

# **Plan Document – ORP**

**ADOPTED by the Board of Regents – November 21, 2008**

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

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## Texas State University System Optional Retirement Program Plan

### Preamble

This plan ("the Plan") is for eligible employees, former employees and retirees of the Texas State University System, including all its component institutions, and is established in compliance with and under the authority of the Texas Government Code, Chapter 830. The Texas State University System is a unit of the State of Texas, and this Plan is not covered by ERISA (P.L. 93-406, 88 Stat. 829). This Plan serves as a restatement of any prior formal or informal plan or rules and regulations governing the Optional Retirement Program ("ORP") at the Texas State University System or at any of its component institutions. This Plan shall be effective January 1, 2009.

### Section 1 Controlling Statutes

The Plan is intended to comply with Section 403(b) of the Internal Revenue Code ("the Code"), the Income Tax Regulations, §1.403(b), with the provisions of the Texas Government Code, Chapter 830 ("the Texas ORP Law"), and the Rules of the Texas Higher Education Coordinating Board, Texas Administrative Code, Title 19, Chapter 25 ("the ORP Rules") References in this plan to specific parts of these laws, rules and regulations are for convenience only, and all relevant provisions are hereby incorporated by reference. In the event that any provision of the Plan or of any administrative procedure, rule or regulation established under the Plan is determined to be in conflict with the Code, or with the Income Tax Regulations, or with the Texas ORP Law, or with the ORP Rules, or with the Plan, the provisions of the Code, or the Income Tax Regulations, or the Texas ORP Law, or the ORP Rules, or the Plan, shall prevail in that order of precedence. Where the law, including but not limited to the Code, the Income Tax Regulations, the Texas ORP Law, and the ORP Rules, governing the Plan is amended, modified or interpreted through subsequent legislation, or rulings or decisions, the Plan's provisions shall be construed, insofar as is feasible, as incorporating any such amendment, modification or interpretation of the law.

### Section 2 Definitions

2.1 The definitions in the ORP Rules, Texas Administrative Code, Title 19, §25.3, are hereby incorporated by reference to the extent that the context does not clearly require another meaning.

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

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

2.3 **“Account Balance”**: The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant’s Account under all Accounts, including the Participant’s Elective Deferrals, the earnings or loss of each Annuity Contract or a Custodial



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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



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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**

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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 104 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 25.5(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 ORP Rules, Rule 25.6(a)(8).

## **Section 5 Contributions**

### **5.1 Contributions are non-elective**

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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 limits aby inadvertence



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## **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

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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

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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 manne

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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**

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