

**VENDOR REGULATIONS**  
**FOR THE**  
**OPTIONAL RETIREMENT PROGRAM**  
**October 2019**  
**SAM HOUSTON STATE UNIVERSITY**

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**FOR THE**  
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SAM HOUSTON STATE UNIVERSITY  
VENDOR REGULATIONS  
FOR THE  
OPTIONAL RETIREMENT PROGRAM

I. INTRODUCTION

The Optional Retirement Program (ORP) is authorized under Chapter 830, Title 8 of the Texas Government Code and Section 403(b) of the Internal Revenue Code. The goal of ORP is to provide eligible employees with a high-quality, portable retirement program. Sam Houston State University (SHSU) 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 ORP contracts to eligible employees. This document is intended to provide vendors and prospective vendors with the regulations governing the ORP program at SHSU.

The SHSU ORP 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 SHSU or eligible ORP participant, for a Product qualified as an ORP under regulations of the Code and as designated under the terms of this document.

CONTRIBUTIONS refer to deposits to the ORP.

CRITERIA, as used throughout this document, means ORP Criteria for ORP Vendors at SHSU.

DEPOSITS refer to individual mandatory employee contributions deducted from salary and employer non-elective contributions.

REPRESENTATIVE means a SHSU approved agent, broker, salesperson, solicitor, selling officer, manager, and other titles indicating a seller of an ORP 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 ORP contracts to employees of SHSU 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 8)
- B. Attachments and required information described in Section IV.B.
- C. Completed Exhibits E-3 and E-4
- D. Completed Representative Acknowledgment Form(s) (Exhibit E-5)

The response should be mailed to:

Sam Houston State University  
Human Resources Department  
Box 2356  
Huntsville, Texas 77341-2356

Physical address:  
John W. Thomason Building  
1831 University Ave, Suite 202  
Human Resources Department  
Huntsville, TX 77340

Inquiries may be directed to Human Resources (936) 294-1070.

**It is the vendor's responsibility to ensure that every person representing that vendor to employees of SHSU 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 ORP contracts to SHSU employees.**

**SHSU 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 SHSU 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 ORP contract issued to employees of SHSU satisfies all requirements for income tax deferral under all applicable sections of the Internal Revenue Code.
2. Every ORP contract offered complies with all requirements of Chapter 830, Title 8 of the Texas Government Code. To view or download Chapter 830 of the Government Code, go to <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.830.htm>.
3. Every ORP contract issued to employees of SHSU complies with all applicable Texas Attorney General's Opinions (see Exhibit E-1).
4. SHSU has the right to reject any ORP contracts it deems not to be in the best interest of the employees.
5. The payment of any investment advisory fees is guaranteed to be in accordance with Title 8, Section 830.107 of The Texas Government Code, as approved by IRS Private Letter Ruling dated August 30, 1990.
6. A distribution of funds will be made only after a distributable event, defined in Title 8, Section 830.105 of the Texas Government Code and only upon receipt of a properly completed Vesting Certification Form.
7. No loans or hardship withdrawals will be granted against the cash or account value to a participant prior to retirement from the public institutions of higher education in Texas or any of the criteria listed in the Vendor Administrative Procedures, Section V, Item F.
8. No redeemable stock certificate or other thing of value redeemable for cash will be issued to a participant prior to retirement from the public institutions of higher education in Texas or any of the criteria listed in the Vendor Administrative Procedures, Section V, Item F.
9. If a participant does not meet the vesting requirement of one year and one day in Texas ORP, all of the employer matching contributions will be refunded by the vendor to SHSU Human Resources upon receipt of a properly executed Vesting Certification Form.
10. Any requirements for a minimum monthly contribution during the participant's period of employment with SHSU are waived.
11. Any requirements for a minimum number of participants for group contracts are waived.
12. All amendments to ORP 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.
13. Accurate records will be maintained on each participant in the ORP reflecting contributions received on a tax-deferred basis and identifying the account as a 403(b)(1) or 403(b)(7).
14. A toll-free interactive telephone system is available that will permit participants to access ORP accumulations or speak with customer service representatives.
15. 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, SHSU requires that the website allow participants to access individual ORP accumulations, review monthly contribution allocations, reallocate contributions and change investment products.

16. 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 SHSU Human Resources and given by presenters selected by SHSU when requested.
17. SHSU's remittances will be accepted.
18. SHSU's remittance reports sent to the vendor, will be in the format and method agreed upon by SHSU and the vendor.
19. 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 SHSU Payroll Office 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.
20. Remittances to the participant's account(s) will be credited preferably within one business day of receipt, but no later than three business days. Remittance acknowledgments and account statements are to be sent directly to the participant no less than quarterly.
21. Fund transfers among participant accounts under the ORP will only be accepted from other active ORP vendors and made to other active ORP vendors. All transfers will be direct transfers in accordance with the TSUS ORP Plan Document (Exhibit E-6) 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.
22. Fund rollovers may not be accepted from any other types of retirement plans.
23. Contributions will be accepted only from the Payroll Office or Human Resources and only for amounts authorized or required by Texas law. No other funds may be deposited into an ORP account. (Transfers from an ORP account with one authorized vendor to an ORP account with another authorized vendor are acceptable for deposit.)
24. SHSU's procedure for handling Domestic Relations Orders (DRO), as outlined in the Vendor Administrative Procedures, Section V, Item G, will be followed. Proper administration of these requests is the vendor's responsibility.
25. A completed Representative Acknowledgment Form will be filed with SHSU for each representative assigned to work with SHSU employees (see Exhibit E-5). 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 TSA programs. Separate vendor representatives for each program are prohibited.
26. 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 SHSU website at <https://www.shsu.edu/dept/human-resources/benefits/retirement-program.html>.

27. The ORP Participation Standards are accepted as conditions for continued authority to market ORP products as an active vendor (see Exhibit E-2).
  28. The following reports must be submitted annually to SHSU 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 Performance Disclosure Exhibit E-3
    - b. Vendor Rating Information Exhibit E-4
- In addition, vendor agrees to submit a summary report of total plan assets to SHSU Human Resources upon request.
29. 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.
  30. Each vendor, after initial approval to market ORP products, may be required to submit a complete recertification at any time or for any reason deemed appropriate by SHSU.
  31. Each vendor may terminate participation with the SHSU ORP by providing written notice to each participant and SHSU Human Resources at least 60 days in advance of the termination date.

**(ADDITIONAL ITEMS FOR SPECIFIC VENDORS)**

32. In addition to items 1-33 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.
33. In addition to items 1-32 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.

34. In addition to items 1-33 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.
35. In addition to items 1-33 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.



**SAM HOUSTON STATE UNIVERSITY  
VENDOR CERTIFICATION STATEMENT - ORP**

By signature on this certification statement, I agree on behalf of the vendor named below, to comply with the conditions set forth in the Sam Houston State University (SHSU) Optional Retirement Program (ORP) Vendor regulations. I certify compliance with items 1-33 in Section IV.A and the applicable item(s) of 34-37 in the same section.

I understand that approval by SHSU 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 SHSU employees. I understand that my organization will not be considered authorized until the Primary Contact receives written notification of such approval from SHSU. I understand that this privilege may be terminated by SHSU 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 Product/Investment Performance Disclosure form (see Exhibit E-3). 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.
2. The completed Vendor Rating Information form (see Exhibit E-4). This form applies to insurance and annuity vendors only.
3. 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 SHSU Human Resources. This individual will be the recipient of regular correspondence and notices from SHSU Human Resources, and must be able to disseminate important information in a timely manner to all authorized vendor representatives as requested by SHSU.
  - 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 SHSU employees. This person must provide each newly authorized representative with a current copy of the ORP Vendor regulations prior to signing and submitting the Representative Acknowledgment Form to SHSU 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 SHSU Payroll Office, for questions concerning the monthly remittances, posting of remittances, fund transfers and distributions.
4. 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.
5. Provide an Internet website address that provides potential customers information about the vendor and available investment products. A website is required.
6. List as representatives the names of brokers and/or representatives with whom you have a third party agreement to provide investment advice for ORP participants. Furnish a Representative Acknowledgment Form for each. (Exhibit E-5). These representatives will represent both ORP and TSA programs. Separate vendor representatives for each program are prohibited.

## V. VENDOR ADMINISTRATIVE PROCEDURES

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

A. ELIGIBILITY FOR ORP PARTICIPATION

SHSU will determine which employees are eligible for ORP based on ORP eligibility standards of state law and the Texas Higher Education Coordinating Board.

B. ENROLLMENT PROCEDURES

The following forms must be completed by the employee and submitted to SHSU Human Resources. Forms are provided on the SHSU University Human Resources website at <https://www.shsu.edu/dept/human-resources/benefits/retirement-program.html>.

1. SHSU Salary Reduction Agreement and Change of Company Form
2. Election to Participate in Optional Retirement Program and/or Refund (TRS 28), if the employee is participating in TRS and wants to request a refund.

In addition, the employee should submit the vendor application to Human Resources or acceptable documentation indicating an account has been opened.

C. EFFECTIVE DATE OF PARTICIPATION (PAYROLL DEADLINES)

1. SHSU will determine the employee's effective date of ORP participation. ORP elections received on or before the first day of employment will be effective the first day of employment. If ORP election is after the first day of employment, the ORP elections will be effective the following 16<sup>th</sup> 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.
2. Any salary reduction authorization that is submitted incorrectly or incompletely will be returned to the submitting party immediately. The employee and representative are responsible for resubmitting the corrected forms within the employee's eligibility period. The final complete and correct application submission will determine the employee's effective date of participation.

D. WITHDRAWAL OF TEACHER RETIREMENT SYSTEM (TRS) CONTRIBUTIONS

An employee who elects to participate in the ORP may withdraw his or her contributions from TRS. The employee must submit a properly completed Election to Participate in Optional Retirement Program and/or Refund (TRS 28) to Human Resources. Rollovers or transfers must be made in compliance with federal and state law. Refunds may not be transferred to an ORP account.

E. PROCEDURE FOR CHANGING THE ORP VENDOR

1. A change of vendor is the only change a participant can make after the initial election to participate in ORP.
2. Participants can change vendors by submitting a SHSU Salary Reduction Agreement and Change of Company 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 beginning of a payroll period will be effective the beginning of the next payroll period.

F. ORP DISTRIBUTION RULES

1. A distribution of funds will only be made upon the occurrence of a distributable event, defined in Title 8, Section 830.105 of the Texas Government Code as follows:

- a. Death
  - b. Retirement
  - c. Termination of employment in all public institutions of higher education in Texas
  - d. Attainment of age 70 ½
2. Distributions may only be made by the vendor upon receipt of a properly completed and signed Vesting Certification Form or letter from Human Resources confirming termination and vesting status. These documents must be signed by an authorized representative of SHSU. The vendor may not delay distribution by requiring additional paperwork or signatures or through some other means. The distribution confirmation form and check should be sent directly to the former SHSU employee or designated vendor as instructed.
  3. Distributions under a Qualified Domestic Relations Order may be made based on the procedures stated below.

#### G. QUALIFIED DOMESTIC RELATIONS ORDER (QDRO) PROCEDURES

A Domestic Relations Order is a notice of entitlement that awards an interest in the ORP account value to an alternate payee. Title 8, Chapter 804 of the Texas Government Code, makes the vendor responsible for qualifying a Domestic Relations Order and administering benefits in accordance with the Code. The following procedure should be used when executing a QDRO for a SHSU ORP participant.

1. Employee/alternate payee's responsibility:

Domestic Relations Order decree must be sent to the employee's ORP vendor to determine if the order meets the criteria for a "Qualified" Domestic Relations Order (QDRO).

2. Vendor's responsibilities:

- a. Determine if the Domestic Relations Order meets the criteria established in Chapter 804. The vendor will communicate the results of its determination to the employee and alternate payee in writing, sending a copy of the determination to SHSU Human Resources.

- b. If the Order is "qualified", execute the provisions of the order.

3. SHSU Human Resources responsibilities:

When notified by a vendor that a Domestic Relations Order is a QDRO, SHSU should place a copy of the notice in the employee's personnel file.

#### H. TRANSFER OF EXISTING ORP FUNDS

Total transfers of ORP funds, partial transfers of funds, and transfers between a 403(b)(7) account (mutual fund) and a 403(b)(1) account within the ORP are permitted. Transfers are only permitted to active ORP vendors. The following procedure applies to partial as well as total ORP fund 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. A SHSU Capital Transfer Form must be completed. An ORP account must be transferred to a corresponding ORP account with the receiving vendor. The SHSU Capital Transfer Form must include the receiving vendor information.
  - c. Both the receiving vendor's rollover/transfer form and the SHSU Capital Transfer Form should be forwarded to Human Resources for signature.
2. SHSU Human Resources responsibilities:
- a. Upon receipt of the SHSU Capital Transfer Form and the receiving vendor's rollover/transfer form, Human Resources will verify that the receiving vendor is an authorized ORP vendor.
  - b. The completed SHSU Capital Transfer Form, with the attached receiving vendor's rollover/transfer form, is forwarded to the surrendering vendor by Human Resources or the receiving vendor. The forms will be returned to the employee if the receiving vendor is not an authorized ORP.
3. Surrendering vendor's responsibilities:
- a. The surrendering vendor must receive a completed SHSU Capital Transfer Form certified by SHSU Human Resources and the receiving vendor's rollover/transfer form, prior to making any transfers. If unauthorized transfers are made, SHSU has the right to require the surrendering vendor to recover the funds or make the account whole.
  - b. Upon receipt of the completed SHSU Capital Transfer 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.
  - 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. REPORTING PROCEDURES

- 1. Each vendor must submit, at least annually, a report or reports directly to each participant containing:
  - a. For all accounts:
    - (1) Name and address of participant
    - (2) Identifying number
    - (3) Total payments received this reporting period
    - (4) Expense charges this reporting period
    - (5) Net payments this reporting period
    - (6) Total value of account at end of this reporting period
    - (7) Net cash surrender value of account at end of this reporting period reflecting all potential charges against the account if it were surrendered for cash as of the last day of this reporting period

- b. For fixed annuity accounts, submit the following additional information:
    - (1) Interest rate or rates paid on this account from the previous reporting period to the end of the current reporting period
    - (2) Where multi-level rates of interest were paid on an account, a breakdown showing the amount in the participant's account at each interest level, the amount of interest earned at each interest level, and the rates of interest
  - c. For variable annuity and custodial accounts, submit the following additional information:
    - (1) Units of each fund or investment or account purchased this reporting period
    - (2) Total units of each fund or investment in the account at end of this reporting period
    - (3) The value of each unit of each fund or investment or account for this reporting period
- 2. Each vendor must submit confirmation of receipt of funds (remittance acknowledgment) directly to each participant at least quarterly. The report shall contain the date and amount of each payment received during the reporting period.
  - 3. Each vendor must, immediately upon execution of a transfer from one fund or investment account to another fund or investment account, submit a confirmation directly to the participant. This confirmation shall include all transfer information, including a statement of the charges made for the transfer, if any.
  - 4. Company literature such as Annual Reports and Proxy Statements will be mailed directly to the participant's permanent address.

#### J. SOLICITATION PROCEDURES

- 1. SHSU 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 SHSU employees, or is disruptive to employees or SHSU business.
- 2. Properly appointed representatives of SHSU ORP vendors are permitted to solicit eligible employees at SHSU facilities only as invited guests of the administration or the employee. They must abide by the rules established by SHSU Human Resources.
- 3. Representatives are allowed to make presentations on SHSU 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 of information on newly hired employees is prohibited.
- 6. All representatives are expected to abide by SHSU parking regulations. Excessive parking violations may result in the loss of solicitation privileges.
- 7. SHSU employees are not required to provide copying, notary or other clerical service to representatives conducting business in SHSU buildings.

K. VENDOR ADMINISTRATIVE CHANGES

1. Changes to existing information:

SHSU 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:

SHSU 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. SHSU Human Resources will notify the vendor if acceptable. New representatives may not contact SHSU 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:

Sam Houston State University  
Human Resources Department  
Box 2356  
Huntsville, Texas 77341-2356

Physical address:  
John W. Thomason Building  
1831 University Ave, Suite 202  
Human Resources Department  
Huntsville, TX 77340

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. SHSU 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 ORP

1. SHSU may terminate a vendor's participation in the ORP 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 ORP by sending a written notice to each participant in the program and SHSU Human Resources at least 60 days in advance of the termination date.

## VI. EXHIBITS TO VENDOR REGULATIONS

Exhibit E-1 Texas Attorney General's Opinions

*This summary is provided by the Texas Higher Education Coordinating Board and serves as general information regarding ORP administration.*

Exhibit E-2 ORP Participation Standards

*This exhibit describes the minimum participation standards required for a vendor to remain active.*

Exhibit E-3 Product/Investment Performance Disclosure

*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.*

Exhibit E-4 Vendor Rating Information

*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.*

Exhibit E-5 SHSU ORP/TSA Representative Acknowledgement Form

*This form must be completed by a prospective representative, vendor and approved by SHSU Human Resources. Representative cannot contact SHSU employees until notification of approval is complete.*

Exhibit E-6 Texas State University System ORP Plan Document

Exhibit E-7 Authorized Active Vendors

Exhibit E-8 Authorized Inactive Vendors (limited to contributions only)



**EXHIBIT E-1**

## Selected Texas Attorney General's Opinions regarding ORP

AGO #	Date	Summary
M-196	02/68	Validity of certain sections of ORP act.
M-420	06/69	ORP vesting: effective after one year and can be with more than one company, but only one institution (revoked by H-99, 1973).
M-595	03/70	No life insurance in ORP contracts (revoked by MW-244, 1980).
M-647	06/70	Teachers and auxiliary employees must be member of either TRS or ORP; if return to TRS, cannot receive TRS credit for time in ORP.
M-1027	12/71	No series of elections: only one-time choice between TRS and ORP.
H-99	09/73	Revokes a section of M-420 on ORP vesting; can be with more than one institution.
H-371	08/74	Only one election; if choose, then have educational absence, cannot choose again upon return.
H-532	02/75	Benefits available only upon termination, retirement, death or total disability; transfers allowed but benefits must remain unavailable; no loans either.
H-1060	09/77	Can transfer from one ORP to another as long as not used as access to benefits.
H-1184	06/78	One-time option to participate in ORP; ISD employees not eligible.
H-1277	12/78	Governing board may not make a rule defining "full-time" employment for ORP eligibility purposes to mean TRS definition of "one-half time or more of standard workload"; must use "plain language" interpretation of full-time (100%).
MW-244	09/80	1973 amendments to ORP statute allow incidental death benefits as defined in IRS Revenue Ruling 70-581 (revokes M-595, 1970).
MW-548	12/82	Governing board may provide for 403(b) investments such as mutual funds, money market funds or fixed or variable annuities; benefits are available only upon termination; legislature intended a single system of regulation for ORPs.
JM-691	05/87	Institutions can limit the number of ORP companies but not TSA companies (interpretation of HB 1824, 1985).
LO-88-88	08/88	Vesting issues should be resolved by the institutions, not AG.
JM-1151	03/90	Rider 31 of Art. III of FY90-FY91 General Appropriations Act is invalid to extent it attempts to expand class of ORP-eligible employees (TAMU extension employees).
LO-93-48	06/93	If provisions allowing a different rate of state contributions to TRS and ORP were challenged as violating the equal protection clause of the 14th amendment of the U.S. Constitution, a court would probably use the rational basis test to determine their validity.
DM-271	11/93	ORP statute permits institutions to limit vendors and scrutinize the quality of their products.
LO-96-133	12/96	The General Appropriations Act's prohibition on institutional use of local funds to supplement state contribution for ORP participants hired since 09/01/95 is not unconstitutional.

*prepared by Texas Higher Education Coordinating Board (rev. 05/99)*

## EXHIBIT E-2

### ORP/TSA PARTICIPATION STANDARDS

SHSU maintains active and inactive lists of vendors for the ORP/TSA. The *active list* contains those vendors who are currently permitted by SHSU 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/TSA participants who initiate a new account with your company or new ORP/TSA 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 TSA during the first year of active status. Thereafter, all vendors must enroll a minimum of three (3) new participants in ORP and/or TSA **AND** maintain a minimum of five (5) actively contributing participants each calendar year in ORP and/or TSA.

SHSU Human Resources may require a vendor to provide a report of employees with new and active ORP or TSA 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 TSA 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-3**

**SAM HOUSTON STATE UNIVERSITY  
PRODUCT/INVESTMENT PERFORMANCE DISCLOSURE**

Vendors are required to provide the following information for each separate product/investment offered to SHSU employees. This information must be included with all applications for active vendor status. In addition, active vendors must submit this information to SHSU 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**       **TSA Only**       **ORP and TSA**      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 largest mutual funds 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. 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 printout of your website page if it contains the required information.

**C. REMITTANCE POSTING**

Remittances are required to be credited to participant's accounts preferably within one business day of receipt (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 cannot be processed within one business day).

Are the ORP and TSA contributions credited to each participant's account within one business day of receipt of the transaction?  
Yes     No

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

**EXHIBIT E-4**

**VENDOR RATING INFORMATION**

Each insurance and annuity vendor is required to submit the following information to SHSU 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: \_\_\_\_\_

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**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)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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**EXHIBIT E-6**

Plan Document – ORP  
ADOPTED by the Board of Regents – November 21, 2008  
Revised February 2016

**Texas State University System  
Optional Retirement Program Plan**

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# Texas State University System

## Optional Retirement Program 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 in compliance with and under the authority of the Texas Government Code, Chapter 830. 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 Optional Retirement Program ("ORP") 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"), the Income Tax Regulations, §1.403(b), with the provisions of the Texas Government Code, Chapter 830 ("the Texas ORP Law"), and the Rules of the Texas Higher Education Coordinating Board, Texas Administrative Code, Title 19, Chapter 25 ("the ORP Rules"). 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, or with the Income Tax Regulations, or with the Texas ORP Law, or with the ORP Rules, or with the Plan, the provisions of the Code, or the Income Tax Regulations, or the Texas ORP Law, or the ORP Rules, or the Plan, shall prevail in that order of precedence. Where the law, including but not limited to the Code, the Income Tax Regulations, the Texas ORP Law, and the ORP Rules, 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 definitions in the ORP Rules, Texas Administrative Code, Title 19, §25.3, are hereby incorporated by reference to the extent that the context does not clearly require another meaning.

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, 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 8 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 Employer’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. (This definition of Compensation is for the purpose of complying with the provisions of the Code and Income Tax Regulations. Compensation that is subject to ORP contributions is as defined in the Texas Government Code, Chapter 821, Section 821.001.)

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

2.11 **“Elective Deferral”**: The Employer contributions made to a retirement plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre- tax salary reduction contributions. (This Plan does not permit Elective Deferrals; but references to Elective Deferrals are required for provisions relating to the Section 415 limit on deferrals.)

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 Optional Retirement Program under the provisions of the ORP Rules, 19 TAC §25.4.

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 Optional Retirement Program 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 authorized to participate in the Optional Retirement Program under the provisions of the Texas ORP Law, the Texas Higher Education Coordinating Board or the Texas Education Agency.

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 purposes of the Plan, Severance from Employment does not occur before a former employee also meets the definition of a "Break in Service" in the ORP Rules, 19 TAC §25.3(4).

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.

## **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 Employer; 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, the Texas ORP Law and the ORP Rules. 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**

Eligibility to elect to participate in the Plan shall be governed by the Texas ORP Law, Sections 830.101 through 103 and the ORP Rules, Rule 25.4.

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

Election to participate in the Plan for the first time shall be governed by the Texas ORP Law, Section 830.102, and the ORP Rules 25.4(e), (f) and (g). Eligibility to continue or resume participation in the Plan shall be governed by the Texas ORP Law, Sections 830.103, 830.105, and 830.106, and the ORP Rules, Rules 25.4(j), 25.5(d), and 25.5(f) through (i). 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.

### **4.3 Vesting**

Vesting in the Plan shall be governed by the Texas ORP Law, Section 830.205 and the ORP Rules, Rules 25.5(a) through (c) and 25.5(e).

### **4.4 Contributions Made Promptly**

All contributions under the plan shall be transferred to the applicable funding vehicle within the time limits in the Texas ORP Law, Section 830.202 and ORP Rules, Rule 25.6(a)(8).

## **Section 5 Contributions**

### **5.1 Contributions are Non-Elective**

Election to participate in ORP is a one-time irrevocable option, and therefore, employee contributions are considered non-elective.

### **5.2 Amount of Contributions**

The amount of contributions to a participant's account or accounts shall be as provided in the General Appropriations Act of the State of Texas for each biennium, and, to the extent not in conflict with that Act, as provided by the Texas ORP Law, Sections 830.201, 830.2015, , and, and the applicable provisions of the ORP Rules, Rule 25.6(a).

### **5.3 Limitation on Contributions**

The maximum amount of the deferral for any participant for any one Calendar Year shall be the lesser of the amount specified in Section 5.2 of the Plan and the amount established for that year under the Code, Section 401(a)(17). If Section 401(a)(17) as interpreted by Income Tax Regulations Section 1.401(a)(17)-1(c)(4)(ii)(A), does not apply because the person first became a participant in the ORP before September 1, 1996, a contribution in excess of the Section 401(c)(17) limit may be made if the provisions of the Texas ORP Law, Section 830.201(f) and the ORP Rules, Rules 25.6(a)(2)(B) and 25.6(a)(5)(B) so permit. However, no deferrals shall be made that would exceed the limitations on the amounts excludable from gross income under Sections 415 of the code.

### **5.4 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 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.

### **5.5 Corrective Distributions**

If, notwithstanding the application of section 5.1 and 5.2, the limits under Section 415 of the Code are exceeded

for any taxable year, whether by inadvertence or by aggregation that includes a Section 403(b) Plan, or other plan the contributions to which are required to be aggregated to determine the maximum permissible deferral, with another employer, then to the extent timely identified, the corrective actions shall be taken in the following sequence until the limits are no longer exceeded: (i) Contributions under this plan in excess of those provided for in Section 5.3, if any, shall be returned to the Employer; (ii) Elective Deferrals under any other Plan of the Employer shall be returned to the Participant until contributions are within the Code Sections 415 and 414(v) limits; (iii) The Plan Administrator shall request that the plan administrator of a plan that the employee participates in with another employer to return elective deferrals, if any, to the participant until contributions are within the Code Sections 415 and 414(v) limits, and contributions to this Plan are in compliance with Section 5.3; (iv) The Plan Administrator shall request that the plan administrator of a plan that the employee participates in with another employer to return any non-elective deferrals, if any, until contributions are within the Code Sections 415 and 414(v) limits, and contributions to this Plan are in compliance with Section 5.3. If it is not possible to return contributions as provided above, and an excess amount still exists, the Plan Administrator shall direct the vendor under this Plan holding the excess amount to hold the excess unallocated in a suspense account.

## **Section 6 Loans Not Permitted**

Loans are not permitted under the Plan.

## **Section 7 Benefit Distributions**

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

Benefits may only be distributed as provided in the Code, Income Tax Regulations, Texas ORP Law, Sections 830.105 and 830.205 and the ORP Rules, Rules 25.5(a) through (d), and Rules 25.6(d) and (f). If immediately after contributions under this Plan cease, a participant transfers directly to another Public Institution of Higher Education that participates in the Texas ORP such that Severance from Employment as defined in this Plan does not occur, and contributions are then made to a Texas ORP plan with the new employer, certification of Severance from Employment by the new employer, or any subsequent Public Institution of Higher Education that participates in the Texas ORP to whom there was a direct transfer, is required before any benefit distribution may occur. Distributions to participants under age 59-1/2 may be subject to additional tax as provided in the Code, Section 72(t).

### **7.2 Forms of Distribution**

A participant who is qualified under Section 7.1 to receive distributions may elect to receive distributions in any amounts, form and timing provided for under the Individual Agreement with the Vendor involved that is in compliance with Section 7.3 and the requirements of the Code and the Income Tax Regulations.

### **7.3 Mandatory Required Distribution**

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

### **7.4 Hardship Distributions Not Permitted**

Hardship distributions are not permitted under the Plan.

## **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 Employer employing or formerly employing the participant, subject to the terms of the Individual Agreements. A participant transferring from one Employer to another is permitted to transfer ORP funds to a Vendor on the approved list for the new Employer, subject to the terms of the Individual Agreement. Any transfer of funds from one Vendor to another shall be by trustee to trustee transfer.

## **8.2 Plan-to-Plan Transfers to the Plan from other Texas ORP Plans**

(a) The Administrator may, but is not required to, permit a transfer to this Plan of the Account Balance of a Participant or class of Participants to the Plan from another plan which is a plan established under and operated in conformity with the Texas ORP Law and the ORP Rules. 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, the Texas ORP Law and the ORP Rules, 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 for the Campus 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 and the Texas ORP Law and ORP Rules. 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 ORP Plan**

(a) The Administrator may, but is not required to, permit a Participant or class of Participant 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, the Texas ORP Law and the ORP Rules. 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 or former 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 Texas ORP Law and the ORP Rules, 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 he or she 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, the Texas ORP Law, the ORP Rules 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, 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.

### **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; provided, however, that Vendors shall have the right to determine the investment of unvested Employer contributions which are required under the Texas ORP Law and the ORP Rules, Rules 25.6(a)(11) and 25.6(c)(4) to be returned to the Employer if the employee does not vest. In accordance with the ORP Rules, Rule 25.6(h)(3)(B), the System and the Employer have no fiduciary responsibility for the market value of a participant's ORP investment or the financial stability of the ORP 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 the Texas ORP 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 the Texas ORP 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 the Texas ORP Law or if the Texas ORP Law is repealed.

## **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 the Texas ORP 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 Miscellaneous**

### **11.1 Non-Assignability**

Except as provided in Section 11.2, 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.

### **11.2 Domestic Relation Orders**

Notwithstanding Section 11.1, 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 the Texas Government Code, Chapter 804, 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. As required by the Texas Government Code, Chapter 804, Section 003(d) and the ORP Rules, Rule 25.6(d)(1), each Vendor is solely responsible for determining whether a domestic relations order is qualified and payable.

### **11.3 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.

### **11.4 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, 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.

### **11.5 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.

### **11.6 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.

### **11.7 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.

### **11.8 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 ORP Account, provided the requirements of the ORP Law, Section 830.107 and the ORP Rules, Rule 25.6(e) are met.

### **11.9 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.

### **11.10 Governing Law**

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

### **11.11 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.

### **11.12 Gender**

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

### **11.13 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.

#### **11.14 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.

#### **11.15 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, the Texas ORP Law and the ORP Rules. 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 also supply the Employer with any available information which may be reasonably necessary to enable the Employer to comply with the ORP Rules, Rule 25.6(g).

Each Vendor shall provide each participant with reports complying with the requirements of the ORP Rules, Rules 25.6(c)(8) through 25.6(c)(14). Such reports may be based on the calendar year.

#### **11.16. 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.

#### **11.17 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, the ORP Law and the ORP Rules, or becomes permissible by reason of amendments to these controlling laws and regulations.

#### **11.18 Effect on Retiree Medical Insurance of Closing all ORP Accounts**

Participants proposing to close all ORP accounts are cautioned, as required by the ORP Rules, Rule 25.6(h)(4), that if the participant wishes to enroll in and continue to be enrolled in the group Insurance Program administered by the Employees Retirement System of Texas, they must meet the definition of an ORP Retiree in the Statutes and Regulations pertaining to that program. An ORP Retiree must, under that definition, be eligible to receive an annuity or periodic distribution of funds under the ORP Program and thus must have an open ORP account.

### **Exhibit 7 – Authorized Active Vendors**

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

<u>Company Name</u>	<u>Funds Offered</u>	<u>Phone Number</u>	<u>Website</u>
Fidelity	Mutual	1-800-343-0860	<a href="http://www.fidelity.com">www.fidelity.com</a>
Voya (formerly ING)	Fixed & Variable	1-800-422-3862	<a href="http://www.orptx.com">www.orptx.com</a>
MetLife (Brighthouse)	Fixed, Variable & Mutual	1-800-638-7732	<a href="http://www.metlife.com">www.metlife.com</a>
Pentegra (Aspire)	Mutual	1-866-634-5873	<a href="http://www.pentegra.com">www.pentegra.com</a>
TIAA	Fixed & Variable	1-800-842-2273	<a href="http://www.tiaa.org">www.tiaa.org</a>
VALIC (AIG)	Fixed & Variable	1-800-448-2542	<a href="http://www.valic.com">www.valic.com</a>

### **Exhibit 8 – Authorized Inactive Vendors**

Vendors authorized to receive ongoing contributions. Exchanges and Transfers to these vendors are not permitted under the Plan. These vendors are not available to new participants:

American Funds  
USAA