

**OREGON COAST COMMUNITY COLLEGE  
403(b) PLAN**

**SECOND AMENDMENT**

**P A R T Y**

This Second Amendment is adopted, effective January 1, 2020, by Oregon Coast Community College, hereinafter referred to as the "College."

**R E C I T A L S**

The College sponsors a tax deferred annuity plan under Section 403(b) of the Internal Revenue Code of 1986, as amended ("Code"), for its eligible employees.

Effective January 1, 2009, the College adopted a written plan document in accordance with final regulations issued under Code Section 403(b) and named the plan the Oregon Coast Community College 403(b) Plan (the "Plan").

The Plan was last amended effective January 1, 2009.

The College desires to further amend the Plan in certain respects.

**A M E N D M E N T**

The Oregon Coast Community College 403(b) Plan is hereby amended, effective January 1, 2020, or as of such earlier or later dates as specified herein or as provided below, but no later than the date required for continued compliance with applicable federal law, as set forth on the pages attached hereto that are incorporated by reference herein as follows:

1. TABLE OF CONTENTS at pages i, ii, and iii.
2. ARTICLE I—PLAN
  - a. 1.2 and 1.3 at page 2, effective January 1, 2010.
  - b. 1.4 at page 2.
3. ARTICLE II—DEFINITIONS
  - a. 2.3(a) at page 4, effective January 1, 2010.
  - b. 2.4 at pages 4 and 5.
  - c. 2.5 at page 6. 2.5(d) is effective January 1, 2010.
  - d. 2.8 and 2.9 at pages 6 and 6a, effective January 1, 2010.
4. ARTICLE IV—ELECTIVE CONTRIBUTIONS
  - a. 4.1(b) at page 8, effective January 1, 2010.

- b. 4.2 at page 9. 4.2(b) is effective January 1, 2010.
- c. 4.6 at page 10.
- d. 4.9 is added at pages 11, 12, and 12a, effective January 1, 2010.
- 5. ARTICLE V—ROLLOVER CONTRIBUTIONS
  - a. 5.2 at page 12b.
  - b. 5.3 at pages 12b and 12c. 5.3(a) is effective January 1, 2010.
- 6. ARTICLE VII—DISTRIBUTIONS
  - a. 7.4(a) at page 16, effective January 1, 2010.
  - b. 7.5 at pages 17 and 17a, effective January 1, 2010.
- 7. ARTICLE VIII—PLAN LOANS AND HARDSHIP WITHDRAWALS
  - a. 8.1 at page 23.
  - b. 8.2 at pages 23 and 24.
- 8. ARTICLE IX—ASSIGNMENT AND ALIENATION
  - a. 9.1 at page 25.
  - b. 9.4 is added at page 25.
- 9. ARTICLE XI—PLAN ADMINISTRATION
  - a. 11.1 at page 27, effective January 1, 2010.
  - b. 11.2 at page 27.
  - c. 11.5 at page 28.
- 10. ARTICLE XII—GENERAL PROVISIONS
  - 12.7 and 12.8 are added at page 29.
- 11. EXHIBIT A—VENDORS AND CONTRACTS at page A-1.

The College has caused this amendment to be executed by its duly authorized representative as of the date set forth below.

**OREGON COAST COMMUNITY COLLEGE**

By: Bryette Rysling

Print Name: Bryette Rysling

Date: 3/10/2020

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## ARTICLE I

### PLAN

**1.1 Name of Plan.** The Plan shall be known as the Oregon Coast Community College 403(b) Plan.

**1.2 Plan Documents.** The Plan shall consist of the provisions set forth in this document, together with the provisions of the Contracts. The terms of the Contracts are hereby incorporated by reference into the Plan, excluding any terms that are inconsistent with this Plan document or Code Section 403(b) and the regulations issued thereunder.

**1.3 Records of Current and Former Vendors.** The Plan Administrator shall maintain a list of all Vendors under the Plan, and that list is hereby incorporated as part of the Plan. The Vendors and the Plan Administrator shall exchange such information with each other as may be necessary to satisfy Code Section 403(b) or other requirements of applicable law. The Plan Administrator shall keep all Vendors (including any Vendor that has ceased to be eligible to receive elective contributions under the Plan) informed of the Plan Administrator's name and contact information in order to coordinate the exchange of information necessary to satisfy Code Section 403(b) or other requirements of applicable law.

The Contracts and Vendors under the Plan shall be listed on Exhibit A, which is attached hereto and incorporated by this reference herein. The Plan Administrator may update Exhibit A from time to time to reflect changes in the Contracts and Vendors without a formal amendment to this Plan.

**1.4 Cessation of Eligibility to Receive Elective Contributions.** If any Vendor ceases to be eligible to receive elective contributions under the Plan, the College will enter into an information sharing agreement to the extent that the Contracts with that Vendor do not provide for the exchange of information described in this section. Under the information sharing agreement, the College and the Vendor will agree to provide each other with the following information:

(a) Information necessary for the Vendor's Contracts, and any other annuity contract or custodial accounts to which Plan contributions have been made, to satisfy Code Section 403(b), including the following:

(i) The College shall provide information as to whether a Participant's employment with the College is continuing, and shall notify the Vendor when a Participant has had a Severance from Employment for purposes of the distribution restrictions in 7.2.

(ii) The Vendor shall provide information to the College or other Vendors concerning a Participant's or Death Beneficiary's annuity contracts, custodial accounts, or qualified employer plan benefits, to enable a Vendor to determine the amount of any plan loans (if applicable) and any rollover accounts that are

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available to the Participant to satisfy a financial need for which a hardship withdrawal is requested.

(b) Information necessary for the Vendor's Contracts, and any other annuity contract or custodial account to which Plan contributions have been made, to satisfy other tax requirements, including the following:

(i) The amount of any plan loan that is outstanding to a Participant, to enable a Vendor to determine whether an additional plan loan will comply with the loan limitations of 8.1(c).

(ii) Information concerning a Participant's or Death Beneficiary's after-tax employee contributions, to enable a Vendor to determine the extent to which a distribution is includible in gross income.

## ARTICLE II

### DEFINITIONS

Throughout this Plan, the following terms shall have the following meanings when used with initial capital letters:

**2.1     Code.** The Internal Revenue Code of 1986, as amended, and successor codes thereto.

**2.2     College.** The Oregon Coast Community College.

**2.3     Contracts.** The contracts or other agreements governing annuity contracts and custodial accounts, as defined in this section, that are issued for the purpose of funding amounts held under the Plan and that are specifically approved by the Plan Administrator for use under the Plan.

**(a)     Annuity Contract.** A nontransferable group or individual contract, as defined in Code Sections 403(b)(1) and 401(g), issued by an insurance company that is qualified to issue annuities in the state of Oregon, and that includes payment in the form of an annuity.

**(b)     Custodial Account.** A group or individual custodial account, as defined in Code Section 403(b)(7).

**2.4     Death Beneficiary.** The person or persons who are entitled to receive the Participant's benefits in the case of the Participant's death. Except as otherwise required by the terms of a distribution option elected by the Participant, the full amount of any remaining portion of a deceased Participant's accounts will be payable to the Death Beneficiary in a lump sum.

Each Participant may designate one or more Death Beneficiaries in accordance with the terms of the applicable Contract or Contracts under which the Participant's accounts are invested. The following rules shall apply to the extent they are not inconsistent with the provisions of an applicable Contract:

**(a)** A Death Beneficiary designation shall not be effective unless it is made in writing and filed with the Plan Administrator or the appropriate Vendor during the Participant's lifetime, in accordance with the procedures established by the Plan Administrator.

**(b)** If a Participant does not make an effective Death Beneficiary designation, or if the designated Death Beneficiary does not survive the Participant, the Death Beneficiary shall be the following persons in the following order of priority: first, the Participant's surviving spouse; second, the surviving children (excluding stepchildren) of the Participant in equal shares; third, the surviving parents (excluding stepparents) of the Participant in equal shares; fourth, the surviving siblings (excluding stepsiblings) of the Participant in equal shares; and fifth, the Participant's estate.

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(c) If a Participant designates his or her spouse as a Death Beneficiary and the Participant's marriage to that spouse is later dissolved, the designation of the former spouse as a Death Beneficiary shall be void unless the Participant submits a subsequent designation naming the former spouse as the Death Beneficiary. Notwithstanding the foregoing, the Participant's Death Beneficiary designation shall remain in effect to the extent required by a domestic relations order, as defined in 9.2.

## **2.5 Includible Compensation.**

(a) **Basic Definition.** An employee's actual wages in box 1 of Form W-2 for a year for services to the College, increased by any compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including any elective contribution under the Plan). The amount of an employee's Includible Compensation is determined without regard to any community property laws. Effective for remuneration paid after December 31, 2008, Includible Compensation shall include any differential wage payment, as defined in Code Section 3401(h)(2), that is paid by the College to the employee. If the College makes any differential wage payment during a Plan Year, all differential wage payments made during that Plan Year must satisfy the nondiscrimination requirements of Code Section 414(u)(12)(C).

(b) **Post-Severance Payments.** Amounts that are paid after an employee's Severance from Employment shall not be included in the employee's Includible Compensation, except as otherwise provided in subsection (i), (ii), or (iii) below.

(i) **Back Pay.** Back pay, within the meaning of Treasury Regulation § 1.415(c)-2(g)(8), shall be included in the employee's Includible Compensation for the Plan Year to which the back pay relates, to the extent that it otherwise satisfies the basic definition of Includible Compensation in (a) above.

(ii) **Regular Pay.** Includible Compensation shall include regular pay for services during the employee's regular working hours, or payment for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, provided that:

(A) Absent a Severance from Employment, the payment would have been made while the employee continued in employment with the College;

(B) The payment otherwise satisfies the basic definition of Includible Compensation in (a) above; and

(C) The payment is paid to the employee by the later of 2½ months after the employee's Severance from Employment or the end of the Plan Year in which the employee had the Severance from Employment.

(iii) **Differential Wage Payments.** Includible Compensation shall include any differential wage payments, as defined in (a) above.

(c) **Deemed 125 Compensation.** Includible Compensation for all Plan purposes shall include deemed 125 compensation. Deemed 125 compensation is an amount that is excludable under Code Section 106 and that is not available to a Participant in cash in lieu of group health coverage under a Code Section 125 plan solely because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as deemed 125 compensation only if the College does not otherwise request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

(d) **Annual Addition Limitation.** An employee's compensation received from the Related Employer that is includible in the Participant's gross income for federal income tax purposes (computed without regard to Code Section 911) for the most recent period that is a year of service (as defined in Treasury Regulation §§ 1.403(b)-2(b)(21) and 1.403(b)-4(e)), increased by any compensation reduction election under Code Section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) (including any elective contribution under the Plan). Includible Compensation does not include any compensation received during a period when the Related Employer was not an eligible employer within the meaning of Treasury Regulation § 1.403(b)-2(b)(8). The amount of an employee's Includible Compensation is determined without regard to any community property laws. Includible Compensation shall include any differential wage payment, as defined in Code Section 3401(h)(2), that is paid by the Related Employer to the employee. An employee's Includible Compensation is subject to the maximum dollar limitation described in Code Section 401(a)(17). This subsection (d) is also subject to the rules in subsections (b) and (c) regarding post-severance payments and deemed 125 compensation.

The definition in this subsection (d) applies for purposes of the annual addition limitation in 4.9.

**2.6 Plan Administrator.** The person, committee, or entity appointed by the College to administer the Plan in accordance with Article XI. In the absence of a different appointment, the College shall be the Plan Administrator.

**2.7 Plan Year.** The 12-month period beginning each January 1 and ending each December 31.

**2.8 Related Employer.** The College and any other entity that is under common control with the College under Code Section 414(b), (c), (m), or (o). For this purpose, the College shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Internal Revenue Service Notice 89-23.

**2.9 Severance from Employment.** The termination of an employee's employment with the College and all other Related Employers. An employee does not have a Severance from Employment under the following circumstances:

(a) In connection with a change of employment, the employee's new employer maintains the Plan with respect to the employee; or

(b) The employee's employment status changes from an employee to a "leased employee," as defined in Code Section 414(n).

**2.10 Valuation Date.** The Valuation Date shall be the dates as provided pursuant to the terms of the Contracts, and such other date or dates as may be designated by the Plan Administrator.

**2.11 Vendor.** The provider of an annuity contract or custodial account, as defined in 2.3, in which Plan assets are held and invested pursuant to a Contract.

## ARTICLE III

### ELIGIBILITY AND PARTICIPATION

**3.1 Eligibility.** Each employee of the College is eligible to participate in this Plan. For this purpose, an "employee" means an individual who performs services for the College as a common-law employee, and, effective January 1, 2009, an individual who is receiving differential wage payments, as defined in Code Section 3401(h)(2), from the College.

**3.2 Commencement of Participation.** An eligible employee shall become a Participant on the first day of the payroll period beginning on or after the later of the date he or she first becomes an eligible employee and the date he or she submits a deferral election pursuant to 4.1(c).

**3.3 Cessation of Participation.** A Participant shall cease to be a Participant on death or on distribution of his or her accounts following Severance from Employment.

**3.4 Recommencement of Participation.** A former Participant resumes participation on the first day of the payroll period beginning on or after the later of the date he or she again becomes an eligible employee and the date he or she completes a deferral election pursuant to 4.1(c).

**3.5 Effective Opportunity to Participate.** The Plan Administrator shall provide each eligible employee with information about the Plan that is sufficient to give the eligible employee an effective opportunity to make elective contributions, as required by Treasury Regulation § 1.403(b)-5(b)(2).

## ARTICLE IV

### ELECTIVE CONTRIBUTIONS

#### 4.1 Elective Contributions.

(a) **General.** Each eligible employee may elect to defer a portion of his or her Includible Compensation and have the College contribute it to the Plan instead of paying it to the Participant in cash. All elective contributions shall be made on a pre-tax basis.

(b) **Limitations on Elective Contributions.** The Plan Administrator may establish a maximum percentage of Includible Compensation for elective contributions, except that any such limitation shall not apply to catch-up contributions under 4.3. Any maximum percentage limitation established by the Plan Administrator shall be memorialized in a written document and shall apply to all Participants. In addition to the maximum limitation established by the Plan Administrator, if any, no Participant's elective contributions for a Plan Year shall exceed the lowest of the following amounts:

(i) The applicable dollar limitation under 4.2, plus any additional catch-up contribution allowed under 4.3;

(ii) The annual addition limitation described in 4.9, plus any additional catch-up contribution allowed under 4.3; or

(iii) The amount of the Participant's compensation that is available for deferral, after taking into account all other deductions from the Participant's compensation that are required by law or authorized or elected by the Participant.

(c) **Election Procedures.** An eligible employee may become a Participant at any time by submitting a deferral election to the Plan Administrator. A deferral election shall not be effective before the first day of the payroll period beginning on or after the date on which the Plan Administrator receives the election.

Once made, a deferral election shall continue in effect until it is changed in accordance with the following rules:

(i) A Participant may submit a new deferral election as of the first day of any subsequent payroll period.

(ii) A Participant may elect to stop making elective contributions at any time.

The changes described in (i) and (ii) above must be made by advance written notice to the Plan Administrator. Any such change shall apply only to payroll periods beginning on or after the effective date of the change. The Plan Administrator may adopt procedures for new, change, or stop elections, and may require that in order to be effective they be received a certain number of days prior to the first payroll period to which they will apply.

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(d) **Allocation of Elective Contributions.** The College shall transfer each Participant's elective contributions to applicable Contract or Contracts within 15 business days after the end of the month in which the amount would otherwise have been paid to the Participant. The Vendors shall separately account for each Participant's elective contributions made pursuant to this Article.

**4.2 Applicable Dollar Limitation.**

(a) **General Limitation.** Subject to subsection (b) below, if applicable, the maximum amount of a Participant's elective contributions for a calendar year shall not exceed the applicable dollar limitation under Code Section 402(g)(1)(B) for the calendar year, including cost-of-living adjustments pursuant to Code Section 402(g)(4) (\$16,500 effective January 1, 2009, \$17,000 effective January 1, 2012, \$17,500 effective January 1, 2013, \$18,000 effective January 1, 2015, \$18,500 effective January 1, 2018, \$19,000 effective January 1, 2019, and \$19,500 effective January 1, 2020).

(b) **Special 403(b) Catch-Up Limitation for Employees With 15 Years of Service.** Because the College is a qualified organization (within the meaning of Treasury Regulation § 1.403(b)-4(c)(3)(ii)), the applicable dollar limitation under (a) for any "qualified employee" is increased (to the extent provided in the Contracts) by the additional amount described in this subsection (b). For purposes of this subsection (b), a "qualified employee" means an employee who has completed at least 15 years of service (as defined in Treasury Regulation §§ 1.403(b)-2(b)(21) and 1.403(b)-4(e)), taking into account only employment with the College.

The additional amount described in this subsection is the least of the amounts described in (i), (ii), or (iii) below:

(i) \$3,000.

(ii) The excess of:

(A) \$15,000, over

(B) The total amount of special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years.

(iii) The excess of:

(A) \$5,000, multiplied by the number of the employee's years of service with the qualified organization, over

(B) The total elective deferrals, as defined in Treasury Regulation § 1.403(b)-2, made for the employee by the qualified organization for prior years.

(c) **Coordination of Catch-Up Limitations.** Amounts in excess of the applicable dollar limitation in subsection (a) shall be allocated first to the special 403(b) catch-up rule described in subsection (b), if applicable, and next as an age 50 catch-up contribution under 4.3.

**4.3 Age 50 Catch-Up Elective Contributions.** All employees who are eligible to make elective contributions under this Plan and who will attain age 50 or more by the end of a calendar year shall be eligible to make catch-up contributions for the calendar year in accordance with, and subject to the limitations of, Code Section 414(v) and the regulations thereunder. The catch-up contributions shall not be taken into account for purposes of the provisions of the Plan or the Contracts implementing the required limitations of Code Sections 401(a)(30), 403(b), and 415(c). The Plan shall not be treated as failing to satisfy the provisions of the Plan or the Contracts implementing the requirements of Code Section 403(b)(12), as applicable, by reason of the making of catch-up contributions under this section.

**4.4 Special Rule for a Participant Covered by Another Section 403(b) Plan.** If a Participant is or has been a participant in one or more other plans under Code Section 403(b) (or any other plan that permits elective deferrals as defined in Code Section 402(g)), then this Plan and all such other plans shall be considered as one plan for purposes of applying the provisions of 4.2 and 4.3. For this purpose, the Plan 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 Plan Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Employer shall be taken into account for purposes of the special limitation described in 4.2(b) only if the other plan is a Code Section 403(b) plan.

**4.5 Correction of Excess Elective Contributions.** If a Participant has an excess deferral as described in Code Section 402(g) (an excess of elective contributions and other elective deferrals over the applicable dollar limitation), the amount of the excess deferral, adjusted for any allocable gain or losses through the end of the taxable year, will be distributed to the Participant, in accordance with Treasury Regulation § 1.403(b)-4(f) and Code Section 402(g)(2)(A).

**4.6 Reduction of Elective Contributions.** Notwithstanding any other provision of this Plan, the Plan Administrator may at any time and from time to time direct that the amount that would otherwise be contributed to the Plan as elective contributions on behalf of one or more Participants pursuant to their elections under 4.1 be reduced to the extent the Plan Administrator deems necessary to satisfy the limitations described in 4.2, 4.3, and 4.9.

**4.7 Military Service.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). An employee whose employment is interrupted by, or who is on a leave of absence for, qualified military service under Code Section 414(u) may elect to make additional elective contributions upon resumption of employment with the College. The maximum amount of additional elective contributions that may be made under this section shall be equal to the maximum elective contributions that the

employee could have elected during the period of the interruption or leave if the employee's employment with the College had continued at the same level of Compensation during that period, reduced by the elective contributions, if any, actually made for the employee during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for five years following the employee's resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

**4.8 Death of Participant During Qualified Military Service.** If a Participant dies on or after January 1, 2007, while performing qualified military service, as defined in Code Section 414(u), the survivors of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under this Plan if the Participant had resumed active employment and then terminated employment on account of death.

**4.9 Annual Addition Limitation.**

(a) **Limitation.** Notwithstanding any provision of the Plan or the Contracts to the contrary, except to the extent permitted under 4.3 and Code Section 414(v), the annual addition with respect to a Participant's accounts for any limitation year (the Plan Year is the limitation year) may not exceed the lesser of:

(i) \$40,000 (plus cost of living adjustments permitted under applicable law) (\$49,000 effective January 1, 2009, \$50,000 effective January 1, 2012, \$51,000 effective January 1, 2013, \$52,000 effective January 1, 2014, \$53,000 effective January 1, 2015, \$54,000 effective January 1, 2017, \$55,000 effective January 1, 2018, \$56,000 effective January 1, 2019, and \$57,000 effective January 1, 2020); or

(ii) 100 percent of the Participant's Includible Compensation for the limitation year.

(b) **Annual Addition.** "Annual addition" means the sum of the following amounts allocated to a Participant's accounts under the Plan or any other plan aggregated with the Plan as of any date within the Plan Year:

(i) Employer contributions (excluding forfeitures) made directly or indirectly;

(ii) The Participant's contributions (whether mandatory or voluntary, but not including rollover contributions), if any;

(iii) Forfeitures;

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

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- (v) Allocations under a simplified employee pension.

4.9(b)(iv) and (v) will apply only if the Participant controls an employer that has a plan that provides for those types of annual additions. Amounts described in 4.9(b)(iv) are annual additions solely for purposes of the dollar limitation under 4.9(a)(i).

(c) **Aggregation of Plans.** For purposes of the annual addition limitation under 4.9(a), all Code Section 403(b) plans maintained by a Related Employer will be treated as one Code Section 403(b) plan.

If a Participant is in control of any employer for a limitation year, the sum of the Participant's annual additions for the limitation year under this Plan, any other Code Section 403(b) plans of the Related Employer, any defined contribution plans maintained by controlled employers, and any Code Section 403(b) plans of any other employers may not exceed the limit set forth in 4.9(a). For purposes of this paragraph, a Participant is in control of an employer based upon the rules of Code Sections 414(b), 414(c), and 415(h) and Treasury Regulation § 1.415(f)-1(f)(2)(ii); and a defined contribution plan means a defined contribution plan that is qualified under Code Section 401(a) or 403(a), a Code Section 403(b) plan, or a simplified employee pension within the meaning of Code Section 408(k). If the Participant is in control of an employer as described in this paragraph, the limitation year is the limitation year of that employer.

If the Plan is aggregated with a qualified plan of a controlled employer, the plans must satisfy 4.9(a) both separately and on an aggregate basis. For purposes of satisfying 4.9(a) separately, compensation from the controlled employer will not be aggregated with compensation from the Related Employer. For purposes of satisfying 4.9(a) on an aggregate basis, the total compensation from both employers is taken into account.

(d) **Coordination of Limitation on Annual Additions if Related Employer Has Another Code Section 403(b) Plan or Participant Is in Control of Employer.** The annual additions which may be credited to a Participant under this Plan for any limitation year will not exceed the limit under 4.9(a), reduced by the annual additions credited to the Participant under any other Code Section 403(b) plans of the Related Employer and, if the Participant is in control of an employer, any defined contribution plans maintained by controlled employers and Code Section 403(b) plans of any other employers. Contributions to the Participant's accounts under this Plan will be reduced to the extent necessary to prevent this limitation from being exceeded.

(e) **Excess Annual Additions.** If, notwithstanding 4.9(a) through (d), a Participant's annual additions under this Plan, or under this Plan and plans aggregated with this Plan under 4.9(c), result in an excess annual addition for a limitation year, the excess annual addition will be deemed to consist of the annual additions last credited, except annual additions to a defined contribution plan qualified under Code Section 401(a) or a simplified employee pension maintained by an employer controlled by the Participant will be deemed to have been credited first. An excess annual addition is the excess of the annual additions credited to the Participant for the limitation year under the Plan and plans aggregated with the Plan under 4.9(c) over the limit for the limitation year under 4.9(a).

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If an excess annual addition is credited to a Participant under this Plan and another Code Section 403(b) plan of the Related Employer on the same date, the excess annual addition attributable to this Plan will be the product of:

- (i) The total excess annual addition credited as of such date; multiplied by
- (ii) The ratio of (A) the annual additions credited to the Participant for the limitation year as of such date under this Plan, to (B) the total annual additions credited to the Participant for the limitation year as of such date under this Plan and all other Code Section 403(b) plans of the Related Employer.

(f) **Correction of Excess Annual Additions.** A Participant's excess annual additions for a taxable year are includible in the Participant's gross income for that taxable year. A Participant's excess annual additions attributable to this Plan will be credited in the year of the excess to a separate account under the Plan for such excess annual additions which will be maintained by the Vendors until the excess annual additions are distributed. This separate account will be treated as a separate contract to which Code Section 403(c) (or another applicable provision of the Internal Revenue Code) applies. Amounts in the separate account may be distributed at any time, notwithstanding any other provisions of the Plan.

## ARTICLE V

### ROLLOVER CONTRIBUTIONS

**5.1 General.** A Vendor may, in its discretion, accept rollover contributions of cash on behalf of an eligible employee, the amount of which shall be credited to a separate rollover account maintained for the employee and shall at all times remain fully vested and nonforfeitable.

**5.2 Definition of Rollover Contribution.** A "rollover contribution" is:

(a) An amount received by the Vendor from an eligible employee who, having received an eligible rollover distribution, as defined in Code Section 402(c)(4), from a qualified trust described in Code Section 401(a), a qualified annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), or an eligible plan described in Code Section 457(b) which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state ("governmental Code Section 457(b) plan"), transfers any portion of the property received in the distribution to the Vendor on or before the 60th day after the day on which the eligible employee received the property (unless this 60-day requirement is waived pursuant to Code Section 402(c)(3)(B));

(b) An amount received by the Vendor on behalf of an eligible employee in a direct trustee-to-trustee transfer of an eligible rollover distribution from a qualified trust described in Code Section 401(a), a qualified annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), or a governmental Code Section 457(b) plan, in accordance with Code Section 403(b)(10); or

(c) An amount received by the Vendor from an eligible employee that consists of the portion of a distribution from an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income, provided that the eligible employee transfers the amount to the Vendor on or before the 60th day after the day on which the eligible employee received the amount (unless this 60-day requirement is waived pursuant to Code Section 402(c)(3)(B)), or such amount is directly transferred to the Vendor from the individual retirement account or annuity provider.

**5.3 Conditions.** Rollover contributions to this Plan are subject to the conditions described in this section and to any additional conditions or limitations imposed by the receiving Contract.

(a) The amount transferred to the Plan as a rollover contribution under this Article shall not exceed the portion of the distribution that is includible in gross income, determined without regard to Code Section 403(b)(8). The Plan will not accept as a rollover contribution any amounts attributable to designated Roth contributions or any amounts from a Roth IRA described in Code Section 408A(b).

(b) The Vendors shall establish a process for determining whether a rollover satisfies the requirements to be a rollover contribution under this article and applicable law.

**5.4 Distributions.** To the extent permitted by the applicable Contract or Contracts, a Participant who has a separate Plan account that is attributable to rollover contributions may elect to receive a distribution of all or any portion of the rollover account at any time.

## ARTICLE VI

### NONFORFEITABLE RIGHTS

**6.1     Fully Vested Accounts.** Subject to the terms of the applicable Contracts regarding the withdrawal of a Participant's accounts and the lost payee rule in 6.2, a Participant's rights to the benefit payable from the Participant's accounts are nonforfeitable.

**6.2     Lost Payees.** The Plan Administrator shall make reasonable efforts to determine the identity and whereabouts of Participants, Death Beneficiaries, and any other persons who are entitled to receive benefits under the Plan. If, after the date on which all or any portion of a Participant's accounts is distributable to any person under the Plan, the distribution cannot be made because the identity or whereabouts of such person cannot be ascertained, that portion of or all of the accounts shall constitute a forfeiture. The Plan Administrator's determination of when a distribution cannot be made shall be final. Notwithstanding the foregoing, if, at any time, the person entitled to the distribution makes a claim to the Plan Administrator for the distribution, the amount of the forfeiture shall be reinstated and distributed to the person.

## ARTICLE VII

### DISTRIBUTIONS

**7.1 Benefit Payments.** Benefit payments shall be made by the Vendors in accordance with the terms of the Contracts and the applicable provisions of this Plan.

**7.2 Distributable Events.**

(a) **General.** Except as otherwise permitted under the terms of this Plan, distributions from a Participant's account or accounts may not be made before the Participant has a Severance from Employment, dies, becomes disabled (within the meaning of Code Section 403(b)(11)(A)), or reaches age 59½.

(b) **Distributions During Service in the Uniformed Services.** Effective January 1, 2009, a Participant shall be treated as having had a Severance from Employment for purposes of eligibility to receive a distribution from his or her Plan account or accounts during any period in which he or she is performing service in the uniformed services while on active duty for a period of more than 30 days, as described in Code Section 3401(h)(2)(A). If a Participant elects to receive a distribution by reason of this subsection, he or she shall not be eligible to make elective contributions under Article IV during the six-month period beginning on the date of the distribution.

**7.3 Payments to Minors and Incapacitated Persons.** If a Participant or Death Beneficiary entitled to receive any Plan benefit is a minor or is determined to be legally incompetent by a court or in the reasonable judgment of the Plan Administrator, the Plan benefit shall be paid to a parent, guardian, conservator, or such other person as may be designated by the court or deemed appropriate by the Plan Administrator to receive the payment for the benefit of the Participant or Death Beneficiary. Any payment made under this section shall be considered a payment to the Participant or Death Beneficiary and, to the extent made, shall be deemed a complete discharge of any liability for the payment of benefits under the Plan.

**7.4 Eligible Rollover Distributions.** To the extent required by law, and except as otherwise provided below, any portion of an eligible rollover distribution that would otherwise be includible in the distributee's gross income if not rolled over shall, at the election of and in lieu of distribution to the distributee, be paid directly to the eligible retirement plan specified by the distributee.

(a) **Eligible Rollover Distribution.** An "eligible rollover distribution" is any distribution of Plan benefits to a Participant, a Participant's surviving spouse, or a Participant's spouse or former spouse pursuant to a domestic relations order, as defined in 9.2 ("distributee"), except the following distributions:

(i) Any distribution that is one of a series of substantially equal periodic payments made at least annually over one of the following periods:

(A) For the life (or life expectancy) of the distributee, or the joint lives (or life expectancy) of the distributee and a designated beneficiary; or

(B) For a specified period of ten years or more.

(ii) Any distribution to the extent it is required under Code Section 401(a)(9).

(iii) Any hardship distribution.

(iv) Any corrective distribution of excess amounts under Code Sections 402(g) or 415(c) and income allocable thereto.

(v) Any loans that are treated as deemed distributions pursuant to Code Section 72(p).

For purposes of this section, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, any such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified plan described in Code Section 401(a) or a plan described in Code Section 403(b) that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not includible in gross income. The amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income, determined without regard to Code Section 403(b)(8).

The provisions of Code Section 402(c)(4) and the regulations thereunder are incorporated herein by reference for the purpose of further defining and interpreting the term "eligible rollover distribution," and those provisions shall be controlling.

(b) **Eligible Retirement Plan.** An "eligible retirement plan" is:

(i) An individual retirement account described in Code Section 408(a);

(ii) An individual retirement annuity described in Code Section 408(b) (other than an endowment contract);

(iii) A tax-deferred annuity described in Code Section 403(b);

(iv) A qualified trust under Code Section 401(a);

(v) An annuity plan described in Code Section 403(a);  
and

(vi) An eligible deferred compensation plan described in Code Section 457(b) that is maintained by an eligible governmental employer described



in Code Section 457(e)(1)(A), and that agrees to separately account for amounts transferred into such plan from this Plan.

The provisions of Code Section 402(c)(8)(B) and the regulations thereunder are incorporated herein by reference for the purpose of further defining and interpreting the term "eligible retirement plan," and those provisions shall be controlling.

(c) **Direct Rollovers by Death Beneficiaries.** If a distribution would qualify as an "eligible rollover distribution" under subsection (a), except that it is payable to a deceased Participant's designated beneficiary who is not a distributee described in subsection (a), the beneficiary may elect to have the distribution paid in a direct rollover to his or her individual retirement plan. For this purpose, a "designated beneficiary" means the Participant's designated beneficiary for purposes of the required minimum distribution requirements of Code Section 401(a)(9). An "individual retirement plan" means an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b), other than an endowment contract, that is established for the purpose of receiving the distribution on behalf of the designated beneficiary, and that will be treated as an inherited individual retirement account or individual retirement annuity pursuant to Code Section 402(c)(11).

(d) **Notices.** Within a reasonable time period before making an eligible rollover distribution, the Vendor making the distribution shall provide the distributee with an explanation of the right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover. The explanation shall comply with the requirements of Code Section 402(f) and Internal Revenue Service guidance issued thereunder.

**7.5 Required Distribution Rules.** All distributions under this Plan shall be determined and made in accordance with Code Sections 403(b)(10) and 401(a)(9), including the incidental death benefit requirement in Code Section 401(a)(9)(G), and the applicable provisions of Treasury Regulation §§ 1.401(a)(9)-1 through 1.401(a)(9)-9. The provisions of this Plan reflecting the requirements of Code Section 401(a)(9) shall take precedence over any inconsistent provisions of this Plan.

Each Contract shall comply with the minimum distribution requirements of Code Section 401(a)(9) and the regulations thereunder. For purposes of applying those minimum distribution requirements, each Contract is treated as an individual retirement account, and distributions shall be made in accordance with the provisions of Treasury Regulation § 1.408-8, except as provided in Treasury Regulation § 1.403(b)-6(e).

To the extent permitted under Treasury Regulation § 1.403(b)-6(e)(7), a Participant's Contracts under the Plan, or under the Plan and other Code Section 403(b) plans in which the Participant participates as an employee, may be aggregated and the minimum distribution requirements satisfied by distribution from any one or more of the Contracts.

The provisions of this 7.5 shall apply to the extent they are not inconsistent with the terms of the applicable Contract.

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(a) **Time and Manner of Distribution.**

(i) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(ii) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(A) If the Participant's surviving spouse is the Participant's sole designated beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(B) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(D) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this paragraph (ii), other than (ii)(A), will apply as if the surviving spouse were the Participant.

(E) Participants or Death Beneficiaries may elect on an individual basis whether the five-year rule described in (C) above or the life expectancy rule described in (A) and (B) above applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under (A) or (B) above, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor the Death Beneficiary makes an election under this subparagraph (E), distributions will be made in accordance with (A) or (B) above, as applicable, and subsection (c)(ii)(A) below.

For purposes of this paragraph (ii) and subsection (c), unless (D) above applies, distributions are considered to begin on the Participant's required beginning date. If (D) above applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under (A) above.

(iii) **Forms of Distribution.** As of the first distribution calendar year, distributions will be made in accordance with subsections (b) and (c).

(b) **Required Minimum Distributions During Participant's Lifetime.**

Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this 7.5(b). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the regulations thereunder.

(i) **Amount of Required Minimum Distribution For Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(A) The quotient obtained by dividing the Participant's accounts by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation § 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(B) If the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Accounts by the number in the Joint and Last Survivor Table set forth in Treasury Regulation § 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(ii) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this subsection (b) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(c) **Required Minimum Distributions After Participant's Death.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with this 7.5(c). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the regulations thereunder.

(i) **Death On or After Date Distributions Begin.** If the Participant dies after distributions are treated as having begun under the regulations under Code Section 401(a)(9), the remainder of the Participant's accounts will be distributed to the Participant's Death Beneficiary at least as rapidly as under the distribution method being used as of the date of death, and in accordance with the following provisions.

(A) **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's accounts by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the

spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's accounts by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) **Death Before Date Distributions Begin.**

(A) **Participant Survived by Designated Beneficiary.** Unless the Participant or Death Beneficiary elects under subsection (a)(ii)(E) to have the five-year rule apply, if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's accounts by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in subsection (c)(i).

(B) **No Designated Beneficiary.** If the Participant dies before the date distributions begin, and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, or if the Participant or Death Beneficiary elects under subsection (a)(ii)(E) to have the five-year rule apply, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (a)(ii)(A), this subsection (c)(ii) will apply as if the surviving spouse were the Participant.

(d) **Definitions.**

(i) **Designated Beneficiary.** The individual who is designated as the beneficiary under the terms of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Treasury Regulation § 1.401(a)(9)-4, Q&A-1.

(ii) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (a)(ii). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(iii) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Treasury Regulation § 1.401(a)(9)-9.

(iv) **Participant's Accounts.** The accounts as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the accounts as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The accounts for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(v) **Required Beginning Date.** The required beginning date is April 1 of the calendar year following the calendar year in which the Participant reaches age 70½ or retires, whichever is later.

## ARTICLE VIII

### PLAN LOANS AND HARDSHIP WITHDRAWALS

#### 8.1 Plan Loans.

(a) General. Loans shall be permitted under the Plan to the extent permitted by the Contracts. Except as provided in this section, the approval, administration, and terms of all loans shall be as set forth in procedures promulgated by the applicable Vendor.

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

(c) Maximum Loan Amount. In no event shall the total of the principal of any loan or loans to any Participant, when added to the outstanding balance of all other loans made to the Participant, exceed the lesser of:

(i) \$50,000 reduced by the excess, if any, of (A) the highest outstanding balance of loans from the Plan during the one-year period ending on the day before the date on which such loan is to be made, over (B) the outstanding balance from the Plan on the date on which such loan is made; or

(ii) 50 percent of the Participant's accounts.

For the purpose of determining the maximum loan amount, the amount of the Participant's accounts shall be determined as of the most recent Valuation Date preceding the making of the loan, adjusted for any distributions or contributions made after the Valuation Date.

(d) Interest. Any loan made to a Participant by the Plan shall bear reasonable interest. Loans shall be treated as individually directed investments solely of the borrowing Participant's accounts, and the interest paid by the borrowing Participant will be allocated solely to the Participant's accounts.

(e) Repayment. A loan shall be repaid by the Participant in such manner as the Vendor shall determine. Notwithstanding the foregoing, a loan must, by its terms, be required to be repaid within five years, unless the loan is used to acquire any dwelling unit that, within a reasonable time, is to be used as the Participant's principal residence. Substantially level amortization of the loan (with payments not less frequently than quarterly) must be required over the term of the loan.

(f) **Security and Default.** A loan shall be secured by 50 percent of the Participant's interest in his or her accounts and by such additional security as the Vendor may require. A loan shall be in default if a payment remains unpaid for 90 days after the due date for the payment (or such other grace period specified in the Contract). Accordingly, in the event of a default, the Vendor may deduct the amount of the delinquent payment from the applicable accounts at any time thereafter and while the delinquency continues to the extent that such deduction will not jeopardize the tax-deferred status of this Plan under Code Section 403(b). In the event that 50 percent of the applicable accounts is not sufficient to repay the remaining balance of the loan or loans and accrued interest, the Participant shall be liable for and continue to make payments on any balance still due from him or her.

(g) **Effect of Loans From Other Employer Plans.** For purposes of this section, any loan from any other plan maintained by a Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan, except that this subsection shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this subsection.

## **8.2 Hardship Withdrawals.**

(a) **General.** Hardship withdrawals shall be permitted under the Plan to the extent they are permitted under the Contract or Contracts under which the Participant's account is invested. A hardship distribution may only be made on account of an immediate and heavy financial need of the Participant and if the distribution is necessary to satisfy the immediate and heavy financial need. If permitted, hardship withdrawals shall be subject to the conditions imposed by the applicable Contract or Contracts and the following requirements:

(i) A distribution made on account of hardship must satisfy the requirements of Code Section 403(b)(11) and Treasury Regulation § 1.403(b)-6(d)(2).

(ii) Hardship withdrawals may be made only from the principal amount of the Participant's elective contributions. Income attributable to a Participant's elective contributions may not be distributed on account of hardship.

(iii) If required by the applicable Contract, no elective contributions shall be allowed under the Plan during the six-month period beginning on the date the Participant receives a distribution on account of hardship. This subsection does not apply to hardship distributions made on or after January 1, 2020.

(iv) A distribution shall be treated as necessary to satisfy an immediate and heavy financial need of a Participant if all of the following requirements are satisfied:

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



(B) The Participant has obtained all other currently available distributions (other than hardship distributions) under all plans of deferred compensation, whether qualified or nonqualified, maintained by the Related Employers; and

(C) The Participant represents (in writing, by an electronic medium, or in such other legally permitted form) that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need. The Vendor may rely on the Participant's representation unless it has actual knowledge to the contrary.

(b) **Information Sharing Agreements.** The College and the Vendors shall enter into agreements to provide for the exchange of information to the extent necessary to determine whether the requirements of this section are satisfied. The information sharing agreements shall include, but not be limited to, the following requirements. When a Participant applies for a hardship withdrawal, the Vendor shall obtain information from the College and any other Vendors holding any portion of the Participant's Plan accounts to determine the amount of any Plan loans (if applicable) or rollover account distributions, if any, that are available to the Participant under the Plan to satisfy the financial need.

## ARTICLE IX

### ASSIGNMENT AND ALIENATION

**9.1 General.** Except as provided in 9.2 or 9.4 or as otherwise provided by applicable law, all provisions in this Plan for the vesting or payment of any sum or interest are subject to the provision that the sum or interest shall not be anticipated, alienated, or in any other manner assigned by a Participant, Death Beneficiary, or alternate payee pursuant to a domestic relations order as defined in 9.2, and shall not be subject to levy, attachment, garnishment, or other process by or on behalf of any creditor of a Participant, Death Beneficiary, or alternate payee.

**9.2 Domestic Relations Orders.** To the extent required by applicable law, the Plan shall comply with the terms of a judgment, decree, or order (including approval of a property settlement agreement) that relate 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 pursuant to the domestic relations law of any state ("domestic relations order"). The Plan Administrator shall establish reasonable procedures for determining the status of any domestic relations order and for effectuating distributions pursuant to domestic relations orders. Except as otherwise provided under the applicable Contracts, a payment may be made to an alternate payee pursuant to a domestic relations order at the time specified in the order, regardless of the age of the Participant whose accounts are affected and even though the payment is to be made before the Participant is eligible for a distribution.

**9.3 Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act taxes with respect to elective contributions, which constitute wages under Code Section 3121). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements, including Code Section 3401 and the regulations thereunder. A payee shall provide such information as a Vendor or the Plan Administrator may require to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

**9.4 IRS Levy.** The Plan Administrator may pay from a Participant's or Death Beneficiary's accounts the amount that the Plan Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Death Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Death Beneficiary.

## ARTICLE X

### FUNDING AND INVESTMENT OF PLAN ASSETS

**10.1 Funding.** All contributions and other assets of the Plan shall be held and invested in one or more Contracts. Each custodial account Contract must provide that it shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Death Beneficiaries, for any part of the assets and income of the custodial account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Death Beneficiaries.

**10.2 Investment of Accounts.** Each Participant or Beneficiary shall direct the investment of his or her account among the investment options available under the annuity contract or custodial account in accordance with the terms of the Contracts. Transfers among annuity contracts and custodial accounts may be made to the extent provided in the Contracts and permitted under applicable Income Tax Regulations.

## ARTICLE XI

### PLAN ADMINISTRATION

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

**11.2 Powers.** The Plan Administrator shall have all powers necessary to supervise the administration of the Plan and to control the operation of the Plan in accordance with its terms. Those powers shall include, but not be limited to, the following:

- (a) Establishing rules from time to time for the performance of its functions and the administration of the Plan, provided that such rules shall not be inconsistent with the Plan, any Contract, or any agreement with the Vendors.
- (b) Interpreting the Plan provisions and determining any questions arising under the Plan, or in connection with the administration or operation of the Plan, including the discretionary authority to make eligibility and benefit determinations, to make factual determinations, and to construe the terms of the Plan.
- (c) Determining the eligibility of any employee to participate in the Plan.
- (d) Authorizing and directing all disbursements of Plan benefits and other amounts as provided for under the Plan, such as payment of the Plan's administrative expenses.
- (e) Employing or engaging such persons, counsel, and agents, and to obtain such administrative, clerical, medical, legal, and other services as the Plan Administrator may deem necessary or appropriate for Plan administration.
- (f) Maintaining such records and accounts, and rendering such financial statements and reports, as may be requested from time to time by the College.

**11.3 Notice to Plan Administrator.** The College shall advise the Plan Administrator in writing of:

- (a) The names and dates of participation of all new Participants;
- (b) The names of Participants who have had a Severance from Employment or whose employment status has changed so that they are no longer eligible to participate in the Plan;
- (c) The names of Participants who have died or become disabled;

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(11.1 eff  
January 1, 2010)

(d) The name of each Participant or Death Beneficiary entitled to a distribution and the date of such entitlement; and

(e) Such other information as the Plan Administrator may reasonably require.

**11.4 Retention of Legal Counsel, Accountants, and Consultants.** The Plan Administrator may consult with counsel of its own choice, and the opinion of such counsel with respect to legal matters shall be full and complete protection with respect to any action taken or suffered by the Plan Administrator in good faith and in accordance with the opinion of such counsel. The Plan Administrator may also engage certified public accountants to perform services deemed appropriate by it in carrying out the provisions of the Plan and may consult with these or other accountants. The opinion of such accountants with respect to accounting matters shall be full protection in respect of any action taken or suffered by the Plan Administrator in good faith and in accordance with the opinion of such accountants. The Plan Administrator may have the Plan audited by certified public accountants at such times as it shall designate at the expense of the Plan and as provided by law. The Plan Administrator may retain such other advisors as it may deem necessary for the operation of the Plan.

**11.5 Limitation of Liability and Indemnification.** Except as otherwise provided by applicable law or the provisions of a Plan administration agreement, no individual who is appointed by the College to carry out Plan administration functions shall be personally liable so long as he or she uses good faith for anything he or she does or fails to do or for any act or failure to act of any predecessors, and the College will indemnify and save harmless the individual against any loss, liability, or damage, including reasonable attorney fees, (the "Losses") arising out of any act or omission to act hereunder, except the individual's own willful misconduct, negligence, or lack of good faith. The individual shall at no time be obligated to institute any legal action or to become a party to any legal action unless and until he or she is indemnified for any fees, costs, and expenses to be incurred in connection therewith.

As a condition precedent to the College's indemnity obligation in this 11.5, the individual shall timely pursue recovery of any of the Losses from any applicable insurance policy, including without limitation a fiduciary liability insurance policy. To the extent that the individual's Losses are covered by an insurance policy, the insurance policy shall be primary to the College's indemnity obligations in this 11.5, and the individual waives any subrogation or other rights to recover the covered Losses from the College.

## ARTICLE XII

### GENERAL PROVISIONS

**12.1 Employment.** Neither the act of the College in adopting this Plan, nor the making of any contributions to the Plan, shall be construed as giving any Participant the right to be retained in the College's employ or any right to any payment whatsoever, except to the extent that benefits provided by this Plan are to be paid from the applicable Contract or Contracts.

**12.2 Governing Law.** This Plan shall be governed by and construed in accordance with the laws of the state of Oregon and applicable federal law.

**12.3 Gender and Number.** Unless the context otherwise requires, the masculine gender includes the feminine, the feminine includes the masculine, the singular includes the plural, and the plural includes the singular.

**12.4 Limitation of Rights.** No Participant or Death Beneficiary shall have any rights under the Plan other than those specified in this Plan document and the Contracts. The sole remedy of any Participant or Death Beneficiary for nonpayment of benefits shall be against the applicable Contract or Contracts.

**12.5 Benefit Responsibility.** Neither the College nor the Plan Administrator shall be liable or responsible in any amount or manner whatsoever for the payment of any benefits under the Plan. Plan benefits are to be paid solely from the applicable Contracts.

**12.6 Settlement of Disputes.** The College shall have the power to compromise, settle, or release claims or demands in favor of or against the Plan on such terms and conditions as it may deem desirable.

**12.7 Overpayments.** In the event a Participant or Death Beneficiary receives an overpayment from the Plan, the Plan Administrator shall make reasonable efforts to recover the overpayment in accordance with applicable Internal Revenue Service guidelines. A Participant or Death Beneficiary is not entitled to keep an overpayment made by the Plan. If the Participant or Death Beneficiary receives a request for repayment from the Plan Administrator, he or she must promptly return the overpayment (adjusted for earnings at the Plan's earnings rate) to the Plan. This 12.7 shall apply to overpayments made at any time.

**12.8 Venue.** Any civil action brought in a U.S. district court against the Plan, the Plan Administrator, a Related Employer, or a Plan fiduciary shall be brought in the district in which the College's headquarters is located.

**OREGON COAST COMMUNITY COLLEGE  
403(b) PLAN**

**EXHIBIT A**

**(Referent Section 1.3)**

**VENDORS AND CONTRACTS**

As of January 1, 2020, the following companies are Vendors under the Oregon Coast Community College 403(b) Plan:

**Current Vendors**

TIAA-CREF

Waddell & Reed

Vanguard

**Former Vendors**

Harmening Financial

Information identifying the Contracts under the Plan is attached.