

**VENDOR REGULATIONS**  
**FOR THE**  
**TAX DEFERRED ACCOUNT PROGRAM**  
**July 1, 2014**  
**TEXAS STATE UNIVERSITY**

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TEXAS STATE UNIVERSITY  
 VENDOR REGULATIONS FOR THE  
 TAX DEFERRED ACCOUNT PROGRAM

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TEXAS STATE UNIVERSITY  
VENDOR REGULATIONS  
FOR THE  
TAX-DEFERRED ACCOUNT PROGRAM

I. INTRODUCTION

The Tax-Deferred Account (TDA) Program is authorized under Section 403(b) of the Internal Revenue Code. The goal of the TDA Program is to provide eligible employees with a high-quality, supplemental retirement program. Texas State University (Texas State) allows certain vendors, including life insurance companies, administrators of custodial accounts, banks and investment companies qualified to conduct business in Texas the opportunity to offer TDA contracts to eligible employees. This document is intended to provide vendors and prospective vendors with the regulations governing the TDA Program at Texas State.

The Texas State Tax-Deferred Account Program is a governmental 403(b) and is not covered by the Employee Retirement Income Security Act of 1974 (ERISA).

II. DEFINITIONS

The following definitions apply:

ACCOUNT BALANCE is the accumulation of all deposits, interest, dividends, capital gains or other additions/deletions to an employee's Product to determine its dollar value at any point in time.

CONTRACT means a formal, written agreement between a Vendor and Texas State or eligible TDA participant, for a Product qualified as a TDA under Section 403(b) of the Internal Revenue Code and as designated under the terms of this document.

CONTRIBUTIONS refer to deposits to the TDA.

CRITERIA as used throughout this document means, TDA Criteria for TDA Vendors at Texas State.

DEPOSITS refer to individual salary reduction amounts.

REPRESENTATIVE means Texas State approved agent, broker, salesperson, solicitor, selling officer, manager, and other titles indicating a seller of a TDA Product.

PRODUCT as used throughout this document means an annuity qualified under Section 403(b) or a custodial account qualified under Section 403(b)(7) of the Code.

VENDOR as used throughout this document means the provider of an Annuity Contract or Custodial Account.

MUTUAL FUND as used throughout this document means any regulated investment company registered under the Investment Company Act of 1940.

FIXED ANNUITY as used throughout this document means any Product which does not contain variable investment options.

VARIABLE ANNUITY as used throughout this document means any annuity Product qualified under section 403(b) containing variable investment options.

ROLLOVER as used throughout this document means any transfer of a participant's account due to a participant incurring a distributable event from this Plan to another retirement plan that is permitted under

the Internal Revenue Code and the terms of its plan document to receive such transfer.

### III. GENERAL INSTRUCTIONS

Vendors may apply for the privilege of marketing TDA contracts to employees of Texas State by responding to each item included in the application section. The response should be arranged as follows:

- A. Certification Statement, with appropriate signature, from Section IV.A. (see page 7)
- B. Attachments and required information described in Section IV.B.
- C. Completed Exhibits E-2, E-4 and E-5
- D. Completed Representative Acknowledgment Form(s) (Exhibit E-6)

The response should be mailed to:

Associate Director of Human Resources  
Texas State University  
601 University Drive  
360 J. C. Kellam Administration Bldg.  
San Marcos, TX 78666

The overnight delivery address is the same as above.

Inquiries may be directed to the Associate Director of Human Resources (512) 245-2557.

**It is the vendor's responsibility to ensure that every person representing that vendor to employees of Texas State follows these specifications. The submission of incorrect information and/or the failure to follow these specifications may result in the loss of the privilege to market TDA contracts to Texas State employees.**

**Texas State reserves the right to modify the requirements stated in these specifications. Changes may be required due to federal or state legislative mandates or due to Texas State administrative requirements.**

#### IV. VENDOR APPLICATION

##### A. CERTIFICATION FOR ALL VENDORS

An officer of the vendor with the authority to legally bind the company must certify agreement with the following by signing the certification statement on page 7:

1. Every TDA contract issued to employees of Texas State satisfies all requirements for income tax deferment under all applicable sections of the Internal Revenue Code.
2. Texas State has the right to reject any TDA contracts it deems not to be in the best interest of the employees.
3. All amendments to TDA contracts that may be mandated by federal or state laws, regulations, revenue rulings or opinions of the Attorney General of Texas will be made effective immediately, or in a timely manner, in accordance with the law, regulation or opinion. Participants will be notified of the amendment in a timely manner.
4. Accurate records will be maintained on each participant in the TDA Program reflecting contributions as elective deferrals or Roth 403(b) contributions and identifying the account as a 403(b)(1) or 403(b)(7).
5. All products offered to Texas State TDA participants must comply with the following fee requirements:
  - a. Front-end sales may not exceed five and three-quarter (5.75) percent. A product with a front-end sales load may not charge a surrender fee. A surrender fee includes a back-end sales load, redemption charge, contingent deferred sales charge, or any other fee that is assessed when a participant accesses their funds.
  - b. Non-rolling surrender charges may not exceed seven (7) percent and must terminate within seven (7) years from the participant's contract date. Rolling surrender charges may not exceed five (5) percent and must terminate within five (5) years from the premium receipt date. A surrender fee that is assessed as a fixed dollar amount may not exceed \$200 per year. If a surrender fee is charged, a front-end sales load may not be charged.
  - c. Custodial fees are assessed by a mutual fund for administrative costs. Asset management fees are assessed for investment assistance, advice and counseling and are paid to the vendor (this does not include investment advisory fees paid directly to a registered investment advisor as defined in Section 830.107 of the Government Code). Custodial and/or asset management fees that are assessed as a fixed dollar amount may not exceed \$100 per year. Custodial and/or asset management fees that are assessed as a percent of assets may not exceed one (1) percent. No front-end sales load or surrender fee as defined in 5.a. may be charged on a fund containing custodial and/or asset management fees that are assessed as a percent of assets.
  - d. Fund management fees (fees that are deducted from fund assets before earnings are distributed to shareholders) may not exceed two and three quarter (2.75) percent per fund. Fund management fees include fees charged by the fund's investment adviser for managing the fund and selecting its portfolio of securities, fund administrative fees, investment fees, mortality and expense fees, 12b-1 fees, operating expenses, and other miscellaneous expenses.
  - e. Annual or monthly policy fees may not exceed \$35 per year in total.

- f. Annuity products may not charge transfer fees on internal fund transfers (transfers between funds or within fund families with the same vendor). Mutual fund products may charge transfer fees on internal fund transfers and the fee must be disclosed in Exhibit E-4.
  - g. Transfer fees on funds transferred to another vendor are not limited, but must be disclosed in Exhibit E-4.
  - h. Any additional fees that are not identified above in Item 5. a - g must be disclosed in Exhibit E-4.
6. Any new investment products must comply with the fee standards stated in Item 5 and be approved in advance by Texas State Human Resources.
  7. A toll-free interactive telephone system is available that will permit participants to access TDA accumulations or speak with customer service representatives.
  8. A secure interactive Internet website is available that provides employee education and product performance information, and allows participants to request literature and prospectuses. In addition, Texas State requires that the website allow participants to access individual TDA accumulations, review monthly contribution allocations, reallocate contributions and change investment products.
  9. A representative will be available to attend benefit fairs held annually in order to acquaint participants with their investment options and services. In addition, a representative will participate in retirement and investment education seminars as scheduled by Texas State Human Resources and given by presenters selected by Texas State when requested.
  10. Texas State's remittances, submitted on the first working day of each month and on the 10<sup>th</sup> of the month or the first working day after the 10<sup>th</sup> of the month via electronic funds transfer (ACH format), will be accepted.
  11. Texas State's remittance reports, sent to the vendor on or before the first working day of the month and on or before the 10<sup>th</sup> of the month or the first working day after the 10<sup>th</sup> of the month, will be in the format and method agreed upon by Texas State and the vendor. Transmittal methods for EFT vendors include an email or an electronic faxed report option (see Exhibit E-2).
  12. Corrections based on payroll or administrative errors will be reflected in remittance reports as negative contribution amounts and will be made by the vendor upon receipt of remittance. The vendor may contact the Texas State Office of Payroll & Tax Compliance or Human Resources for additional information regarding the correction, but may not delay posting of remittances to other participants' accounts based on the negative amount. If funds cannot be posted to participants' accounts upon receipt for any reason, posting must be made retroactive to the date of receipt, once the posting problem is resolved.
  13. Remittances to the participant's account(s) will be credited by the third working day of the month, or within three (3) working days of the supplemental payroll done on the 10<sup>th</sup> of the month. Remittance acknowledgments and account statements are to be sent directly to the participant no less than quarterly.
  14. Fund transfers will only be accepted from other active TDA vendors and made to other active TDA vendors. All transfers will be direct transfers in accordance with the TSUS Supplemental Tax Sheltered Annuity Plan Document (Exhibit E-7) and the Vendor Administrative Procedures, Section V, Item H. All vendors must agree to transfer funds within seven (7) business days of receipt of necessary documentation of an employee's instructions to complete a

transfer.

15. Fund rollovers, direct and indirect, will be processed in accordance with federal law, the TSUS Supplemental Tax Sheltered Annuity Plan Document (Exhibit E-7) and the Vendor Administrative Procedures, Section V, Item I.
16. Requests for distribution, including hardship and Domestic Relations Orders (DRO), and requests for loans will be administered in compliance with provisions of the applicable sections(s) of the IRS code, the TSUS Supplemental Tax Sheltered Annuity Plan Document (Exhibit E-7) and the Vendor Administrative Procedures, Section V, Item G. Proper administration of these requests is the vendor's responsibility.
17. The TDA Maximum Contribution Limit (MCL) (Exhibit E-1) worksheet will be completed by Texas State Human Resources with each Tax-Deferred Annuity Program Salary Reduction Agreement.
18. Correction of excess contributions to TDAs will be completed in accordance with the Vendor Administrative Procedures, Section V, item F.
19. A completed Representative Acknowledgment Form will be filed with Texas State for each representative assigned to work with Texas State employees (see Exhibit E-6). The procedures outlined in the Vendor Administrative Changes Section will be followed when appointing additional representatives or amending any information requested in Section V, Item K. These representatives will represent both ORP and TDA programs. Separate vendor representatives for each program are prohibited.
20. Each officer, representative, broker, employee or any other person involved in the sale and service of contracts will be provided with a copy of the Vendor regulations, and each individual will comply with those conditions and all applicable state and federal laws. Vendor regulations will be posted on the Texas State Human Resources website at [www.hr.txstate.edu](http://www.hr.txstate.edu).
21. The TDA Participation Standards are accepted as conditions for continued authority to market TDA products as an active vendor (see Exhibit E-3).
22. The following reports must be submitted annually to Texas State on the forms provided as Exhibits E-3 and E-4. After initial certification, the reports must be submitted by November 30 of each year.
  - a. Product/Investment Fee and Performance Disclosure Exhibit E-4
  - b. Vendor Rating Information Exhibit E-5
23. Each vendor will abide by each provision of Section IV, Vendor Application, and Section V, Vendor Administrative Procedures, of these Vendor regulations. Failure to comply may result in the loss of solicitation privileges.
24. Each vendor, after initial approval to market TDA products, may be required to submit a complete recertification at any time or for any reason deemed appropriate by Texas State.
25. Each vendor may terminate participation with the Texas State TDA Program by providing written notice to each participant and Texas State Human Resources at least 60 days in advance of the termination date.

**(ADDITIONAL ITEMS FOR SPECIFIC VENDORS)**

26. In addition to items 1-25 listed above, a vendor which is an insurance/annuity company must certify that:
- a. The vendor is qualified and admitted to do business in Texas in accordance with the rules and regulations of the Texas Department of Insurance.
  - b. The contract to be offered has been approved by the Texas Department of Insurance.
  - c. The contract to be offered does not contain a life insurance or other feature that could be considered a distribution of account funds reportable to the Internal Revenue Service for income tax purposes. However, an incidental life insurance feature, which is not considered a distribution of account funds reportable to the Internal Revenue Service, is permitted.
  - d. Participants will be allowed to change their annuity commencement date at any time before the annuity begins.
  - e. Participants will retain all annuity and death benefits purchased by premiums already paid if any periodic premium is not paid prior to the end of the grace period, and they may resume payments at any time prior to retirement without penalty or repayment of any prior premiums.
27. In addition to items 1-25 listed above, a vendor which is a national bank must certify that:
- a. It is chartered by the U.S. Comptroller of the Currency.
  - b. The contract to be offered has the approval of the U.S. Comptroller of the Currency.
28. In addition to items 1-25 listed above, a vendor which is a state bank must certify that it is chartered to conduct business in Texas by the Texas Department of Banking.
29. In addition to items 1-25 listed above, a vendor which is a regulated investment company must certify that:
- a. It is registered with the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940.
  - b. The contract(s) to be offered has been approved by the Texas State Securities Board, pursuant to the Securities Act (Vernon's Texas Civil Statutes, Article 581-1 et seq.) and any other applicable law(s).
  - c. All contracts shall be offered in compliance with Securities and Exchange Commission Releases 33-6352 and IC-11960.



**TEXAS STATE UNIVERSITY  
VENDOR CERTIFICATION STATEMENT - TDA**

By signature on this certification statement, I agree on behalf of the vendor named below, to comply with the conditions set forth in the Texas State University (Texas State) Tax-Deferred Account Program (TDA) Vendor regulations. I certify compliance with items 1-25 in Section IV.A and the applicable item(s) of 26-29 in the same section.

I understand that approval by Texas State of this certification and a complete and acceptable application for active vendor status provides my organization the privilege of marketing 403(b)(1) and/or 403(b)(7) products to Texas State employees. I understand that my organization will not be considered authorized until the Primary Contact receives written notification of such approval from Texas State. I understand that this privilege may be terminated by Texas State at any time for failure to comply with the requirements stated herein.

It is also hereby certified that the exhibits, information and documentation included in the application are true, complete and correct as of the date of application.

This certification statement must be signed by a duly authorized officer of the company who has the authority to legally bind and commit the applicant organization.

Company Name \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## B. OTHER DOCUMENTS AND INFORMATION REQUIRED FOR VENDOR APPLICATION

The following information must be attached to the Certification Statement.

1. The completed Electronic Funds Transfer Remittance Data Form (see Exhibit E-2).
2. The completed Product/Investment Fee and Performance Disclosure form (see Exhibit E-4). If your company offers more than 20 mutual fund products, you may submit forms on a sample set of the 20 funds with the highest fees within all fee categories.
3. The completed Vendor Rating Information form (see Exhibit E-5). This form applies to insurance and annuity vendors only.
4. Provide the name, title, address, telephone number (include both the toll-free and direct numbers), fax number and email address of the following individuals:
  - a. **Primary Contact:** This individual must be an employee, preferably an officer, of the company identified on the Vendor Certification Statement (he/she may not be an independent representative or broker). This individual has primary responsibility for overseeing compliance with these Vendor regulations and serves as a first point of contact with Texas State Human Resources. This individual will be the recipient of regular correspondence and notices from Texas State Human Resources, and must be able to disseminate important information in a timely manner to all authorized vendor representatives as requested by Texas State.
  - b. **Representative Designator(s):** This individual must be an employee, preferably an officer, of the company identified on the Vendor Certification Statement (he/she may not be an independent representative or broker). This individual is responsible for adding or deleting representatives who are assigned to work with Texas State employees. This person must provide each newly authorized representative with a current copy of the TDA Vendor regulations prior to signing and submitting the Representative Acknowledgment Form to Texas State Human Resources. The vendor may designate up to two individuals to serve in this capacity, if necessary; however, the Primary Contact is also authorized to add or delete representatives.
  - c. **Remittance Contact:** This individual should be located at either the company headquarters or at a regional office. This individual serves as the contact for the Texas State Office of Payroll & Tax Compliance for questions concerning the monthly electronic fund remittances, posting of remittances, fund transfers and distributions.
5. Provide a customer service department toll-free number where individuals are available to provide general information to current or prospective participants concerning your company and contracts. These individuals should be located at either the company headquarters or regional office. A toll-free telephone number is required.
6. Provide an Internet website address that provides potential customers information about the vendor and available investment products. A website is required.
7. List as representatives the names of brokers and/or representatives with whom you have a third party agreement to provide investment advice for TDA participants. Furnish a Representative Acknowledgment Form for each. (Exhibit E-6) These representatives will represent both ORP and TDA programs. Separate vendor representatives for each program are prohibited.

## V. VENDOR ADMINISTRATIVE PROCEDURES

All TDA vendors must adhere to the following procedures. Failure to follow these procedures may result in the loss of the privilege to market TDA contracts to Texas State employees.

A. ELIGIBILITY FOR TDA PARTICIPATION

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

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

B. ENROLLMENT PROCEDURES

The employee must complete a Texas State Tax-Deferred Account Program Salary Reduction Agreement and submit it to Human Resources. In addition, the employee must submit the vendor enrollment/application directly to the vendor. All Texas State forms are provided on the Texas State University Human Resources website at <http://www.hr.txstate.edu/Forms/retirementforms.html>.

C. EFFECTIVE DATE OF PARTICIPATION (PAYROLL DEADLINES)

1. Texas State will determine the employee's effective date of participation. The effective date will be the first day of the month, provided all necessary and properly executed forms are signed, received by Human Resources, and processed before payroll has run for that month. Forms received after the monthly payroll calculation will be effective on the first of the following month.
2. Any salary reduction authorization that is submitted incorrectly or incompletely will be returned to the submitting party immediately. The employee is responsible for resubmitting the corrected form. The final complete and correct form will determine the employee's effective date of participation.

D. PROCEDURE FOR MCL CALCULATION WORKSHEET

The purpose of this worksheet is to assist the participant in determining their annual contribution limit. Texas State Human Resources may complete the calculation in order to determine the maximum contribution limit allowed by a participant.

It remains the responsibility of the TDA participant to submit a new Texas State TDA Program Salary Reduction Agreement if necessary. Participants may contact their vendor representatives for assistance. Texas State reserves the right to change or terminate participant's contribution amounts to ensure compliance with IRS contribution limits.

E. PROCEDURE FOR CHANGING THE TDA VENDOR OR REDUCTION AMOUNT

1. A request to change the dollar amount of reduction requires a new Texas State TDA Program Salary Reduction Agreement. Participants may submit a new form as frequently as once per month.
2. Participants can change vendors by submitting an ORP/TDA Authorization to Change Carriers form to Human Resources. The change will be effective on the first day of the month, provided all necessary and properly executed forms are signed, received by Human Resources, and processed before payroll has run for that month. Forms received after the monthly payroll calculation will be effective on the first of the following month.

3. Participants may cancel their Texas State TDA Program Salary Reduction Agreement at the end of any month for amounts not yet received. They must provide the form to Human Resources in advance of the requested stop date. The stop date will be determined by the date the notice is actually received by Human Resources in conjunction with payroll processing deadlines.

#### F. PROCEDURES FOR HANDLING EXCESS CONTRIBUTIONS TO A TDA

1. For purposes of this section, excess contributions to a TDA are defined as any contributions in a calendar year that exceed the calculated Internal Revenue Code 415(c) or Section 402(g) limits (taking into account any available catch-ups under the Internal Revenue Code Sections 402(g)(7) and/or 414(v)) for the TDA participant. Participants' limits are determined using the calculations defined on the MCL worksheet.
2. If excess contributions are identified earlier than November during the calendar year, Human Resources will work with the Texas State Office of Payroll and Tax Compliance to refund the excess contributions through payroll as taxable income. With this process, funds will be returned to the participant through the payroll rather than directly from the vendor to the participant. Such returns will be made in accordance with IRS guidelines.
3. In the event excess contributions are identified after payroll processing for the calendar year has ended, Human Resources will notify the vendor as soon as administratively feasible. Excess deferrals and Roth 403(b) Contributions, if applicable, will be distributed to the employee, with allocable net income, no later than April 15 of the following taxable year or otherwise in accordance with Section 402(g) of the Code.

#### G. TDA DISTRIBUTION RULES

1. Distribution may only be made by the vendor upon receipt of verification by an authorized representative of Texas State Human Resources. The vendor may not delay distribution by requiring additional paperwork or signatures or through some other means.

Distribution of funds will only be made in accordance with IRS 403(b) guidelines.

2. Eligibility for loans and financial hardship distributions is determined by the vendor, in accordance with applicable IRS guidelines. The vendor is responsible for processing financial hardship requests and loan requests with final approval by Texas State Human Resources. The vendor is responsible for maintaining supporting qualification documentation for hardship distributions and loans for a principal residence.
3. Distributions to an alternate payee pursuant to a Domestic Relations Order (DRO) are the responsibility of the participant and the vendor. A DRO is a notice of entitlement that awards an interest in the TDA account value to an alternate payee. The vendor should determine if the DRO is "qualified" and, if so, execute the provisions of the order and provide notification of such to Human Resources. Human Resources should place a copy of the notice in the employee's personnel file.
4. Roth TDA distributions will include disclosure of whether the distribution is qualified or not, the first year of the 5-taxable-year-period, and the portion of the distribution that is attributable to the designated Roth contributions. For distributions directly to the employee, a statement with this information must be supplied to the employee.
5. Distributions related to excess contributions are described in Section F.

#### H. TRANSFER OF EXISTING TDA FUNDS

Total transfer of TDA funds, partial transfer, and transfers between a 403(b)(7) account (mutual fund) and a 403(b)(1) account are permitted. Transfers are only permitted to active TDA vendors. No employer authorization or ORP/TDA Capital Transfer Verification form will be required for a trustee to trustee transfer from a TDA Vendor to TRS or ERS to be used for service credit purchase. The following procedure applies to partial as well as total TDA transfers:

1. Receiving vendor's/employee's responsibilities:
  - a. The receiving vendor completes its rollover/transfer form, including the account number, address where the funds should be sent, and other information appropriate for each vendor. Employees may only do transfers to an active vendor.
  - b. An ORP/TDA Capital Transfer Verification form must be completed. The ORP/TDA Capital Transfer Verification form must include the receiving vendor information, including the name of the vendor representative who is authorized by Texas State. The vendor representative name is not required if the employee is doing a transfer to a vendor that does not require individual vendor representatives. (ORP refers to the Optional Retirement Program.)
  - c. Both the receiving vendor's rollover/transfer form and the ORP/TDA Capital Transfer Verification form should be forwarded to Human Resources.
2. Texas State Human Resources responsibilities:
  - a. Upon receipt of the ORP/TDA Capital Transfer Verification form and the receiving vendor's rollover/transfer form, Human Resources will verify that the receiving vendor is an authorized vendor.
  - b. The completed ORP/TDA Capital Transfer Verification form, with the attached receiving vendor's rollover/transfer form, is forwarded by Human Resources to the surrendering vendor. The forms will be returned to the employee if the receiving vendor is not an authorized TDA vendor or if the representative is not registered with Texas State.
3. Surrendering vendor's responsibilities:
  - a. The surrendering vendor must receive a completed ORP/TDA Capital Transfer Verification form certified by Texas State Human Resources, and the receiving vendor's rollover/transfer form, prior to making any transfers. If unauthorized transfers are made, Texas State has the right to require the surrendering vendor to recover the funds or make the account whole.
  - b. Upon receipt of the completed ORP/TDA Capital Transfer Verification form and the receiving vendor's rollover/transfer form, the funds must be transferred directly to the receiving vendor within seven (7) business days. The surrendering vendor may not delay transfers by requiring additional paperwork or signatures or through some other means. However, the surrendering vendor may require a signature guarantee or medallion guarantee. In the case of a Roth TDA transfer, the surrendering vendor must provide the first year of the 5-taxable-year-period and portion of the transfer attributable to designated Roth contributions.
  - c. If a total transfer is completed by the surrendering vendor (i.e., the total account value is transferred to the receiving vendor) and additional funds are subsequently received by the surrendering vendor, the surrendering vendor is responsible for automatically transferring those funds directly to the receiving vendor.

## I. ROLLOVERS

Rollovers into a TDA account from another retirement plan do not require Texas State review or approval. In addition, Texas State review or approval is not required when participants roll over funds from their TDA accounts to other retirement plans (the participants must be eligible to elect a distribution – see TDA Distribution Rules, Section V.G)

It is the responsibility of the receiving vendor to process the rollover in accordance with federal law. TDA funds may be invested in plans structured under different sections of the Internal Revenue Code, i.e. 403(b), 401(k), governmental 457(b), or to a traditional or Roth IRA (a Roth 403(b) may only be rolled over to another Roth 403(b), Roth 401(k), Roth IRA, or Roth 457(b) under a 457(b) plan sponsored by a governmental employer) and there is no involvement in the rollover of funds by the employer. The employer will work directly with the surrendering vendor and receiving vendor.

1. Direct – A direct rollover occurs when funds move from one vendor to another without a taxable distribution or Roth 403(b) distribution being made to the employee. The check is made payable to the new vendor. A rollover of a taxable distribution from a TDA account to a Roth IRA may only be made via a direct rollover.
2. Indirect – An indirect rollover occurs when an employee requests a taxable distribution of funds or a distribution of Roth 403(b) amounts from one investment vendor, and within 60 days, reinvests the funds with another investment vendor and subsequently claims a refund on the taxes previously paid. The check is made payable to the employee less applicable mandatory federal tax withholding.

## J. SOLICITATION PROCEDURES

1. Texas State reserves the right to limit or revoke the solicitation privileges of any representative or vendor at its discretion if it determines that any representative or vendor is not properly serving the best interest of Texas State employees or is disruptive to employees or Texas State business.
2. Properly appointed representatives of authorized active TDA vendors are permitted to solicit eligible employees at Texas State facilities only as invited guests of the administration or the employee. They must abide by the rules established by Texas State Human Resources.
3. Representatives are allowed to make presentations on Texas State premises only at the request of the administration or the employee with the approval of the employee's supervisor.
4. No unsolicited visits, mailings (including bulk mailings), telephone, or e-mail solicitations are permitted to campus offices.
5. The providing of gifts or monetary rewards in exchange for information on newly hired employees is prohibited.
6. All representatives are expected to abide by Texas State parking regulations. Excessive parking violations may result in the loss of solicitation privileges.
7. Texas State employees are not allowed to provide copying or typing assistance, notary or other clerical service to representatives conducting business in Texas State buildings.
8. A list of Texas State employees may be purchased by contacting:

Associate Director of Human Resources  
Texas State University

601 University Drive  
360 J.C. Kellam Administration Bldg.  
San Marcos, TX 78666  
Phone: (512) 245-2557  
Fax: (512) 245-1942

Note: The Texas Public Information Act restricts public access to the home addresses and home telephone numbers of employees who designate this information as private. Therefore, address lists described above will only include employees who permit public access to their information.

K. VENDOR ADMINISTRATIVE CHANGES

1. Changes to existing information:

Texas State Human Resources must be notified in writing of any changes to the information provided in response to Part IV, B. The notification should be provided by the individual with primary responsibility for overseeing compliance with these Vendor regulations (the Primary Contact). If the notification involves a change in Primary Contact, it must be signed by the previous Primary Contact's immediate supervisor.

2. Adding representatives:

Texas State Human Resources must receive a completed Representative Acknowledgment Form (Exhibit E-6) that has been signed by the prospective representative and one of the individuals assigned as a Representative Designator or Primary Contact by the vendor. Texas State Human Resources will notify the vendor if acceptable. New representatives may not contact Texas State employees until after the vendor has been notified that the addition is accepted.

3. Send a notice of change and/or requests to add or drop representatives to:

Associate Director of Human Resources  
Texas State University  
601 University Drive  
360 J.C. Kellam Administration Bldg.  
San Marcos, Texas 78666  
Fax: (512) 245-1942

L. RECERTIFICATION PROCEDURE

In order to maintain solicitation privileges, the vendor will periodically be required to certify agreement with changes to the vendor requirements or to resubmit the information contained in the application.

1. Texas State is responsible for initiating the request for recertification. A written notice, including instructions and a response deadline, will be sent to the Primary Contact for the vendor.
2. Failure to respond in a timely fashion may result in loss of privileges.

M. PROCEDURE FOR TERMINATING VENDOR PARTICIPATION IN THE TDA PROGRAM

1. Texas State may terminate a vendor's participation in the TDA Program by sending a written notice to the Primary Contact for the vendor at least 30 days in advance of the termination date.
2. A vendor may terminate participation in the TDA Program by sending a written notice to each participant in the program and Texas State Human Resources at least 60 days in advance of the termination date.

## VI. EXHIBITS TO VENDOR REGULATIONS

- |             |   |
|-------------|---|
| Exhibit E-1 | Texas State Maximum Contribution Limit Worksheet  |
|             | <i>This form can be completed by Texas State when an employee initially signs up for the TDA Program, to insure contributions do not exceed allowable limits.</i>   |
| Exhibit E-2 | Electronic Funds Transfer (EFT) Remittance Data Form and Sample Report Format   |
|             | <i>This form should be completed and submitted with an initial application for active vendor status.</i>  |
| Exhibit E-3 | TDA Participation Standards   |
|             | <i>This exhibit describes the minimum participation standards required for a vendor to remain active.</i>   |
| Exhibit E-4 | Product/Investment Fee and Performance Disclosure   |
|             | <i>This form should be completed and submitted with an initial application for active vendor status. Active vendors are also required to complete and submit this form by November 30 of each year.</i>   |
| Exhibit E-5 | Vendor Rating Information   |
|             | <i>This form should be completed and submitted with an initial application for active vendor status. Active vendors are also required to complete and submit this form by November 30 of each year. Vendors for whom this information is not applicable, such as mutual fund vendors, are not required to complete this form with an initial application or annually.</i> |
| Exhibit E-6 | Texas State ORP/TDA Representative Acknowledgement Form   |
|             | <i>This form must be completed by a prospective representative, vendor and approved by Texas State Human Resources. Representative cannot contact Texas State employees until notification of approval is complete.</i>   |
| Exhibit E-7 | Authorized Active Vendors   |
| Exhibit E-8 | Authorized Inactive Vendors (limited to contributions only)   |



EXHIBIT E-1

**TDA MAXIMUM CONTRIBUTION LIMIT WORKSHEET**

**Note:** This form only should be completed if employee is participating in the 15 year lifetime catch up provision for 403(b) plans. The plan allows employees with 15 years of service and a history of low contributions to make additional contributions of up to \$3,000 per year subject to a \$15,000 maximum on aggregate catch up contributions.

In addition, participants who are age 50 or older by the end of the calendar year are allowed to make additional Age 50 Catch-up contributions. The 15-year lifetime catch up amounts will be applied first.

Higher limitation under 402(g):

1. General limit on salary reduction contribution \$ \_\_\_\_\_
  
2. If total years of service is 15 or larger, enter total years of service here. \_\_\_\_\_
  
3. #2 x \$5,000 = \$ \_\_\_\_\_
  
4. Elective 403(b) deferrals prior to current calendar year. \$ \_\_\_\_\_
  
5. #3 less #4 but not less than zero \$ \_\_\_\_\_
  
6. Least of #5 or \$3,000.  
\* subject to a lifetime limit of \$15,000 \$ \_\_\_\_\_
  
7. \$15,000 minus amount of higher cap used in lifetime \$ \_\_\_\_\_
  
8. Least of #6 or #7 \$ \_\_\_\_\_
  
9. Section 402(g) limit (#1 plus #8) \$ \_\_\_\_\_

**EXHIBIT E-2**

**ELECTRONIC FUNDS TRANSFER (EFT)  
Remittance Data Form**

Vendor Name: \_\_\_\_\_

Texas Identification Number – TIN (14 digits): \_\_\_\_\_

In addition to providing the Texas Identification Number, complete and submit the Form W-9 Request for Taxpayer Identification Number and Certification which can be accessed at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. If your company does not have a Texas Identification Number, submission of the Employer Identification Number, as required on the Form W-9, will suffice.

**Transmittal of Funds**

ORP and TDA funds will be transmitted in separate files on the first business day of each month and on the 10<sup>th</sup> of the month or the first business day after the 10<sup>th</sup> of the month via ACH transfer (*not Federal wire*). Please complete the “Vendor Direct Deposit Authorization” form on the following page to include remittance information.

**Transmittal of Data**

ORP and TDA remittance detail data (an example is provided below) will be transmitted two (2) business days prior to the first business day of each month and on the first business day following the 10<sup>th</sup> of the month reflecting supplemental payroll. Remittance detail is sent to the vendor via fax or e-mail using the attached file format.

Please select the method preferred for receiving remittance detail:

**Remittance Detail sent via e-mail \_\_\_\_\_ or via fax \_\_\_\_\_**

Remittance Report Recipient Name\* (The person to which the remittance detail summary report will be sent):

\_\_\_\_\_

Recipient’s e-mail address\*: \_\_\_\_\_

Recipient’s fax number\*: \_\_\_\_\_

\*Vendors are responsible for contacting Texas State with a change to the remittance report recipient, recipient’s e-mail address, and/or recipient’s fax number at least one week prior to the last working day of the month.

*Texas State University-San Marcos, founded 1899, is a member of The Texas State University System*

<b>PRPPROCR</b>	<b>Texas State University</b>			
<b>Date</b>	<b>Report of Retirement and Annuities</b>			
<b>Budge xx - xxx</b>	<b>EFT – TDA</b>			
<b>Vendor Name</b>			<b>Pay Date: Month xx,xxxx</b>	
		<b>Employee</b>	<b>Employer</b>	<b>Total</b>
	<b>SSN</b>	<b>Contribution</b>	<b>Matching</b>	<b>Contribution</b>
<b>Last Name First Name, I</b>	<b>xxx-xx-xxxx</b>	<b>xxx.xx</b>	<b>xxx.xx</b>	<b>xxx.xx</b>
<b>Vendor Total</b>		<b>xxx.xx</b>	<b>xxx.xx</b>	<b>xxx.xx</b>

EXHIBIT E-2 (Cont.)



A member of the Texas State University System

Submit to: FI Master Data Center  
JCK 560

Email: [gao@txstate.edu](mailto:gao@txstate.edu)  
Fax: (512) 245-8990

VENDOR DIRECT DEPOSIT AUTHORIZATION

Contact Information

Company Name  
DBA  
SAP Vendor Number (located in the address label)  
Tax ID / Federal ID (must include this number to process the form)  
Contact Name  
Phone Number  
Fax Number  
Email to receive payment notifications from TXSTATE  
Remit to Order From (if different)  
Address Address  
City City  
State State  
Zip Code Zip Code

Exemption: I claim exemption and request payment by state warrant (check) because:

Authorized Signature Printed name Date

Payment Account Information

Bank Name  
Account Type Checking Savings  
Bank Routing Number  
Bank Account Number



I hereby authorize Texas State University to deposit by electronic transfer payments owed to me, if necessary, debit entries and adjustments for any amounts deposited electronically in error. Texas State University shall deposit the payments in the financial institution and account designated above. I recognize that if I fail to provide complete and accurate information on this authorization form, the processing of the form may be delayed or that my payments may be erroneously transferred electronically.

I consent to and agree to comply with the National Automated Clearing House Association Rules and Regulations and the Texas State University rules about electronic transfers as they exist on the date of my signature on this form or as subsequently adopted, amended or repealed.

Authorized Signature Printed name Date

## EXHIBIT E-3

### ORP/TDA PARTICIPATION STANDARDS

Texas State maintains active and inactive lists of vendors for the ORP/TDA. The *active list* contains those vendors who are currently permitted by Texas State to enroll new participants in their plans. The *inactive list* is composed of vendors who are not permitted to enroll new participants in their plan but continue to receive monthly contributions from existing participants. In this exhibit, *new accounts* refers to existing ORP/TDA participants who initiate a new account with your company or new ORP/TDA participants, and *active contributions* refers to those employees for whom you receive monthly remittances. Vendors will be reviewed annually to determine if they may remain on the active and inactive lists according to the following criteria:

#### ACTIVE VENDORS:

New active vendors must enroll a minimum of two (2) new participants in ORP and/or TDA during the first year of active status. Thereafter, all vendors must enroll a minimum of three (3) new participants in ORP and/or TDA **AND** maintain a minimum of five (5) actively contributing participants each calendar year in ORP and/or TDA.

Texas State Human Resources may require a vendor to provide a report of employees with new and active ORP or TDA accounts. If this report is required, the vendor will be contacted and asked to provide each employee's name, social security number, and the date the employee opened an ORP or TDA account. The information will be checked against our records to determine if the vendor meets the participation standards for the calendar year.

If a vendor fails to meet these standards, that vendor will be removed from the active list and placed on the inactive list effective January 1. A vendor that is moved to the inactive list may not reapply for certification as an active vendor for a period of one (1) year from the date of the status change. After the one-year waiting period, the vendor may reapply during the next application period.

#### INACTIVE VENDORS:

All inactive vendors will continue to receive monthly remittances from existing participants, but are restricted from soliciting new business. Once an inactive vendor no longer has a contributing participant, the vendor will be removed from the inactive list. Inactive vendors are required to continue to abide by these vendor regulations.

**EXHIBIT E-4**

**TEXAS STATE UNIVERSITY  
PRODUCT/INVESTMENT FEE AND PERFORMANCE DISCLOSURE**

Vendors are required to provide the following information for each separate product/investment offered to Texas State employees. This information must be included with all applications for active vendor status. In addition, active vendors must submit this information to Texas State Human Resources by November 30 of each subsequent year. Information for each product/investment must be provided using this form. Failure to supply this information or the submission of incomplete or inaccurate information may result in removal from the active vendor list.

Indicate the retirement program(s) under which this product or investment is/will be offered.

**ORP Only**       **TDA Only**       **ORP and TDA**      Date of report: \_\_\_\_\_

**A. GENERAL INFORMATION**

1. Vendor name: \_\_\_\_\_

2. Name of product/investment: \_\_\_\_\_

Existing Product - no change       Existing Product - modified       New Product

3. Inception date: \_\_\_\_\_

4. Product type:  Fixed Annuity       Variable Annuity       Mutual Fund/Custodial Account\*

If the product offered is a Mutual Fund/Custodial Account, identify the share class.

Class A  Class B       Class C       Other \_\_\_\_\_

\*Vendors that offer more than 20 mutual fund products may submit a sample set of the 20 mutual funds with the highest fees in lieu of submitting this form for each mutual fund offered (this form must be completed for each mutual fund in the sample set).

Is this product one of the 20 submitted as part of the mutual fund sample set?     Yes       No

**B. SUMMARY OF CHARGES INFORMATION**

For the product identified in item A.2, the following fees and/or charges apply (identify annual maximums and provide specific percentage or dollar amounts). If providing attachments, **the maximum fee in each fee category must be identified on this form** in addition to stating "see attachment."

1. Front-end sales load: \_\_\_\_\_

2. Surrender charge, back-end sales load, redemption charge, contingent deferred sales charge or any other fee that is assessed when a participant accesses their funds. State the type of fee and the percentage:

Fee Type: \_\_\_\_\_ Rolling or Non-rolling: \_\_\_\_\_

Fees: Yr 1 \_\_\_\_\_%    Yr 2 \_\_\_\_\_%    Yr 3 \_\_\_\_\_%    Yr 4 \_\_\_\_\_%    Yr 5 \_\_\_\_\_%    Yr 6 \_\_\_\_\_%    Yr 7 \_\_\_\_\_%

Identify any surrender restrictions that limit a participant's ability to access all funds upon request:

\_\_\_\_\_  
\_\_\_\_\_

Identify any surrender restrictions on fixed accounts that restrict distribution to a percentage per year (i.e., 10% of contract value per contract or calendar year):

\_\_\_\_\_  
\_\_\_\_\_

3. Custodial fees that are assessed by a mutual fund or custodial account for administrative costs:

\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT E-4 (cont.)**

4. Asset management fee that are assessed for investment assistance, advice and counseling (this does not include investment advisory fees paid directly to a registered investment advisor as defined in Section 830.107 of the Texas Government Code):

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5. Fund management fees that are deducted from fund assets before earnings are distributed to shareholders. These may include fees charged by the fund's investment adviser for managing the fund and selecting its portfolio of securities, fund administrative fees, investment fees, mortality and expense fees, 12b-1 fees, operating expenses, and other miscellaneous expenses. Identify each fee or charge individually and list the total.

Example: Advisory Fees: 1.00%, Other Expense: .59%, Mortality & Expense: 1.10%, Total: 2.69%

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6. Policy fee: Monthly: \_\_\_\_\_ Annual: \_\_\_\_\_

7. Transfer fees:

Internal (transfers between funds or within fund families with the same vendor): \_\_\_\_\_

External (transfers to another vendor): \_\_\_\_\_

Transfer restrictions: Identify any limitation regarding the amount that may be transferred or the frequency of transfers:

---

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Identify any transfer restrictions on fixed accounts that restrict distribution to a percentage per year (i.e., 10% of contract value per contract or calendar year):

---

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8. Additional fees that are not identified in items B.1-7 must be disclosed:

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**C. PERFORMANCE INFORMATION**

Provide percentage returns on this product/investment for the previous one, five and ten years, ending the most recent quarter. If available, provide information both with and without sales charges considered. You may attach a preprinted table, investment report, or reference your website page if it contains the required information.

**E. REMITTANCE POSTING**

Remittances are required to be credited to participant's accounts upon receipt of the electronic funds transfer (crediting to the account means processing the trade within one business day or depositing the contribution into an interest bearing account for the benefit of the participant if the trade can not be processed within one business day).

Are the ORP and TDA contributions credited to each participant's account within one business day of receipt of the ACH transaction?

Yes  No

If no, provide explanation. \_\_\_\_\_

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**EXHIBIT E-5**

**VENDOR RATING INFORMATION**

Each insurance and annuity vendor is required to submit the following information to Texas State Human Resources with all applications for active vendor status. Also, current active insurance and annuity vendors must submit this information by November 30 each year. Each section that is not applicable or information that is not available should be indicated as appropriate. Failure to supply this information may result in removal from the active vendor list.

Vendor: \_\_\_\_\_

Date of Report: \_\_\_\_\_

---

**RATING INFORMATION REQUIRED FOR INSURANCE/ANNUITY VENDORS**

The most recent rating from the following rating services are:

	<u>Most Recent</u>	<u>Date of Rating</u>	<u>Previous</u>	<u>Change (+/-)</u>
1. A.M. Best	_____	_____	_____	_____
2. Fitch	_____	_____	_____	_____
3. Moody's	_____	_____	_____	_____
4. Standard & Poor's	_____	_____	_____	_____
5. Any other (list name)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**EXHIBIT E-6**

**TEXAS STATE UNIVERSITY  
ORP/TDA REPRESENTATIVE ACKNOWLEDGEMENT FORM**

**INSTRUCTIONS:**

1. Prospective representative should complete Section I and forward to vendor.
2. Vendor should complete Section II and mail to Texas State Human Resources.
3. Human Resources will review and complete Section III. Representative may not contact Texas State employees until after the vendor has been notified of approval.
4. This representative will represent both ORP and TDA programs. Separate vendor representatives for each program are prohibited.

**SECTION I**

\_\_\_\_\_ **Add**      \_\_\_\_\_ **Remove**

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Broker/Dealer/Company Name

\_\_\_\_\_  
Representative Title

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone Number(s)

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
E-mail Address

<b>Check All Applicable Responses</b>			
<b>Designations:</b>	<b>Licenses &amp; Registrations:</b>	<b>NASD Examinations:</b>	<b>Memberships:</b>
CPA <input type="checkbox"/>	Attorney <input type="checkbox"/>	_____ Series <input type="checkbox"/>	American Society CLU ChFC <input type="checkbox"/>
ChFC <input type="checkbox"/>	Health Insurance <input type="checkbox"/>	_____ Series <input type="checkbox"/>	CFPI <input type="checkbox"/>
CLU <input type="checkbox"/>	Life Insurance <input type="checkbox"/>	_____ Series <input type="checkbox"/>	MDRT <input type="checkbox"/>
CAP <input type="checkbox"/>	PC Insurance <input type="checkbox"/>	_____ Series <input type="checkbox"/>	NALU <input type="checkbox"/>
CFA <input type="checkbox"/>	Variable Insurance <input type="checkbox"/>	_____ Series <input type="checkbox"/>	NAPFA <input type="checkbox"/>
	Registered Investment Advisor <input type="checkbox"/>	_____ Series <input type="checkbox"/>	

I certify that as a prospective authorized representative, I have received a copy of the Texas State Vendor regulations for the ORP and/or TDA program and will abide by all Texas State solicitation restrictions and procedures set forth in them. I will not intentionally present any false or misleading information regarding any product(s) offered by my company or any other vendor. I certify that I am currently licensed by the State of Texas and by the NASD to sell 403(b)(1) and/or 403(b)(7) products. Failure to follow the Vendor regulations may result in the loss of privilege to market ORP and/or TDA contracts to Texas State employees.

\_\_\_\_\_  
Signature of New Vendor Representative

\_\_\_\_\_  
Date

**SECTION II**

I hereby request approval for the appointment of the above-named individual to represent my company to eligible Texas State employees in connection with the Optional Retirement Program and Tax Deferred Account Program. I understand that my company is responsible for ensuring this individual complies with all Texas State requirements stated in the Vendor regulations.

\_\_\_\_\_  
Signature of Representative Designator/Primary Contact

\_\_\_\_\_  
Print name of Representative Designator/Primary Contact

**SECTION III**

Approved       Denied

\_\_\_\_\_  
Signature of Texas State Human Resources Representative

\_\_\_\_\_  
Date

**Exhibit E-7**



**Texas State University System  
Supplemental Tax Sheltered Annuity Plan**

**Table of Contents**

Section 1	Controlling Statutes
Section 2	Definitions
Section 3	Administration
Section 4	Participation and Vesting
Section 5	Contributions
Section 6	Loans
Section 7	Benefit Distributions
Section 8	Transfers, Rollovers and Exchanges
Section 9	Investment of Contributions
Section 10	Amendment and Plan Termination
Section 11	Roth 403(b) Contributions
Section 12	Miscellaneous

# Texas State University System Supplemental Tax Sheltered Annuity Plan

## Preamble

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

## Section 1 Controlling Statutes

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

## Section 2 Definitions

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

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

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

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

2.3 **"Account Balance"**: The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant's Account under all Accounts, including the Participant's Elective Deferrals and Roth 403(b) Contributions, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a

Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).

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

2.5 **"Annuity Contract"**: A nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in Texas and that includes payment in the form of an annuity.

2.6 **"Beneficiary"**: The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.

2.7 **"Custodial Account"**: The group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

2.8 **"Code"**: The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

2.9 **"Compensation"**: All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code.

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

2.11 **"Elective Deferral"**: The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.

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

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

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

2.15 **"Includible Compensation"**: An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code. The amount of Includible Compensation is determined without regard to any community property laws.

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

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

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

2.19 **"Plan year"**: The year coincident with the Fiscal Year of the State of Texas, ending August 31 of each year.

Vendors may, in their discretion and as necessary to enable the vendor and/or the participants to comply with the Code, supply participants with reports and other documents based on the calendar year.

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

2.21 "**Related Employer**": The Employer and any other entity which is under common control with the Employer under section 414(b) or (c) of the Code. For this purpose, the Plan Administrator shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

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

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

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

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

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

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

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

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

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

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

## **Section 3 Administration**

### **3.1 Plan Administrator**

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

### **3.2 Deputy Plan Administrators**

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

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

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

### **3.4 Administration and Compliance**

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

### **3.5 Administrative Procedure Documents**

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

### **3.6 Vendor Lists.**

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

### **3.7 Information Sharing**

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

## **Section 4 Participation and Vesting**

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

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

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

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

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

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

An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral and/or Roth 403(b) Contributions in accordance with Section 11 on his or her behalf) and filing it with the Administrator. This Compensation reduction election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals and/or Roth 403(b) Contributions are to be made and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. All Elective Deferrals shall be made on a pre-tax basis. All Roth 403(b) Contributions shall be made in accordance with the terms of Section 11. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the employee's election.

### **4.4 Vesting**

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

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

Each Employee enrolling in the Plan shall provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

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

Subject to the provisions of the applicable Individual Agreements, and subject to payroll processing deadlines, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals and/or Roth 403(b) Contributions, his or her investment direction, and his or her designated Beneficiary. A change in the investment direction filed in good order prior to the payroll processing deadline for the campus at which

the Participant is employed shall take effect as of the next payroll. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

#### **4.7 Contributions Made Promptly**

All contributions under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

#### **4.8 Leave of Absence**

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

### **Section 5 Contributions**

#### **5.1 Contributions**

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

#### **5.2 Limitation on Contributions**

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

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

**(c) *Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service .*** Because the Employer is a qualified organization (within the meaning of §1.403(b)-4(c)(3)(ii) of the Income Tax Regulations), the applicable dollar amount under Section 5.2(b) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:

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

the qualified organization for prior years.

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

**(d) Age 50 Catch-up Contributions.** An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals and/or Roth 403(b) Contributions, up to the maximum age 50 catch-up Elective Deferrals and/or Roth 403(b) Contributions for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals and/or Roth 403(b) Contributions for a year is \$5,000 for 2007, and is adjusted for cost-of-living after 2007 to the extent provided under the Code.

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

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

**(g) Correction of Excess Elective Deferrals and/or Roth 403(b) Contributions.** If the Elective Deferral and/or Roth 403(b) Contributions on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral and/or Roth 403(b) Contributions on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the employer under section 403(b) of the Code (and any other plan that permits Elective Deferrals and/or Roth 403(b) Contributions under section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral and/or Roth 403(b) Contributions, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant. Excess Deferrals (and, if applicable, Roth 403(b) Contributions) will be distributed to the Participant, with allocable net income, no later than April 15 of the following taxable year or otherwise in accordance with Section 402(g) of the Code.

## **Section 6 Loans**

### **6.1 Availability of Loans**

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

### **6.2 Information Coordination Concerning Loans**

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



information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator may decline to permit a loan if the Administrator is unable to obtain necessary information concerning a Participant's Account Balance or outstanding loans with any current or prior Vendor, or if the Administrator believes that a loan would be a violation of any provision of Section 403(b) of the Code or the Regulations §1.403(b)-1 through §1.403(b)-11.

### **6.3 Maximum Loan Amount**

No loan to a Participant under the Plan may exceed the lesser of:

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

For purposes of Section 6.3, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

### **6.4 Recordkeeping**

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

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

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

## **Section 7 Benefit Distributions**

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

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

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

Except as permitted under Section 5.2(g) (relating to excess Elective Deferrals and/or Roth 403(b) Contributions), Section 7.4 (relating to hardship), or Section 10.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment as defined in this Plan, dies, becomes Disabled, or attains age 59 1/2. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements. Notwithstanding the foregoing, Elective Deferrals made to

an Annuity Contract and corresponding earnings as of December 31, 1988 are "grandfathered" and withdrawal restrictions do not apply to the extent that such amounts can be appropriately identified by the Vendor. Distributions to participants under age 59 1/2 may be subject to additional tax as provided in the Code, Section 72(t)

## **7.2 Small Account Balances**

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

## **7.3 Minimum Distributions**

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

## **7.4 Hardship Withdrawals**

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

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

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

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

## **Section 8 Transfers, Rollovers and Exchanges**

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

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

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

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

(b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.

(c) The Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan.

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

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

(b) The other plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the other plan shall impose restrictions on distributions to the Participant whose assets are transferred that are not less stringent than those imposed under the Plan.

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

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

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

## **8.5 Permissive Service Credit Transfers.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan.

A transfer under this Section 8.5(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under Section 8.5(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

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

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

## **Section 9 Investment of Contributions**

### **9.1 Manner of Investment**

All amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants, their Beneficiaries and unvested Employer contributions for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

### **9.2 Investment of Contributions**

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

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

The Administrator shall maintain a list of all Vendors approved for each Employer under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive contributions under the Plan, the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

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

### **10.1 Termination of Contributions**

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

### **10.2 Amendment and Termination**

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

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

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

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

### **11.1 Definitions**

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

- (i) made by the Employer to the Plan pursuant to a Compensation reduction agreement entered into by a Participant, which qualifies as a “designated Roth contribution” within the meaning of Code Section 402A;
- (ii) irrevocably designated by the Participant at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of all or a portion of the Elective Deferrals the Participant is otherwise eligible to make under the Plan; and
- (iii) treated by the Employer as includible in the Participant’s income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

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

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

For each Plan Year, each Participant who is in a Class of Participant that the Plan administrator has authorized to make Roth 403(b) contributions may elect to make Roth 403(b) Contributions to the Plan up to the applicable limit under Code Section 402(g) and as aggregated with Elective Deferrals as described in Section 3.1, 3.2, and 3.3, and subject to any limitations imposed under applicable law or under any applicable collective bargaining agreement. Such contributions will be allocated to the Participant’s Roth 403(b) Contributions Account.

### **11.3 Distribution of Roth 403(b) Contributions**

(a) **Qualified Distributions:** Distributions from a Roth 403(b) Contributions Account will be tax-free for federal income tax purposes if:

- (i) The amounts are held for a 5-year holding period, measured from the first year that the initial Roth 403(b) Contribution was made on behalf of the Participant to a Roth 403(b) Contributions Account, and

(ii) The distribution is due to a Participant's attainment of age 59 1/2, death, or in the event of the Participant's becoming Disabled.

(b) Non-qualified Distributions: Amounts distributed from a Roth 403(b) Contributions Account that are not considered "Qualified Distributions" as defined in Section 11.3(a), may be distributed from a Roth 403(b) Contributions Account subject to the distribution rules applicable to Elective Deferrals as described in Section 5.1. Such nonqualified distributions shall be subject to federal income tax to the extent that the amount distributed exceeds the value of the Roth 403(b) Contributions.

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

## **Section 12 Miscellaneous**

### **12.1 Non-Assignability**

Except as provided in Section 12.2, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

### **12.2 Domestic Relations Orders**

Notwithstanding Section 12.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order") that is determined to be a Qualified Domestic Relations Order under applicable law. Each Vendor is solely responsible for determining whether a domestic relations order is qualified and payable.

### **12.3 Qualified Military Service**

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

### **12.4 Tax Withholding**

Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals and Roth 403(b) Contributions, which constitute wages under section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Treasury Regulations thereunder). A payee shall provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

### **12.5 Payments to Minors and Incompetents**

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

### **12.6 Mistaken Contributions**

If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the

Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer. The Employer, as an agency of the State of Texas, is constitutionally unable to indemnify any party or hold them harmless, and Vendors shall not require an indemnification or hold harmless agreement as a condition for the return of mistaken contributions.

#### **12.7 Procedure When Distributee Cannot Be Located**

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

#### **12.8 Investment Advisory Fees**

To the extent permissible under the Code and the Income Tax Regulations, a participant may authorize the payment of Investment Advisory Fees from the participant's TSA Account.

Investment advisory fees may be paid with tax-deferred funds in a TSA account in accordance with the following provisions

- (a) The investment advisory fees for each fiscal year shall not exceed two percent of the annual value of the participant's account as of the last day of that fiscal year.
- (b) The fees shall be paid directly to a registered investment advisor that provides advice to the participant.
- (c) The investment advisor to whom the fees are paid shall be registered with the Securities and Exchange Commission and any other applicable federal or state agencies, and shall be engaged full-time in the business of providing investment advice.
- (d) The participant and the investment advisor shall enter into a contract for a term of no more than one year. A contract that automatically renews each year shall be considered acceptable as long as both parties have the right to sever the relationship, with reasonable notification, at any time.

#### **12.9 Incorporation of Individual Agreements**

The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code.

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

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

#### **12.11 Headings**

Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

#### **12.12 Gender**

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

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

The establishment of this Plan and the purchase of any Annuity Contract or establishment of a Custodial Account under

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

#### **12.14 Necessary Information**

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

#### **12.15 Accounting**

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

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

#### **12.16 Severability**

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

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

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

IN WITNESS WHEREOF, the Texas State University System has caused this Plan to be executed this 22nd day of February, 2010.

Texas State University System :

By:

Title: Chancellor

Date signed: February 22, 2010

Effective Date of the Plan: January 1, 2009

Section 6.3, 8.4 and 12.2 amended 02/19/2010

6.4, and 6.5 added 02/19/2010



**Exhibit 8 - Active**

Vendors authorized to receive ongoing contributions, and Exchange and Transfers under the Plan:

<b><u>Name of Organization</u></b>	<b><u>Telephone Number</u></b>
American Funds	800-421-5475
Fidelity Investments	801-537-4035
ING Life Insurance & Annuity Co.	800-873-5518
Lincoln Investment Planning	800-242-1421
MetLife Resources	732-652-1212
Pentegra	877-203-8668
TIAA-CREF	866-842-2952
VALIC	800-448-2542

**Exhibit 9 - Inactive**

Vendors authorized to receive ongoing contributions. Exchanges and Transfers to these Vendors are not permitted under the Plan:

<b><u>Name of Organization</u></b>	<b><u>Telephone Number</u></b>
Ameriprise Financial	612-671-1942
Commonwealth Annuity & Life	866-735-5872
Lincoln Financial Group	800-322-3917
Security Benefit	800-888-2461
T. Rowe Price	800-492-7670
USAA	800-531-8292