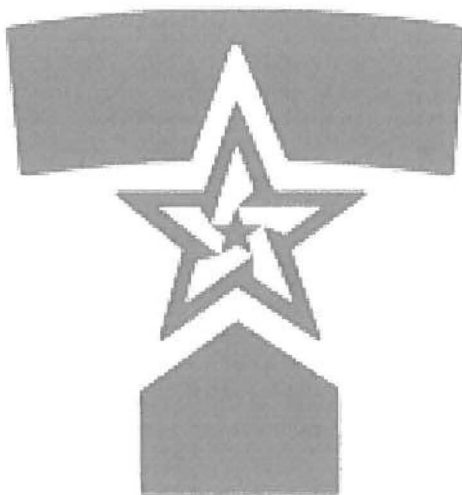


TEXAS STATE UNIVERSITY SYSTEM



Optional Retirement Program Plan February 2016

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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 Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code. (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.