

**THE UNIVERSITY OF TOLEDO
CODE SECTION 403(b)
TAX SHELTERED ANNUITY PROGRAM
BASIC PLAN DOCUMENT**

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CODE SECTION 403(b) TAX SHELTERED ANNUITY PROGRAM BASIC PLAN DOCUMENT

The Employer may adopt this Plan by executing the Adoption Agreement, which is a part of this 403(b) Plan document. This Basic Plan document, the Adoption Agreement, any underlying Annuity Contracts and Custodial Account agreements between a Vendor and an Employee, and agreements between the Employer and one or more Vendors or Providers shall be construed together to constitute the Plan.

Section 1 - Definitions

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

1.1 **“Account”**: The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account with respect to his or her total interest in the Plan attributable to Elective Deferrals, Employer Contributions, eligible Rollover Contributions, Roth 403(b) Contributions, and Plan-to-Plan Transfer Contributions.

The Employer or the Provider may establish additional sub-accounts within the various Accounts or combine similar Accounts or sub-accounts.

1.2 **“Account Balance”**: The value of the aggregate amount credited to each Participant’s Account under all Accounts, including the Participant’s Elective Deferrals, any Employer Contributions, 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, if such contributions are authorized under the Adoption Agreement, the account established for a Beneficiary after a Participant’s death, and any account or accounts established for an alternate payee (as defined in Section 414(p)(8) of the Code).

1.3 **“Administrator”**: The person(s) or organization, such as the Vendor, third party administrator or other designee, approved by the Employer to administer the Plan and perform administrative functions for the Plan as identified in the Adoption Agreement.

1.4 **“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 the state in which the Employer or Participant, as applicable, resides and that includes payment in the form of an annuity.

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

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

1.7 **“Compensation”**: Except as otherwise elected on the Adoption Agreement, Compensation means cash compensation for services to the Employer as reported on Form W-2, 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. Except as otherwise elected on the Adoption Agreement, Compensation shall include amounts related to a compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election under Section 2 made to reduce compensation in order to have Elective Deferrals under the Plan).

1.8 **“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, and/or by each Participant individually, to hold assets of the Plan.

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

1.10 **“Elective Deferral”**: The Employer Contributions made to the Plan at the election of the Participant in accordance with Section 2 in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.

1.11 **“Employee”**: Each individual, whether appointed or elected, who is a common law employee of the Employer performing services for a public school as an employee of the Employer. This definition is not applicable unless the employee's Compensation for performing services for a public school is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government. Employees do not include independent contractors.

1.12 **“Employer”**: The public education organization identified in the Adoption Agreement as the Employer.

1.13 **“Employer Contributions”**: Any contributions, including non-elective contributions and matching contributions, made to the Plan by the Employer as provided in Section 2.2(c) and in the Adoption Agreement.

1.14 **“Employer Contributions Account”**: The account established and maintained by the Administrator for each Participant with respect to his total vested interest (including any earnings and losses attributable thereon) under the Plan resulting from Employer Contributions.

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

1.16 **“Includible Compensation”**: An Employee’s actual wages in box 1 of Form W-2 for the most recent one-year period of service for the Employer, but increased (up to the dollar maximum) by any compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). The amount of Includible Compensation is determined without regard to any community property laws. Notwithstanding the foregoing, if the Adoption Agreement provides for Employer Contributions, then for purposes of determining Employer Contributions, Includible Compensation will be subject to a maximum of \$230,000 (or such higher maximum as may apply under Section 401(a)(17) of the Code).

1.17 **“Individual Agreement”**: The agreements between a Vendor and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract with respect to that Participant’s Account.

1.18 **“Information Sharing Agreement”**: The agreement between a Vendor and the Employer to share information necessary for compliance with Treasury Regulation Section 1.403(b)-10(b) relating to tax-free exchanges made after September 24, 2007 (or such later compliance date provided in guidance by the Internal Revenue Service) by Employees of the Employer.

1.19 **“Participant”**: An individual for whom Elective Deferrals or other contributions permitted herein are currently being made, or for whom such contributions have previously been made, under the Plan and who has not received a distribution of his or her entire Account Balance under the Plan.

1.20 **“Plan”**: The name given to this Plan by the Employer in the Adoption Agreement.

1.21 **“Plan Year”**: The calendar year.

1.22 **“Provider”**: A provider of Annuity Contracts or Custodial Accounts that has entered into an Information Sharing Agreement with the Employer.

1.23 **“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 Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

1.24 **“Roth 403(b) Contribution”**: If authorized in the Adoption Agreement, any contribution made by a Participant which is (1) designated as a Roth 403(b) Contribution in accordance with Section 10 of the Plan and (2) treated by the Employer as includible in the Employee’s income such that the contribution qualifies as a Roth contribution under Section 402A of the Code.

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

1.26 **“Section 401(k) Plan”**: A cash or deferred arrangement described in Code Section 401(k) under which a covered Employee may elect to have the Employer make payments as contributions to a trust under the plan on behalf of the Employee, or to the Employee directly in cash.

1.27 **“Section 403(b) Plan”**: A plan of deferred compensation described in Code Section 403(b) which is offered to Employees of a tax-exempt organization under Code Section 501(c)(3) or Employees of certain educational organizations and which satisfies the requirements of Code Section 403(b).

1.28 **“Section 457(b) Plan”**: A plan of deferred compensation described in Code Section 457(b) which is an eligible deferred compensation plan which satisfies the requirements of Code Section 457(b).

1.29 **“Severance from Employment”**: For purpose of the Plan, Severance from Employment means Severance from Employment with the Employer and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public school, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public school or in a capacity that is not employment with a public school (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).

1.30 **“Valuation Date”**: The date(s) selected in the Adoption Agreement.

1.31 **“Vendor”**: The provider of an Annuity Contract or Custodial Account as selected by the Employer or any organization expressly authorized by such provider to act on their behalf under this Plan, as listed in Appendix A.

1.32 **“Vested”**: The nonforfeitable portion of any Account maintained on behalf of a Participant.

Section 2 - Participation and Contributions

2.1 **Eligibility**. Except as otherwise provided in the Adoption Agreement, each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals or Roth 403(b) Contributions in accordance with Section 10 made on his or her behalf hereunder immediately upon becoming employed by the Employer. As selected in the Adoption Agreement, the following Employees may be excluded on a uniform basis:

- (a) Employees who are eligible to participate in one or more plans described under Section 403(b)(12)(A) of the Code during the calendar year sponsored by the Employer (i.e. another Section 403(b) Plan, a Section 457(b) Plan, or a Section 401(k) Plan);
- (b) Employees who are non-resident aliens described in Section 401(b)(3)(C) of the Code;
- (c) "Student Employees," as classified by the Employer (if such Employer is an educational institution) during the calendar year; and
- (d) Employees who normally work fewer than 20 hours per week (or such lower number of hours per week as may be set forth in the Adoption Agreement). An Employee normally works fewer than 20 hours per week if for the 12-month period beginning on the date the Employee's employment commenced, the Employer reasonably expects the Employee to work fewer than 1,000 hours of service and the Employee actually worked fewer than 1,000 hours of service for the Employer in the preceding 12-month period.

2.2 Contributions.

- (a) Elective Deferrals. 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 on his or her behalf) and filing it with the appropriate Administrator. This Compensation reduction election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. As provided in the Adoption Agreement, the amount of Compensation reduced is to be expressed as either a specified dollar amount or a percentage of Compensation. The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. Except as otherwise provided in the Plan, all Elective Deferrals shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the Employee's election.

- (b) Special Rule for New Employees.
- (1) Automatic Enrollment for New Employees. If authorized in the Adoption Agreement, for purposes of applying this Section 2.2, a new Employee is deemed to have elected to become a Participant and to have his or her Compensation reduced by the percentage or dollar amount elected in the Adoption Agreement (and have that amount contributed as an Elective Deferral on his or her behalf), at the time the Employee is hired, and to have agreed to be bound by all the terms and conditions of the Plan. Contributions made under this automatic participation provision shall be made to the Funding Vehicle or Vehicles selected for this purpose for all new Employees by the Administrator. Any Employee who automatically becomes a Participant under this Section 2.2(b) shall file a designation of Beneficiary with the Funding Vehicle or Vehicles to which contributions are made.
- (2) Right to File a Different Election - Notice to Employee. This Section 2.2(b) shall not apply to the extent an Employee files an election for a different percentage reduction or elects to have no Compensation reduction, or designates a different Funding Vehicle to receive contributions made on his or her behalf. Any new Employee shall receive a statement at the time he or she is hired that describes the Employee's rights and obligations under this Section 2.2(b) (including the information in this Section 2.2(b) and identification of how the Employee can file an election or make a designation as described in the preceding sentence, and the refund right under Section 2.2(b)(3), including the specific name and location of the person to whom any such election or designation may be filed), and how the contributions under this Section 2.2(b) will be invested.
- (3) Refund of Contributions. An Employee for whom contributions have been automatically made under Section 2.2(b)(1) may elect to withdraw all of the contributions made on his or her behalf under Section 2.2(b)(1), including earnings thereon to the date of the withdrawal. This withdrawal right is available only if the withdrawal election is made within 90 days after the date of the first contribution made under Section 2.2(b)(1).
- (c) Roth 403(b) Contributions. If authorized in the Adoption Agreement and if permitted under an Employee's Individual Agreement(s), an Employee may elect to make Roth 403(b) Contributions to the Plan in accordance with Section 10 of the Plan. The Participant's election to make Roth 403(b) Contributions shall be made on the agreement provided by the Administrator and shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made. Any such election shall remain in effect until a new election is filed. The Administrator may establish an annual minimum Roth 403(b) Contribution amount no higher than \$200, and may change such minimum to a lower amount from time to time.

- (d) **Employer Contributions.** If authorized in the Adoption Agreement, the Employer may make Employer Contributions to Accounts of designated Employees in accordance with Section 11 of the Plan. Contributions made under this Section 2.2(c) shall be deposited into each Participant's Account in accordance with Section 2.5 of the Plan. The Participant shall designate the Funding Vehicles and the Accounts therein to which Employer Contributions are to be made. Such designation shall be made on a form provided by the Administrator.

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

2.4 **Change in Elective Deferrals Election.** Unless otherwise provided in the Adoption Agreement, and subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals (and/or Roth 403(b) Contributions), his or her investment direction, and/or his or her designated Beneficiary. A change in the amount of Elective Deferrals (and/or Roth 403(b) Contributions) investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

2.5 **Contributions Made Promptly.** 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.

2.6 **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 3 - Limitations on Amounts Deferred

3.1 **Basic Annual Limitation.** Except as provided in Sections 3.2 and 3.3, the maximum amount of the Elective Deferrals (and/or Roth 403(b) Contributions to the extent permitted under Section 10) 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, which is \$15,500 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under Section 415(d) of the Code.

3.2 **Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service.** If authorized in the Adoption Agreement, the applicable dollar amount under Section 3.1(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:

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

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

3.3 Age 50 Catch-up Elective Deferral Contributions. If authorized in the Adoption Agreement, 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, if applicable, Roth 403(b) Contributions, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals and, if applicable, Roth 403(b) Contributions for a year is \$5,000 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under the Code.

3.4 Coordination. If the Adoption Agreement authorizes contributions under Section 3.2 and Section 3.3 of the Plan, amounts in excess of the limitation set forth in Section 3.1 shall be allocated first to the special 403(b) catch-up under Section 3.2 and next as an age 50 catch-up contribution under Section 3.3. However, in no event can the amount of the Elective Deferrals and, if applicable, Roth 403(b) Contributions for a year be more than the Participant’s Includible Compensation for the year.

3.5 Special Rule for a Participant Covered by Another Section 403(b) Plan. For purposes of this Section 3, if the Participant is or has been a participant in one or more other Section 403(b) Plan (and any other plan that permits elective deferrals under Section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Entity shall be taken into account for purposes of Section 3.2 only if the other plan is a § 403(b) plan.

3.6 Correction of Excess Elective Deferrals. If the Elective Deferrals (or Roth 403(b) Contributions) on behalf of a Participant for any calendar year exceed the limitations described above, or the Elective Deferrals (and/or Roth 403(b) Contributions) on behalf of a Participant for any calendar year exceed the limitations described above when combined with other amounts deferred by the Participant under another plan of the Employer under Section 403(b) of the Code (and any other plan that permits elective deferrals under Section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral (and to the extent applicable, 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.

3.7 Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Section 4 - Loans

4.1 Loans. If authorized in the Adoption Agreement, loans shall be permitted 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.

4.2 Information Coordination Concerning Loans. Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator(s) shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 4.3, including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator(s) shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

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

- (a) \$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 this Section 4.3, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

Section 5 - Benefit Distributions

5.1 Benefit Distributions At Severance from Employment or Other Distribution Event.

Except as permitted under Section 3.6 (relating to excess Elective Deferrals), Section 5.3 (relating to withdrawals of amounts rolled over into the Plan), Section 5.4 (relating to hardship), or Section 8.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59½. 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.

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

5.3 **In-Service Distributions From Rollover Account.** If authorized in the Adoption Agreement and to the extent permitted by the applicable Individual Agreement, if a Participant has a separate account attributable to rollover contributions to the Plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover

account.

5.4 **Hardship Withdrawals.** Hardship withdrawals shall be permitted under the Plan if selected in the Adoption Agreement and to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship and this Section 5.4 of the Plan. If permitted by the Funding Vehicle(s) in which the Participant's Account is invested, a Participant may make withdrawals from his or her Elective Deferral Accounts (excluding income allocated thereon after December 31, 1988) and from assets held in the Account as of December 31, 1988, for the purpose of enabling him or her to meet financial hardships. For purposes of this Section 5.4, a distribution is on account of a financial hardship only if the distribution is made both on account of an immediate and heavy financial need of the Participant and is necessary to satisfy (and does not exceed) such financial need as described in Subsections (a) and (b) set forth below.

Amounts shall be distributed under this Section 5.4 only after the Administrator has determined that the applicable nondiscriminatory and objective criteria have been satisfied. A Participant requesting a hardship withdrawal shall submit such request to the Administrator in writing at the time and in the manner specified by the Administrator.

- (a) **Immediate and Heavy Financial Need.** The determination of whether a Participant has an immediate and heavy financial need is to be made by the Administrator on the basis of all relevant facts and circumstances. Unless the Administrator adopts and obtains the Employer's written approval regarding additional nondiscriminatory and objective criteria for making this determination (which shall be contained in the Funding Vehicle), a distribution will be deemed to be made on account of an immediate and heavy financial need of a Participant only if the distribution is on account of:
 - (1) expenses for unreimbursed medical care described in Code Section 213(d) previously incurred by the Participant, the Participant's spouse, or any dependents of the Participant (as defined in Code Section 152 (determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof)), or expenses necessary to obtain such medical care;
 - (2) costs (excluding mortgage payments) directly related to the purchase of a principal residence for the Participant;
 - (3) payment of tuition, related educational fees, and room and board expenses, for up to the next twelve months of post-secondary education for the Participant, the Participant's spouse or children, or any dependents of the Participant (as defined in Code Section 152 (determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof));
 - (4) payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence;

- (5) payments for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Code Section 152 (determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof));
 - (6) expenses for the repair of damage to the Employee's principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income); or
 - (7) such other events, expenses or conditions as the Commissioner of Internal Revenue may determine from time to time.
- (b) Necessary to Satisfy Financial Need. A distribution will be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant only if all of the following requirements are satisfied:
- (1) the distribution is not in excess of the amount of the immediate and heavy financial need of the Participant. The amount of an immediate financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution;
 - (2) the Participant has obtained all distributions, other than hardship distributions, and all nontaxable (determined at the time of the loan) loans currently available under this Plan and all other plans maintained by the Employer;
 - (3) the Plan, and all other 403(b), qualified and nonqualified plans of deferred compensation maintained by the Employer (excluding health and other welfare plans including one that is part of a cafeteria plan), provide that the Participant's elective deferrals and voluntary employee contributions will be suspended for at least six months after receipt of the hardship distribution; and
 - (4) the Plan, and all other 403(b), qualified and nonqualified plans of deferred compensation maintained by the Employer (excluding health and other welfare plans including one that is part of a cafeteria plan), provide that the Participant may not make elective deferrals for the Participant's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code Section 402(g) for such next taxable year less the amount of such Participant's elective deferrals for the taxable year of the hardship distribution.

The provisions of these subparagraphs (a) and (b) of this Section 5.4 may be modified by the Employer to the extent necessary or permissible to take into account any new standards prescribed by the Commissioner of Internal Revenue by which distributions are deemed to be necessary to satisfy an immediate and heavy financial need.

Additionally, the Vendor with prior approval by the Employer, may adopt rules for determining whether a hardship distribution is necessary to satisfy a Participant's financial need under the "facts and circumstances" tests described in Treasury Regulation Section 1.401(k)-1(d)(3)(iii) in lieu of the rules described tests, above.

An Individual Agreement may make distributions to Participants for expenses described in Treasury Regulation Section 1.401(k)-1(d)(3)(iii)(B)(1), (3), or (5) for a primary Beneficiary. For this purpose, a "primary Beneficiary" is an individual who is named as a Beneficiary and has an unconditional right to all or a portion of the Account balance upon the death of the Participant.

5.5 Rollover Distributions.

- (a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in Section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in Section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant's death was neither the spouse 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.
- (c) A Participant or a spouse who is the designated Beneficiary of the Participant may elect to roll over amounts in accordance with Section 408A(e) of the Code directly to a Roth IRA.

Section 6 - Rollovers to the Plan; Transfers; Exchanges

6.1 Eligible Rollover Contributions to the Plan.

- (a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. However, unless Roth 403(b) Contributions are authorized under the Adoption Agreement, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in Section 402A(e)(1) of the Code.
- (b) **Eligible Rollover Distribution.** For purposes of Section 6.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Section 401(a)(9) of the Code, or corrective distribution of excess amounts in accordance with Sections 3.6 and 10.7. In addition, an eligible retirement plan means an individual retirement account described in Section 408(a) and 408A of the Code, an individual retirement annuity described in Section 408(b) and 408A of the Code, a qualified trust described in Section 401(a) of the Code, an annuity plan described in Section 403(a) or 403(b) of the Code, or an eligible governmental plan described in Section 457(b) of the Code, that accepts the eligible rollover distribution.
- (c) **Separate Accounts.** The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

6.2 **Plan-to-Plan Transfers to the Plan.**

- (a) If authorized under the Adoption Agreement, the Administrator may permit a transfer of assets to the Plan as provided in this Section 6.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an Employee or former Employee of the Employer. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Treas. Reg. § 1.403(b)-10(b)(3) and to confirm that the other plan is a plan that satisfies Section 403(b) of the Code.

- (b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.
- (c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral or, if applicable, Roth 403(b) Contribution by the Participant or Employer Contribution under the Plan, except that (1) 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 and (2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

6.3 Plan-to-Plan Transfers from the Plan.

- (a) If authorized under the Adoption Agreement, Participants and Beneficiaries may elect to have all or any portion of their Account Balance transferred to another plan that satisfies Section 403(b) of the Code in accordance with Treas. Reg. § 1.403(b)-10(b)(3). A transfer is permitted under this Section 6.3(a) only if the Participants or Beneficiaries are Employees or former Employees of the Employer (or the business of the Employer) under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount 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 or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).
- (c) Upon the transfer of assets under this Section 6.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The

Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.3 (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 Treas. Reg. § 1.403(b)-10(b)(3).

6.4 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 6.4(a) may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 6.4(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).

6.5 Contract and Custodial Account Exchanges.

- (a) If authorized in the Adoption Agreement, a Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Vendors under the Plan, subject to the terms of the Individual Agreements. However, unless otherwise indicated on the Adoption Agreement, exchanges are not permitted to Vendors that are not eligible to receive contributions under Section 2. If the Adoption Agreement authorizes exchanges to a Vendor that is not eligible to receive contributions under Section 2, the conditions in paragraphs (b) through (d) of this Section 6.5 must be satisfied.
- (b) The Participant or Beneficiary must have an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both Section 403(b) contracts or custodial accounts immediately before the exchange).

- (c) The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.
- (d) The Employer enters into an agreement with the receiving Vendor for the other contract or custodial account under which the Employer and the Vendor will from time to time in the future provide each other with the following information:
 - (1) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the Employer, to satisfy Section 403(b) of the Code, including the following:
 - (i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5.1);
 - (ii) the Vendor notifying the Employer of any hardship withdrawal under Section 5.3 if the withdrawal results in a 6-month suspension of the Participant's right to make Elective Deferrals (and, if applicable, Roth 403(b) Contributions) under the Plan; and
 - (iii) the Vendor providing information to the Employer or other Vendors concerning the Participant's or Beneficiary's Section 403(b) contracts or custodial accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any Plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Section 5.4); and
 - (2) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following:
 - (i) the amount of any Plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional Plan loan satisfies the loan limitations of Section 4.3, so that any such additional loan is not a deemed distribution under Code Section 72(p)(1); and
 - (ii) information concerning the Participant's or Beneficiary's Roth Contributions and after-tax employee contributions in order for a

Vendor to determine the extent to which a distribution is includible in gross income.

- (e) If any Vendor ceases to be eligible to receive Elective Deferrals (or Roth 403(b) Contributions or Employer Contributions, if applicable) under the Plan, the Vendor shall enter into an information sharing agreement as described in Section 6.5(d) with the Employer if the Employer's existing contract with the Vendor does not provide for the exchange of information described in Section 6.5(d)(1) and (2).

Section 7 - Investment of Contributions

7.1 **Manner of Investment.** All Elective Deferrals, Roth 403(b) Contributions, Employer Contributions or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

7.2 **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers and exchanges among Annuity Contracts and Custodial Accounts may be made to the extent provided in Section 6.4 of the Plan, the Individual Agreements and permitted under applicable Income Tax Regulations.

7.3 **Current and Former Vendors.** The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy Section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals (or Roth 403(b) Contributions) under the Plan and a Vendor holding assets under the Plan in accordance with Section 6.2 or 6.4), 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 8 – Amendment and Plan Termination

8.1 **Termination of Contributions.** The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may

discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

8.2 **Amendment and Termination.** The Employer reserves the authority to amend or terminate this Plan at any time.

8.3 **Distribution upon Termination of the Plan.** The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed as soon as administratively practicable under the Plan, provided that the Employer and any Related Employer on the date of termination do not make contributions to 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 9 - Miscellaneous

9.1 **Non-Assignability.** Except as provided in Section 9.2 and 9.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

9.2 **Domestic Relation Orders.** Notwithstanding Section 9.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any state ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

9.3 **IRS Levy.** Notwithstanding Section 9.1, the Administrator may direct payment from a Participant's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

9.4 **Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals (and, if applicable, Roth 403(b) Contributions), which constitute wages under Section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Section 3401 of the Code and the Employment

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

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

9.6 **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned to the party that made the contribution.

9.7 **Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the records of the Employer or the Administrator, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 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.

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

9.9 **Governing Law.** The Plan will be construed, administered and enforced according to the Code and the laws of the state in which the Employer has its principal place of business.

9.10 **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.

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

Section 10 – Roth 403(b) Contribution Provisions

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

10.2 **Roth 403(b) Contributions.** For each Plan Year, each Participant may elect to make Roth 403(b) Contributions to the Plan up to the applicable limit under Code Section 402(g) and as aggregated with Elective Deferrals as described in 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.

10.3 **Separate Accounting Requirements.** Contributions and withdrawals of Roth 403(b) Contributions, and earnings or losses thereon, shall be credited and debited to each Participant's Account and shall be separately accounted for under each Employee's Account. Gains, losses, and other credits or charges shall be separately allocated on a reasonable and consistent basis for each Employee's Roth 403(b) Contributions. Except as provided in Section 10.6, no contributions other than Roth 403(b) Contributions and properly attributable earnings may be credited to each Employee's Roth subaccount.

10.4 **Deposit Requirements.** Roth 403(b) Contributions shall be deposited with the applicable Funding Vehicles as soon as practicable in accordance with Section 2.5 of the Plan, unless an earlier date is required under state law.

10.5 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 ½, 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 10.3(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 be used for a loan in accordance with Section 4, distributed due to a hardship withdrawal

under Section 5.4, transferred in accordance with Sections 6.3 or 6.5, or exchanged in accordance with Section 6.4.

10.6 Direct Roth Rollovers From the Plan. Notwithstanding Section 5.5 of the Plan, Participants may only make a direct rollover of a distribution of Roth 403(b) Contributions (and earnings thereon) to another 403(b) plan with Roth contribution features; to a 401(k) Plan with Roth contribution features, or to Roth IRA described in Section 408A of the Code, and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.

10.7 Roth Rollovers Into the Plan. Notwithstanding Section 6.1 of the Plan, and unless otherwise indicated on the Adoption Agreement, direct rollovers of Roth 403(b) Contributions and Roth 401(k) Contributions and earnings thereon from another 403(b) Plan with Roth contribution features, or from a 401(k) Plan with Roth contribution features are permitted, provided that the Funding Vehicles selected by a Participant will accept such Roth Rollovers. Direct rollovers shall only be permitted if the transmitting plan satisfies the conditions set forth in Section 402(A)(e)(1) of the Code and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.

10.8 Correction of Excess Deferrals. Excess deferrals shall be corrected by first distributing Roth 403(b) Contributions (plus earnings thereon) made during the Plan Year and then by distributing a Participant's Elective Deferrals (plus earnings thereon). However, if a highly compensated Employee (as defined in Section 414(q) of the Code) experiences an excess deferral in any Plan Year, he may designate the extent to which the excess amount is composed of Elective Deferrals and Roth 403(b) Contributions, provided that both types of contributions were made by the Employee during the applicable Plan Year. If the highly compensated Employee does not designate which type of contributions are to be distributed, then Elective Deferrals shall be distributed first, followed by Roth 403(b) Contributions.

10.9 Roth Caveat. Employer, Administrator and providers of Annuity Contracts and Custodial Accounts shall utilize good faith compliance efforts to conform to the requirements applicable to Roth 403(b) Contributions based on applicable IRS guidance related to such contributions. The Plan shall be administered and interpreted in the manner necessary to ensure compliance with such guidance.

Section 11 – Employer Contributions

11.1 Employer Contributions. For each Plan Year, the Employer will contribute to the Plan the amount and form of Employer Contributions as specified in the Adoption Agreement, subject to any limitations imposed under applicable law or under any applicable collective bargaining agreement. Such contributions will be allocated to the Participant's Employer Contributions Account.

11.2 **Maximum Annual Additions.**

- (a) The maximum permissible Annual Additions that may be contributed or allocated to each Participant's Account under the Plan for any Plan Year will not exceed the lesser of:
 - i) \$40,000, as adjusted for increases in the cost of living under Section 415(d) of the Code, or
 - ii) 100 percent of the Participant's Includible Compensation for the Plan Year.
- (b) For purposes of this Section, "Annual Additions" means, for any Plan 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 made on behalf of such individual under any other 403(b) plan, whether or not sponsored by the Employer.
- (c) If a Participant has a "controlling interest" in another Employer and participates in that Employer's qualified 401(a) defined contribution plan, a welfare benefit fund (as defined in Section 419(e) of the Code), an individual medical account (as defined in Section 415(l)(2) of the Code) or a Simplified Employee Pension (as defined in Section 408(k) of the Code) which provides Annual Additions, the amount of Annual Additions which may be credited to a Participant's Account for any Plan Year will not exceed the maximum permissible amount described in subsection (a), taking into account Employer contributions that have been allocated to such other plans as described in this subsection.
- (d) If the Annual Additions are greater than the maximum permissible amount described in subsection (a) in a Plan Year, no amount will be contributed to the Participant's Account under the Plan for that Plan Year. If there is any such excess amount under the Plan, the Employer or its delegate will direct the Vendor as to the appropriate method of correction of such excess amounts in accordance with the Income Tax Regulations. If timely correction of such excess is not made, such excess will remain in the Plan and will be separately accounted for in accordance with Section 403(c) of the Code.

11.3 **Vesting.** A Participant will be 100% Vested in any Employer Contributions.

Section 12 – Employer Adoption

Name of Plan: The University of Toledo 403(b) Plan

Name of Employer: The University of Toledo

Signature By:  _____

Print Name: William G. Logie

Title: Vice President of Human Resources and Campus Safety

Date: November 24, 2008

APPENDIX A

**AUTHORIZED 403(b) VENDOR LIST
FOR THE
UNIVERSITY OF TOLEDO
403(b) PLAN**

This list identifies the Vendors available under the designated 403(b) Plan maintained by the Employer, on or after the effective date of this Appendix A ("Effective Date"). Vendors on this Appendix A shall be subject to requirements and restrictions under the written Plan, if any, provided however that such requirements and restrictions are not intended to enlarge the rights and benefits otherwise set forth in the Individual Arrangements.

Employer: The University of Toledo Plan Name: The University of Toledo 403(b)
Plan

Effective Date: January 1, 2009

A. Vendors authorized to receive contributions and transfers under the Plan:

Name of Vendor

1. ING
2. TIAA-CREF
3. VALIC
4. Ameriprise
5. Mass Mutual

B. Providers that hold contributions made before 2009, that are not included in the Plan, and are not authorized to receive new contributions, exchanges, or transfers under the Plan:

Name of Vendor

1. Fidelity
2. Security First Investments
3. MetLife
4. Vanguard

5. Equi Vest
6. Templeton World Funds
7. John Hancock
8. Nationwide
9. Paine Weber (UBS)
10. Mass Financial Services
11. Merrill Lynch
12. American Funds
13. Jackson National
14. Smith Barney
15. State Farm
16. American Century
17. New York Life
18. The Prudential
19. T. Rowe Price
20. Lord Abbett
21. Northwestern Mutual
22. Lincoln
23. Thrivent (Aid Lutheran)
24. USAA Life
25. Union Central Life
26. Travelers Ins.
27. Dreyfus Fund

28. AUSA Life

29. Capital

30. Protective

31. Equitable

32. AIM

33. Anchor

34. Union Central

C. Vendors that may receive transfers under the Plan pursuant to an information sharing agreement, which may remain a part of the plan but are not authorized to receive new contributions under the Plan:

Name of Vendor

D. Other:

Name of Vendor

**ADOPTION AGREEMENT FOR THE
403(b) PLAN DOCUMENT FOR
PUBLIC EDUCATION ORGANIZATIONS**

Employer hereby establishes a 403(b) plan by adopting the following 403(b) plan document (the "Plan"). The Plan shall be comprised of the 403(b) Basic Plan Document for Public Education Organizations, as modified by this Adoption Agreement, including Appendix A attached to this Adoption Agreement.

I. EMPLOYER INFORMATION (SECTION 1.12 OF THE BASIC PLAN DOCUMENT):

A. Name of Employer: The University of Toledo

B. Federal Tax ID: 34-6401483

C. Employer's Address:
Attn: Human Resources Department
2801 W. Bancroft Street
Toledo, OH 43606

D. Telephone Number: (419) 530-4747 Fax: (419) 530-1490

E. Type of Public Education Organization:

- K-12 Public School
- Community College
- Public College/University

Note: If the Employer is not a public education organization under Section 170(b)(1)(A)(ii) of the Code, this document may not be used.

2. PLAN INFORMATION (SECTIONS 1.20 AND 1.21 OF THE BASIC PLAN DOCUMENT):

A. Name of Plan: The University of Toledo 403(b) Plan (the "Plan")

B. Effective Date: This Adoption Agreement:

- Establishes the Plan effective as of January 1, 2009 (the "Effective Date") and is the first 403(b) plan document established by the Employer.

- Amends and restates a previously established 403(b) Plan document of the Employer. The effective date of this amended Plan is _____ (the "Effective Date"). The original effective date of the Plan is _____.

C. Plan Administration: The Plan shall be administered by:

- The Employer.
- The Employer and Vendors jointly as provided in the applicable Funding Vehicle.
- The following designated Administrator: ING

3. **ELIGIBILITY (SECTION 2.1 OF THE BASIC PLAN DOCUMENT):** Except as otherwise selected below, all Employees are immediately eligible to make contributions under the Plan. The Plan shall not include:

- Employees who are eligible to participate in one or more plans described under Section 403(b)(12)(A) of the Code during the calendar year sponsored by the Employer (i.e., another Section 403(b) plan, a Section 457(b) plan, or a Section 401(k) plan).
- Employees who are non-resident aliens described in Section 410(b)(3)(C) of the Code.
- Student Employees as classified by the Employer during the calendar year (limited to Employers that are educational institutions).
- Employees who are normally scheduled to work fewer than 20 hours per week (must be 20 or less).
- Other: _____
- No exclusions apply.

4. **VALUATION DATE (SECTION 1.30 OF THE BASIC PLAN DOCUMENT):**

- Each business day.
- The last business day of the month.
- The last day of each calendar year year ending _____.
- Other: Per the terms of the Individual Agreements

5. EMPLOYEE CONTRIBUTIONS:

A. Elective Deferrals. (Section 2.2(a) of the Basic Plan Document)

The amount of Compensation that a Participant elects to have reduced by the Employer shall be expressed as:

- A specified dollar amount.
- A percentage of Compensation.

In no event, however, may the amount of Compensation a Participant elects to have reduced be less than \$ N/A (must not exceed \$200).

B. Automatic Enrollment. (Section 2.2(b) of the Basic Plan Document)

The Plan *will* or *will not* permit Employees to be automatically enrolled in the Plan. If permitted, each eligible Employee is required to defer:

- _____% of Compensation.
- \$ _____.

C. Roth 403(b) Contributions. (Section 2.2(c) of the Basic Plan Document)

In addition to Elective Deferral Contributions, the Plan shall authorize the following Contributions:

- Roth 403(b) Contributions to the Plan are permitted beginning on _____.
- Roth 403(b) Contributions are NOT permitted under the Plan.

D. Changes in Elective Deferrals Election. (Section 2.4 of the Basic Plan Document)

Subject to the provisions of the applicable Individual Agreement(s), after his or her initial entry into the Plan, a Participant may change the amount to be contributed to his or her Elective Deferral Account as provided under Section 2.2 of the Plan as follows:

- Once per calendar month.
- Once per calendar quarter.
- Other (but no less often than once per calendar year): _____.

E. Age 50 Catch-Up Contributions. (Section 3.3 of the Basic Plan Document)

The Plan *will* or *will not* permit Employees who will attain age 50 or more by the end of the calendar year to increase their Elective Deferrals as provided under Section 3.3 of the Plan.

F. 15 Years of Service Catch-Up Contributions. (Section 3.2 of the Basic Plan Document)

The Plan *will* or *will not* permit Employees with 15 years of service with the Employer to increase their Elective Deferrals as provided under Section 3.2 of the Plan.

G. Rollover Contributions. (Section 6.1(a) of the Basic Plan Document)

The Plan *will* or *will not* accept rollovers from another eligible plan.

H. Roth Rollover Contributions. (Section 6.1(a) of the Basic Plan Document)

If Roth 403(b) Contributions are permitted to the Plan (above), direct rollovers from other Roth 403(b) or Roth 401(k) plans *are* or *are not* authorized to be rolled over into the Plan or Not Applicable because Roth Contributions are not permitted to the Plan.

6. **EMPLOYER CONTRIBUTIONS (SECTIONS 1.13 AND 11 OF THE BASIC PLAN DOCUMENT):**

No Employer Contributions will be made.

Discretionary non-elective contributions.

Formula non-elective contributions according to the following formula:

Discretionary matching contributions.

Formula matching contributions according to the following formula:

7. **COMPENSATION FOR PURPOSES OF ELECTIVE DEFERRALS (SECTION 1.7 OF THE BASIC PLAN DOCUMENT):**

- Compensation reported on Form W-2.
- Wages for withholding purposes under Code Section 3401.
- Safe harbor compensation under Code Section 415.
- Compensation shall include or shall not include pre-tax compensation reductions (i.e., compensation which is not currently includible in the Participant's gross income by reason of a compensation reduction election under Code Sections 125, 132(f)(4), 401(k), 403(b), or 457(b)).

8. **COMPENSATION FOR PURPOSES OF EMPLOYER CONTRIBUTIONS (SECTION 1.16 OF THE BASIC PLAN DOCUMENT):**

- Same as 6 above.
- Not Applicable.
- Other: _____

9. **EXCHANGES WITHIN THE PLAN (SECTION 6.5 OF THE BASIC PLAN DOCUMENT):** The Plan *will* or *will not* permit Participants to make Exchanges. If permitted, Exchanges may occur between:

- Any Vendor.
- Any Vendor and any other organization offering Annuity Contracts and or Custodial Accounts that satisfy the requirements of Section 403(b) of the Code who execute an Information Sharing Agreement with Employer or its appointee for purposes of satisfying applicable compliance requirements.
- Vendors listed in Section A of Appendix A.

10. **TRANSFERS INTO THE PLAN (SECTION 6.2 OF THE BASIC PLAN DOCUMENT):** The Plan *will* or *will not* accept Transfers from another Employer's 403(b) Plan.

11. **TRANSFERS FROM THE PLAN (SECTION 6.3 OF THE BASIC PLAN DOCUMENT):** The Plan *will* or *will not* permit Transfers from the Plan to another Employer's 403(b) Plan, if requested by a former Participant.

12. FINANCIAL HARDSHIP DISTRIBUTIONS (SECTION 5.4 OF THE BASIC PLAN DOCUMENT): Hardship Distributions *are* or *are not* available under the Plan subject to availability and any additional conditions that may apply under a Participant's Individual Agreement(s).

13. LOANS (SECTION 4 OF THE BASIC PLAN DOCUMENT): Loans *are* or *are not* available under the Plan subject to availability and any additional conditions that may apply under a Participant's Individual Agreement(s).

14. IN-SERVICE DISTRIBUTIONS (SECTION 5.3 OF THE BASIC PLAN DOCUMENT): The Plan *will* or *will not* permit in-service distributions subject to availability and any additional conditions that may apply under a Participant's Individual Agreement(s). If permitted, in-service distributions shall be made from:

- Rollover Accounts.
- Accounts other than Rollover Accounts upon attainment of age 59 ½.
- Both.

15. OTHER PROVISIONS: The following section may be used to modify any portion of the Plan or Adoption Agreement:

16. SIGNATURES: Employer acknowledges that it is an eligible public education organization under Section 170(b)(1)(A)(ii) of the Code and is authorized to offer a program qualified under Section 403(b) of the Internal Revenue Code.

[The remainder of this page is left blank intentionally.]

EMPLOYER

By:  _____

Print Name: William G. Logie

Title: Vice President of Human Resources and Campus Safety

Date: November 24, 2008