Former Vendor or to any other vendor that is not eligible to receive Contributions under the Plan permitted.

**Section 9.06. Current Vendors.** The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan and set forth in Appendix A. Each Vendor and the Administrator will exchange such information as may be necessary to satisfy Code Section 403(b) or other requirements of applicable law.

**Section 9.07. Former Vendors.** The Employer shall make a good faith reasonable effort to enter into an information sharing agreement with each Former Vendor to the extent that any existing agreement with that Former Vendor does not already provide for such information sharing on a continuing basis. The agreement will provide for mutual sharing of the following information:

(a) Information necessary for the resulting Annuity Contract or Custodial Account, or any other Annuity Contract or Custodial Account to which contributions have been made by the Employer, to satisfy Code Section 403(b), including the following: (i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Former Vendor when the Participant has had a Severance from Employment (for purposes of the Plan benefit distribution restrictions); (ii) the Former Vendor notifying the Employer of any hardship withdrawal if the withdrawal results in a six month suspension of the Participant's right to make Elective Deferrals under the Plan; and (iii) the Former Vendor providing information to the Employer or other Vendors or Former Vendors concerning the Participant's or Beneficiary's Annuity Contracts or Custodial Accounts (to enable a Vendor or Former 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 Plan's hardship withdrawal rules).

(b) Information necessary in order for the resulting Annuity Contract or Custodial Account and any other Annuity Contract or Custodial Account to which Contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following: (i) the amount of any Plan loan that is outstanding to the Participant in order for a Vendor or Former Vendor to determine whether an additional Plan loan satisfies the applicable loan limitations, so that any such additional loan is not a deemed distribution under Code

Section 72(p)(1); and (ii) information concerning the Participant's or Beneficiary's after-tax employee contributions in order for a Vendor or Former Vendor to determine the extent to which a distribution is includible in gross income.

## **ARTICLE X.**

### **PLAN ADMINISTRATION**

#### **Section 10.01. Authority of the Administrator.**

(a) The Administrator shall have the authority to control and manage the operation and administration of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. The Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan.

(b) The Plan shall be administered, and the provisions of the various documents comprising the Plan shall be coordinated, in accordance with the terms of the Plan and the requirements of Code Section 403(b). These provisions and requirements include but are not limited to:

- (1) Determining whether an Employee is eligible to participate in the Plan.
- (2) Determining whether Contributions comply with the applicable limitations.
- (3) Determining whether hardship withdrawals and loans comply with applicable requirements and limitations.
- (4) Determining that any transfers, rollovers, or purchases of service credit comply with applicable requirements and limitations.
- (5) Determining that the requirements of the Plan and Code Section 403(b) are properly applied, including whether the Employer is a member of a controlled group.
- (6) Determining the status of domestic relations orders or qualified domestic relations orders.

Administrative functions, including functions to comply with Code Section 403(b) and other tax requirements, may be allocated among various persons pursuant to service agreements or other written documents. In no case shall administrative functions be allocated to Participants (other than permitting Participants to make investment elections for self-directed accounts). Any administrative functions not allocated to other persons are reserved to the Administrator.

(c) Persons to whom administrative functions have been allocated and the specific functions allocated to such persons shall be identified in Appendix B to the Plan. Service agreements and other records or information pertaining to the administration of the Plan may be included or incorporated by reference in Appendix B. Appendix B may be modified from time to time. A modification of Appendix B is not an amendment of the Plan.



(d) The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claim procedures, the Administrator shall be the sole and final judge of such expediency. Any action by the Administrator which is not found to be an abuse of discretion, shall be final, conclusive, and binding on all individuals affected thereby.

(e) Benefits are payable under the Plan only if the Administrator, in its sole and absolute discretion, determines the benefits are payable under the provisions of the Plan.

**Section 10.02. Delegation by Administrator.** The Administrator may from time to time delegate in writing to a committee or any duly authorized officer certain of its fiduciary duties or other responsibilities under the Plan. Any such committee or officer delegated fiduciary duties shall be a fiduciary until the Administrator revokes such delegation. A delegation of the Administrator's duties or responsibilities may be revoked without cause or advance notice. To the extent permitted under applicable law, such committee or officer shall have the same power and authority with respect to such delegated fiduciary or other responsibilities as the Administrator has under the Plan. The Administrator shall not be liable for any act or omission of such fiduciary in carrying out such responsibilities.

**Section 10.03. Employment of Consultants.** The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

**Section 10.04. Plan Expenses.** All reasonable expenses of administering the individual Accounts in the Plan will be charged against and paid from the Participants' Accounts, subject to the terms of the Investment Arrangements, unless paid by the Employer. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with Internal Revenue Service rules.

## **ARTICLE XI.** **CLAIMS PROCEDURES**

**Section 11.01. Claim for Benefits.** If a Participant makes a written claim for benefits under the Plan to the Administrator or Vendor, as applicable, and the written request is denied in whole or part, the Administrator or Vendor, as applicable, shall within 60 days provide a written denial to the Participant. It shall include the specific reasons for denial, the provisions of the Plan and/or Investment Arrangements on which the denial is based, and how to apply for a review of the denied claim. Where appropriate, it shall also include a description of any material which is needed to complete or perfect a claim and why such material is necessary. If the Participant does not receive a timely denial from the Administrator or Vendor, then the Participant's claim for benefits shall be deemed denied.

**Section 11.02. Review of Denial.** Within 60 days after the Participant receives notification of the denial, a Participant may request in writing a review of a claim denied by the Administrator

or Vendor, as applicable, and review pertinent documents and submit issues and comments in writing to the Administrator or Vendor, as applicable. The Participant shall receive a written decision upon such request for review of a denied claim within 60 days following receipt of the request. The decision shall set forth the specific reasons and specific Plan provisions on which the Administrator or Vendor based its decision. If the Participant does not receive a timely denial from the Administrator or Vendor, then the Participant's request for review of their claim shall be deemed denied.

## **ARTICLE XII.** **AMENDMENT AND TERMINATION**

**Section 12.01. Termination of Contributions.** The Board has adopted the Plan with the intention and expectation that Contributions will be continued indefinitely. However, the Board has no obligation or liability whatsoever to maintain the Plan for any length of time and may, by resolution of the Board, discontinue Contributions under the Plan at any time without any liability hereunder for any such discontinuance.

**Section 12.02. Amendment and Termination.** The Board reserves the authority to amend or terminate this Plan at any time.

**Section 12.03. Distribution Upon Termination of the Plan.** Upon termination of the Plan, all non-Vested amounts under the Plan will be fully Vested, and subject to any restrictions contained in the terms governing the applicable Investment Arrangement, 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 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 Treasury Regulations. For purposes of distributing all assets from the Plan in the event of a Plan termination, (i) delivery of a fully paid individual insurance annuity contract, and/or (ii) distribution of an individual custodial account in kind, shall be treated as a distribution.

## **ARTICLE XIII.** **MISCELLANEOUS**

**Section 13.01. Non-Assignability.** Except as provided in Section 13.02 for a domestic relation order or Section 13.03 for an Internal Revenue Service levy, 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 will 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.

**Section 13.02. Domestic Relation Orders.** Notwithstanding Section 13.01, 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 Accumulated Benefit

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 or its designee shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. Participants may be charged a reasonable processing fee per domestic relation order.

**Section 13.03. Internal Revenue Service Levy.** Notwithstanding Section 13.01, the Administrator may pay from a Participant's or Beneficiary's Accumulated Benefit 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.

**Section 13.04. Military Service.**

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with USERRA, HEART, Code Section 414(u), and, effective January 1, 2007, Code Section 401(a)(37). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(b) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service may elect to make Elective Deferrals upon resumption of employment with the Employer up to the maximum Elective Deferrals that the Participant could have elected during that period if the Participant'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 Participant during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for the lesser of (i) five years following the resumption of employment or (ii) a period equal to three times the period of the interruption or leave. Such Elective Deferrals by the Participant may only be made during such period and while the Participant is reemployed by the Employer. The Employer shall also make any Supplemental Employer Contributions attributable to the Employee's period of service no later than ninety (90) days after the date of reemployment or when Supplemental Employer Contributions are normally due for the year in which the qualified military service was performed, if later.

(c) Effective January 1, 2009, an Employee whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Employer, shall be treated as an Employee of the Employer eligible to make Elective Deferrals during such service and the differential wage payment shall be treated as Includible Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(d) In addition, the survivors of any Participant who dies on or after January 1, 2007, while performing qualified military service are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan had the Participant resumed employment and then terminated employment on account of death.

**Section 13.05. 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, which constitute wages under Code Section 3121). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Code Section 3401 and the Treasury Regulations thereunder), except to the extent that it is a Qualified Distribution. A payee will 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.

**Section 13.06. Federal and State Taxes.** It is intended that Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries, except to the extent that the Contribution is a Roth Elective Deferral or in-Plan Roth Rollover under Section 7.10. However, the Administrator does not guarantee that any particular Federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

**Section 13.07. Erroneous Payments.** If the Administrator or the Vendor makes any payment that, according to the terms of the Plan and the benefits provided hereunder, should not have been made, the Administrator or the Vendor may recover that incorrect payment by whatever means necessary, whether or not it was made due to the error of the Administrator or the Vendor, from the person to whom it was made, or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or the Vendor may deduct it when making any future payments directly to that Participant.

**Section 13.08. Liability and Indemnification.** The Employer shall indemnify, defend, and hold harmless any members of the Board or any person to whom any power, authority or responsibility of the Employer is delegated pursuant to Section 10.02 except a Vendor or other service provider, from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by the Employer or any of its officers or employees, which may occur during or which may arise out of the operation or administration of the Plan. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the System, under any provision of law, or under any other agreement.

**Section 13.09. No Reversion.** Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the Employer, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, 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) may be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

**Section 13.10. 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 or the Vendor, benefits will be paid to a court appointed guardian or in accordance with the terms of a court order. Such payments will be considered a payment to such Participant or Beneficiary and will, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**Section 13.11. Procedure When Distributee Cannot Be Located.** The Vendor will 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 the Vendor is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Investment Arrangement will continue to hold the benefits due such person, subject to any applicable state law.

**Section 13.12. Incorporation of Terms Governing Investment Arrangements.** The Plan, together with the terms governing the Investment Arrangements, is intended to satisfy the requirements of Code Section 403(b) and the Treasury Regulations thereunder. Terms and conditions governing the Investment Arrangements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Code Section 403(b).

**Section 13.13. Limitation on Rights and Obligations.** Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor the purchase of any Annuity Contract or Custodial Account, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) as conferring upon any Participant, Beneficiary, or any other person any right or claim against the Employer or the Administrator, except to the extent that such right or claim will be specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Employer for the validity or effect of the Plan;

(c) as a contract or agreement between the Employer and any Participant or other person;

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Participant or other person to continue or terminate the employment relationship at any time, except as otherwise provided under any applicable collective bargaining agreement; or

(e) as giving any Participant the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or other person at any time; provided, however, that the foregoing will not be deemed to modify the provisions of any

collective bargaining agreements which may have been entered into by the Employer with the bargaining representatives of any Participant.

**Section 13.14. Cessation of Contributions.** If the Employer ceases to be an eligible employer within the meaning of Code Section 403(b)(1)(A), it may no longer make Contributions to the Plan for any subsequent period.

**Section 13.15. Counterparts.** The Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be evidenced by any one counterpart.

IN WITNESS WHEREOF, the Board has caused this amended and restated Plan to be executed by its duly authorized representative as of the date written below, but effective as of January 1, 2023.

**THE BOARD OF REGENTS OF MONTANA  
UNIVERSITY SYSTEM**

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

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

## **MONTANA UNIVERSITY SYSTEM 403(b) PLAN**

### **APPENDIX A**

#### **APPROVED VENDORS**

The current selection of Vendor(s) is not intended to limit future additions or deletions of Vendor(s). The Administrator from time to time may add or delete Vendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in a revised Appendix A.

##### **1.1 Approved Vendors**

As of January 1, 2023, the Administrator has approved Teachers Insurance and Annuity Association ("TIAA") as the Vendor under the Plan.

##### **1.2 Former Vendors**

As of January 1, 2023, the Former Vendors under the Plan are:

- (a) VALIC
- (b) Voya (ING)
- (c) MetLife
- (d) T. Rowe Price

## **MONTANA UNIVERSITY SYSTEM 403(b) PLAN**

### **APPENDIX B**

#### **ADMINISTRATIVE FUNCTIONS**

Any administrative functions not allocated to other persons under the terms of the Plan or as specified in this Appendix B shall be reserved to the Administrator.

For purposes of identifying persons to whom administrative functions under the Plan have been allocated, and the specific functions allocated to such persons, the following service and other agreements, as amended from time to time, are hereby incorporated by reference:

1. Amended and Restated Recordkeeping Services Agreement for Governmental Plans between Montana University System and the Teacher's Insurance and Annuity Association of America ("TIAA"), effective as of December 18, 2017, as amended from time to time.
2. Amended and Restated Custodial Account Agreement for a Governmental 403(b) Plan between the Montana University System and TIAA, FSB, effective as of December 18, 2017, as amended from time to time.



## **MONTANA UNIVERSITY SYSTEM 403(b) PLAN**

### **ADDENDUM FOR PRESIDENT WADED CRUZADO**

The Board of Regents of the Montana University System (the "Board") has designated Waded Cruzado, President of the Montana State University (the "University") as eligible to receive Supplemental Employer Contributions under the Montana University System 403(b) Plan ("Plan") pursuant to Section 3.03 of the Plan.

This Addendum shall be incorporated into the Plan, and any capitalized term in this Addendum shall have the same meaning as set forth in the Plan.

In consideration of President Cruzado's services to the University, the University has agreed to make the following Supplemental Employer Contributions to the Plan on her behalf:

1. The University shall make a Supplemental Employer contribution to the Plan each Plan Year equal to the difference between the limit under section 415(c) of the Code and the limit under section 402(g) of the Code. For example, for 2023 the Supplemental Employer Contribution is \$43,500 (\$66,000 - \$22,500 = \$43,500).
2. Supplemental Employer Contributions shall be made to the Plan each Plan Year that President Cruzado remains employed by the University, beginning with the 2015 Plan Year.
3. President Cruzado's Service Completion Date is December 31, 2019. On the Service Completion Date, President Cruzado shall Vest in all Supplemental Employer Contributions already made to the Plan as of such date and shall also be immediately Vested in any Supplemental Employer Contributions made to the Plan on or after such date. If President Cruzado has a Severance from Employment with the University prior to the Service Completion Date, she shall forfeit all Supplemental Employer Contributions made to the Plan on her behalf, except as provided in the Plan.
4. If President Cruzado remains continuously employed by the University until the Service Completion Date, the University shall also make Supplemental Employer Contributions on her behalf for a period of five years following her Severance from Employment with the University. The Supplemental Employer Contributions made to the Plan for each such year shall be equal to \$500,000 less the total Supplemental Employer Contributions made to the Plan prior to President Cruzado's Severance from Employment, divided by five; provided, however, that in no event shall the Supplemental Employer Contribution for a year exceed the section 415(c) limit for that year.
5. All other terms of the Plan shall apply.