OREGON UNIVERSITY SYSTEM
TAX-DEFERRED INVESTMENT 403(b) PLAN

Effective December 1, 2006,
for salary payable after February 28, 2007, and
transfers made after February 28, 2007

Adopted by the Oregon State Board of Higher Education
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OREGON UNIVERSITY SYSTEM
TAX-DEFERRED INVESTMENT 403(b) PLAN

SECTION 1. PURPOSE AND EFFECTIVE DATE

1.1. Established under ORS 243.810 to 243.830. The Oregon State Board of Higher Education (the Board) establishes this Plan under the authority in ORS 243.810 to 243.830, which allow the Oregon University System (the Employer) to agree with an individual employed by the Employer, who performs services for an educational institution, to reduce the employee's salary and to contribute the same amount as premiums for an annuity contract or for shares in an investment company for the employee to obtain the advantages of IRC Section 403(b).

1.2. Salary reductions, contributions, annuity contracts, custodial accounts, and transfers to which this Plan applies. This Plan applies only to the salary reductions, contributions, annuity contracts, custodial accounts, and transfers described in this 1.2.

   a. Salary reductions and contributions. All salary reductions and contributions with respect to the Employer under the authority of ORS 243.810 to 243.830 for salary that otherwise would be paid after February 28, 2007, will be made under this Plan.

   b. Annuity contracts and custodial accounts. All contributions to which this Plan applies will be paid to the Annuity Contracts described in 2.3. and the Custodial Accounts described in 2.5.

   c. Transfers. Participants and their beneficiaries (including Alternate Payees) may transfer amounts (by Direct Rollover as defined in 2.15.a., Rollover as defined in 2.15.b., or Transfer as defined in 2.15.c.) to the Annuity Contracts described in 2.3. and the Custodial Accounts described in 2.5. if the transfers are made after February 28, 2007, and are permitted by the Annuity Contracts and the Custodial Accounts receiving the transfers.

1.3. Not part of any other plan, program, annuity contract, or custodial account. This Plan is not and will not be part of any other plan or program of the Employer or part of any annuity contract or custodial account not described in 1.2. For example, salary reductions and contributions with respect to the Employer under the authority of ORS 243.810 to 243.830 for salary that otherwise would have been paid before March 1, 2007, are not part of this Plan except to the extent the contributions are transferred to this Plan as described in 1.2.c.

1.4. Effective date. This Plan is effective December 1, 2006.
SECTION 2. DEFINITIONS

Capitalized terms used in this Plan and defined in this Section 2. have the meanings stated in this Section 2.

2.1. **Accrued Benefit**: The balance of an Employee's or former Employee's accounts under Annuity Contracts and Custodial Accounts.

2.2. **Alternate Payee**: A spouse, former spouse, child, or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under this Plan with respect to the Participant.

2.3. **Annuity Contract**: An annuity contract that is designated by the Employer under the authority in 4.1. as eligible to receive contributions under this Plan.

2.4. **Board**: The Oregon State Board of Higher Education.

2.5. **Custodial Account**: A custodial account that is designated by the Employer under the authority in 4.1. as eligible to receive contributions under this Plan.

2.6. **Eligible Employment**: Performing services as an Employee for an educational institution of the Employer and for which the Employee's salary is paid by the Employer.

   a. For this purpose, an *educational institution* is an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. *Educational institution* excludes any program, activity, institution, or subsidiary or other affiliate of the Employer that treats itself as not being the State of Oregon, or a political subdivision, agency, or instrumentality of the State of Oregon, for any purpose of the IRC.

   b. **Eligible Employment** includes services in an elective or appointive public office only if the office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education.

2.7. **Employee**: A common law employee of the Employer who is not a student performing services described in IRC Section 3121(b)(10).¹ *Employee* does not include a former employee or an independent contractor.

2.8. **Employer**: The Oregon University System as defined in ORS 352.002.

2.9. **IRC**: The Internal Revenue Code of 1986, as amended.

¹IRC Section 3121(b)(10) describes service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at the school, college, or university.
2.10. **ORS**: Oregon Revised Statutes, as amended.

2.11. **Participant**: An Employee or former Employee who has entered into a Salary Reduction Agreement and who has, or pursuant to the Salary Reduction Agreement will have, an Accrued Benefit.

2.12. **Plan**: The plan embodied herein.

2.13. **Salary Reduction Agreement**: An Employee’s agreement (including an agreement entered into before the December 1, 2006, effective date of this Plan) that meets the following requirements:

   a. **Required form**: The agreement is on a written paper document or through an electronic medium made available by the Employer for this purpose and is properly completed by the Employee and delivered to the Employer at the place specified in the document or medium or instructions therefor; and

   b. **Contribution amount or percentage**: Subject to any minimum amount or percentage and any other requirements or limitations imposed by the Employer consistent with IRC Section 403(b)(12)(A)(ii),\(^2\) the agreement specifies the amount or percentage by which the salary to be paid by the Employer to the Employee is to be reduced in exchange for the Employer’s contribution of the same amount or percentage to an annuity contract or a custodial account to which contributions may be made under IRC Section 403(b).

2.14. **Severance from Employment**: Termination of the Participant’s employment with the Employer, including because the Participant dies.

2.15. A transfer from, to, or within this Plan may occur by Direct Rollover, Rollover, or Transfer, as defined in this 2.15.

   a. **Direct Rollover**: Any of the following:

      (1) From this Plan for a distributee, after a distributable event. A direct trustee-to-trustee transfer described in IRC Section 401(a)(31) of an eligible rollover distribution from this Plan to another eligible retirement plan. Such a Direct Rollover will occur when a distributee elects a direct rollover as described in 6.3.c. or when an automatic direct rollover is required.

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\(^2\)IRC Section 403(b)(12)(A)(ii) requires that “all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement,” excluding “employees who are students performing services described in section 3121(b)(10).” IRC Section 3121(b)(10) describes service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at the school, college, or university.
rollover is made for a Participant as described in 6.2.b.(2). Such a Direct Rollover may occur only after a distribution is allowed by:

(a) 6.1.a.(1) (about distribution after the Participant’s Severance from Employment or, if earlier, after the Participant attains age 59½);

(b) 6.1.d.(2) and 6.6. (about qualified reservist distribution of 403(b) elective deferrals);

(c) 6.1.d.(3) and 6.7. (about amounts attributable to Rollover or Direct Rollover); or

(d) 6.1.d.(7) and 6.11. (about Alternate Payees).

(2) From this Plan for a non-spouse designated beneficiary, after the Participant’s death. A direct trustee-to-trustee transfer described in IRC Section 402(c)(11) from this Plan to an individual retirement plan. Such a Direct Rollover will occur when a non-spouse designated beneficiary elects a direct trustee-to-trustee transfer as described in 6.3.d.

(3) To this Plan. A direct trustee-to-trustee transfer described in IRC Section 401(a)(31) of an eligible rollover distribution from another eligible retirement plan to this Plan. Such a Direct Rollover will occur when a direct rollover is made to an Annuity Contract or Custodial Account as described in 4.5.f.

b. Rollover: A transfer described in IRC Section 402(c) of an eligible rollover distribution from another eligible retirement plan to this Plan. A Rollover will occur when an individual who receives such an eligible rollover distribution transfers cash or a cash equivalent to an Annuity Contract or a Custodial Account as described in 4.5.g. This definition of Rollover does not define Rollover when used in Direct Rollover.

c. Transfer: Any of the following:

(1) From this Plan for a Participant, before or after a distributable event. A direct trustee-to-trustee transfer described in IRC Section 403(b)(13) from this Plan to a defined benefit governmental plan. Such a Transfer will occur when a Participant elects a transfer as described in 6.8. Such a Transfer may occur before a distribution is allowed by 6.1.a.(1) (about distribution after the Participant’s Severance from Employment or, if earlier, after the Participant attains age 59½).

(2) Within this Plan. A direct transfer allowed under Revenue Ruling 90-24 from one Annuity Contract or Custodial Account to another Annuity Contract or Custodial Account. Such a Transfer will occur when such a direct transfer is made as described in 4.5.h. from another Annuity Contract or Custodial Account (i.e. one designated by the Employer under the authority in 4.1. as eligible to receive contributions under this Plan).
(3) **To this Plan.** A direct transfer allowed under Revenue Ruling 90-24 to an Annuity Contract or a Custodial Account from an annuity contract or a custodial account to which contributions may be made under IRC Section 403(b) but which is not an Annuity Contract or a Custodial Account. Such a Transfer will occur when such a direct transfer is made as described in 4.5.h. from an annuity contract or a custodial account that is not designated by the Employer under the authority in 4.1. as eligible to receive contributions under this Plan.
SECTION 3. SALARY REDUCTION CONTRIBUTIONS

3.1. Employees eligible to enter into a Salary Reduction Agreement. Each Employee is eligible to enter into a Salary Reduction Agreement. Participation in this Plan is completely voluntary for Employees.

3.2. Requirements for a Salary Reduction Agreement to be effective. An Employee’s Salary Reduction Agreement is effective on the first date (1) it has satisfied the requirements in 2.13. and (2) the Employee has satisfied, to the Employer’s satisfaction, all the following requirements that the Employer has imposed on the Employee on or before that date:

   a. Enrollment and investment designation. The Employer may require an Employee to:

      (1) Enroll in this Plan, and to update the enrollment, as provided in 3.5.; and

      (2) Designate the one or more Annuity Contracts and Custodial Accounts, and the one or more investment funds, in which the Employee’s Accrued Benefit is to be held and invested, and to update or change the designation, as provided in 4.2. and 4.3.; and

   b. Employer's satisfaction regarding contributions limits. The Employer may require an Employee to satisfy the requirements in 3.7. (about determining contributions limits).

3.3. Limitations on a Salary Reduction Agreement. A Salary Reduction Agreement that is effective as provided in 3.2. is subject to each of the following limitations:

   a. Limited to salary for Eligible Employment. The Agreement applies only to the Employee's salary for Eligible Employment;

   b. Limited to salary first payable on a future date. The Agreement does not apply to salary first payable to the Employee on or before the date the Agreement becomes effective or any later date determined by the Employer for purposes of administering Salary Reduction Agreements;

   c. Limited to salary for payroll periods that begin before employment ceases. The Agreement applies only to salary that would otherwise be paid to the Employee for a payroll period that begins before the Employee ceases to be employed by the Employer;

   d. No designated Roth contributions. None of the Employer’s contributions under the Agreement will be treated as designated Roth contributions (within the meaning of IRC Section 402A);

   e. Contribution limits. The Agreement does not apply to the extent it purports to allow an amount of contribution that would exceed the Employee's limit on elective
deferrals under IRC Sections 401(a)(30), 402(g), 414(u), and 414(v)\(^3\) or the Employee's limit on annual additions under IRC Sections 414(u), 414(v), and 415,\(^4\) determined by aggregating the contributions under this Plan with any other contributions or annual additions under any other plan or program of the Employer;

f. **Legally binding.** The Agreement is legally binding and irrevocable according to its terms with respect to salary payable while the Agreement is in effect;

g. **Changes.** The Agreement may be changed only by terminating the Salary Reduction Agreement as described in 3.3.h. or i. or entering into another Salary Reduction Agreement;

h. **Termination by the Employee.** The Agreement is terminable in its entirety at any time by the Employee, which termination:

1. Must be done by the Employee on a written paper document or through an electronic medium made available by the Employer for this purpose;

2. Must be properly completed by the Employee and delivered to the Employer at the place specified in the document or medium or instructions therefore; and

3. Does not apply to salary first payable to the Employee on or before the date the Employee delivers the termination to the Employer or any later date determined by the Employer for purposes of administering Salary Reduction Agreements; and

i. **Termination by the Employer.** The Agreement is terminable in its entirety at any time by the Employer, but only for salary first payable to the Employee after the date the Employer terminates the Salary Reduction Agreement or any later date determined by the Employer. Without limiting the Employer’s right to terminate Salary Reduction Agreements, the Employer may terminate a Salary Reduction Agreement if the Employee fails to do, to the Employer’s satisfaction, any of the following as required from time to time by the Employer:

1. Enroll in this Plan, or update the enrollment, as provided in 3.5.;

2. Designate the one or more Annuity Contracts and Custodial Accounts, and the one or more investment funds, in which the Employee's Accrued Benefit is to be held and invested, and update or change the designation, as provided in 4.2. and 4.3.; and

\(^3\)IRC Sections 401(a)(30), 402(g), 414(u), and 414(v) all relate to the annual limit on elective deferrals (salary reduction contributions) for an Employee. IRC Sections 401(a)(30) and 402(g) state the basic annual limit. IRC Section 414(u) allows elective deferrals for periods of military service. IRC Section 414(v) increases the annual limit for individuals age 50 or over.

\(^4\)IRC Sections 414(u), 414(v), and 415 all relate to the limit on annual additions (contributions) for an Employee. IRC Section 415 states the basic limit. IRC Section 414(u) allows annual additions for periods of military service. IRC Section 414(v) increases the annual limit for individuals age 50 or over.
(3) Satisfy the requirements in 3.7. (about determining contributions limits).

3.4. Results of entering into a Salary Reduction Agreement.

a. Participants bound by the terms of this Plan, including retroactive amendments. Each Participant is bound by the terms of this Plan as amended from time to time. Any retroactive amendment applies to Participants retroactively according to the terms of the amendment.

b. The Employer’s irrevocable right to take actions to change and terminate this Plan, including actions on behalf of and in the name of the Participant and beneficiaries. The Employer has the irrevocable right to take all actions (except actions that cause this Plan to fail to satisfy the requirements of ORS 243.810 to 243.830 or IRC Section 403(b)) that the Employer deems appropriate, including without limitation actions on behalf of and in the name of the Participant and the Participant's beneficiaries, to facilitate all changes that the Employer determines to make to this Plan and to facilitate termination of this Plan, including without limitation actions:

1. To cause the Participant's Accrued Benefit to be transferred to one or more other annuity contracts or custodial accounts to which contributions may be made under IRC Section 403(b) and which will, as the Employer determines, (a) be under the control of the Participant or (b) be under the control of the Employer; and

2. To designate the one or more investment funds in which the Participant's Accrued Benefit is to be invested, and the one or more Annuity Contracts and Custodial Accounts in which the Participant’s Accrued Benefit is to be held, and from time to time to change the designation.\(^5\)

This right allows the Employer to effect the Employer’s interest in making changes to this Plan and in terminating this Plan. None of the State of Oregon, the Employer, the Board, and the Vice Chancellor for Finance and Administration is liable to any person for any act or failure to act under this right. No person who relies in good faith on this right of the Employer (whether exercised by the Employer or a delegatee of the Employer) is liable to any other person based on that reliance.

3.5. Enrollment in this Plan. The Employer may require an Employee to enroll in this Plan and to update the enrollment.

a. Required form. An Employee may enroll in this Plan or update the enrollment only on a written paper document or through an electronic medium made available by

\(^5\)This right to designate is in addition to, and does not limit, the Employer’s right provided in 4.1. to designate the default Annuity Contracts, Custodial Accounts, and investment funds, and that right provided in 4.1. does not limit this right.
the Employer for this purpose and by properly completing and delivering the enrollment to the Employer at the place specified in the document or medium or instructions therefor.

b. **Matters covered.** The Employer may require that the document or medium include the Employee’s agreements, releases, indemnifications, and representations with respect to such matters as the Employer from time to time requires. Upon delivery of the document or medium to the Employer, the Employee is bound by the Employee’s agreements, releases, indemnifications, and representations stated in the document or medium.

3.6. **Time of contributions.** Contributions on behalf of an Employee pursuant to a Salary Reduction Agreement will be paid by the Employer to an Annuity Contract or a Custodial Account as soon after the end of the applicable pay period as the contributions can reasonably be segregated from the general assets of the Employer, but no later than the 15th business day of the month following the month in which the contributions would otherwise have been payable to the Employee in cash or a cash equivalent.

3.7. **Determining contribution limits.** The Employer may require an Employee to determine and inform the Employer of the amounts of:

a. The Employee's limit on elective deferrals under IRC Sections 401(a)(30), 402(g), 414(u), and 414(v); and

b. The Employee's limit on annual additions under IRC Sections 414(u), 414(v), and 415; and

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6 *Elective deferrals* are employer contributions under a salary reduction agreement to a 401(k) plan, a 403(b) plan or program, a simplified employee pension under IRC Section 408(k)(6) (a SARSEP), a simple retirement account under IRC Section 408(p), or the Federal Thrift Savings Plan, and also deductible employee contributions to a trust described in IRC Section 501(c)(18) (which applies to pension trusts created before June 25, 1959, that are funded only by employee contributions).

7 IRC Sections 401(a)(30), 402(g), 414(u), and 414(v) all relate to the annual limit on elective deferrals (salary reduction contributions) for an Employee. IRC Sections 401(a)(30) and 402(g) state the basic annual limit. IRC Section 414(u) allows elective deferrals for periods of military service. IRC Section 414(v) increases the annual limit for individuals age 50 or over.

8 IRC Sections 414(u), 414(v), and 415 all relate to the limit on annual additions (contributions) for an Employee. IRC Section 415 states the basic limit. IRC Section 414(u) allows annual additions for periods of military service. IRC Section 414(v) increases the annual limit for individuals age 50 or over.
c. Any contributions\(^9\) and annual additions\(^10\) that are to be aggregated with contributions under this Plan in determining those limits.

The Employer may require this information on a worksheet provided by the Employer or in any other format.

3.8. Contributions with respect to qualified military service. Despite any contrary provision of this Plan, contributions with respect to qualified military service will be provided in accordance with IRC Section 414(u).\(^11\)

\(^9\)The contributions that are to be aggregated with contributions under this Plan in determining an Employee’s limit on elective deferrals referred to in 3.7.a. are all the Employee’s elective deferrals (as defined in note 6) for employment with the Employer or any other employer.

\(^10\)The annual additions that are to be aggregated with contributions under this Plan in determining an Employee’s limit on annual additions referred to in 3.7.b. are all contributions and forfeitures allocated to the Employee’s account in:

a. Any other 403(b) plan or program of the Employer;

b. Any 403(b) plan or program of any other employer; and

c. Any qualified plan under IRC Section 401(a) or 403(a), simplified employee pension under IRC Section 408(k), or medical benefit account for a key employee as described in IRC Section 419A(d)(2), of an employer that is more than 50% controlled by the Employee or certain family members or related entities.

Accordingly, an Employee’s annual additions do not include contributions or forfeitures allocated for the Employee in a 457 plan (such as the Oregon Savings Growth Plan), the Public Employees Retirement System (which includes the Oregon Public Service Retirement Plan), or the Employer’s Optional Retirement Plan.

But where the Employee (or certain family members or related entities) controls more than 50% of another employer (such as a corporation, partnership, limited liability company, or sole proprietorship) and participates in a plan of that employer, the Employee’s annual additions do include contributions and forfeitures allocated for the Employee in that plan if the plan is a qualified plan under IRC Section 401(a) or 403(a), a simplified employee pension under IRC Section 408(k), or a medical benefit account for a key employee as described in IRC Section 419A(d)(2).

\(^11\)IRC Section 414(u) allows certain individuals to make elective deferrals for periods of military service.
SECTION 4. INVESTMENTS

4.1. Employer's designation of Annuity Contracts, Custodial Accounts, and investment funds. The Employer will designate (1) the annuity contracts and custodial accounts that are eligible to receive contributions under this Plan, (2) the investment funds to be available under those annuity contracts and custodial accounts, and (3) the default annuity contracts, custodial accounts, and investment funds (i.e. the one or more of those annuity contracts and custodial accounts, and the one or more of those investment funds, in which a Participant’s Accrued Benefit is to be held and invested if the Participant or beneficiary has not made that designation as provided in 4.2. and 4.3.). The Employer:

   a. Annuity Contracts and Custodial Accounts. May designate an annuity contract or a custodial account under this 4.1. only if it is one to which contributions may be made under IRC Section 403(b) and the contract or account satisfies the requirements described in 4.5., and for this purpose the Employer may rely on statements by a representative of the issuer of the contract, the custodian of the account, or a company through which the contract or account is provided;

   b. Available investment funds. May designate an investment fund under this 4.1. to be available under a custodial account only if the investment fund may be held in a custodial account to which contributions may be made under IRC Section 403(b), and for this purpose the Employer may rely on statements by a representative of the issuer of the contract, the custodian of the account, or a company through which the contract or account is provided;

   c. Default Annuity Contracts, Custodial Accounts, and investment funds. Need not (but may) designate the same one or more default annuity contracts, custodial accounts, and investment funds for all Participants’ Accrued Benefits;

   d. Mapping of default investment funds for transfers within this Plan. When amounts are transferred within this Plan as described in 2.15.c.(2) or transferred to one or more different investment funds in the same Annuity Contract or Custodial Account, need not (but may) designate, as the one or more default investment funds for the amounts, funds with investment characteristics similar to the funds in which the amounts were invested immediately before the transfer;

   e. Mapping of default investment funds for transfers to this Plan. When amounts are transferred to this Plan as described in 2.15.c.(3), will not attempt to designate, as the one or more default investment funds for the amounts, funds with investment characteristics similar to the funds in which the amounts were invested immediately before the transfer;

   f. Mapping of default Annuity Contracts and Custodial Accounts for transfers within or to this Plan. When amounts are transferred within or to this Plan as described in 2.15.c.(2) or (3), need not (but may) designate, as the one or more default annuity contracts and custodial accounts for the amounts, contracts or accounts with characteristics similar to the contract or account in which the amounts were held immediately before the transfer (for
example, the Employer may designate a custodial account as the default for a transfer from an annuity contract, and may designate an annuity contract as the default for a transfer from a custodial account);

g. **Both Annuity Contract and Custodial Account not required; number of Annuity Contracts, Custodial Accounts, and investment funds.** Must designate at least one annuity contract or custodial account but need not designate both an annuity contract and a custodial account, and may designate any number of annuity contracts, custodial accounts, and investment funds; and

h. **Changes.** May from time to time change those designations.

### 4.2. Participant’s and beneficiary's designation of Annuity Contracts, Custodial Accounts, and investment funds

Each Participant who has entered into a Salary Reduction Agreement may, and must if the Employer requires, designate the one or more Annuity Contracts and Custodial Accounts in which the Participant’s Accrued Benefit is to be held and the one or more investment funds in which the Participant’s Accrued Benefit is to be invested. For any amount of a Participant's Accrued Benefit that is subject to the investment control of a beneficiary (including an Alternate Payee), the beneficiary may, and must if the Employer requires, designate the one or more Annuity Contracts and Custodial Accounts in which the amount is to be held and the one or more investment funds in which the amount is to be invested; and until that designation the Participant's designations with respect to the amount will continue to apply to the amount. Participants and beneficiaries may, and must if the Employer requires, from time to time update or change their designations.

### 4.3. Procedure for Participants’ and beneficiaries’ designations

Participants and beneficiaries may designate Annuity Contracts, Custodial Accounts, and investment funds, and update or change the designations, only in the manner and subject to any limitations the Employer requires from time to time.

### 4.4. No State, Employer, Board, or Vice Chancellor liability

None of the State of Oregon, the Employer, the Board, and the Vice Chancellor for Finance and Administration is liable to any person for any loss that results from (1) any designation or change made under 4.1. or 4.2., (2) any failure to change a designation made under 4.1. or 4.2., (3) any requirement imposed under 4.3., (4) any failure to change a requirement imposed under 4.3., or (5) the manner in which the Employer fulfilled its functions under 4.1. or 4.3.

### 4.5. Additional requirements for annuity contracts and custodial accounts

The Employer may designate an annuity contract or a custodial account under 4.1. only if the contract or account satisfies the following requirements:

a. **Nonforfeitable.** Participants' rights under the contract or account are nonforfeitable except for failure to pay future premiums;

b. **Elective deferral limit.** The contract or account satisfies the requirements of IRC Section 401(a)(30) (which limits elective deferrals), including the requirement to
distribute a Participant’s excess deferrals for a year to the Participant by April 15 of the following year;

c. **Excess annual additions.** The contract or account requires separate accounts for any excess annual additions under IRC Section 415 for a Participant and for the remaining amount held in the contract or account for the Participant, for the year of the excess and each year thereafter;

d. **Minimum distributions, Direct Rollovers, and incidental death benefits.** The contract or account satisfies requirements similar to the requirements of IRC Sections 401(a)(9) and 401(a)(31), and requirements similar to the incidental death benefit requirements of IRC Section 401(a), as prescribed in Treasury regulations under IRC Section 403(b)(10);

e. **Direct Rollover for non-spouse designated beneficiaries.** To the extent allowed by IRC Section 402(c)(11), the contract or account allows an individual who is a designated beneficiary (as defined in IRC Section 401(a)(9)(E)) of a deceased Participant and who is not the Participant’s surviving spouse to elect to have any portion of a distribution be made as a direct trustee-to-trustee transfer to an individual retirement plan specified by the individual and established for the purposes of receiving the distribution on behalf of the individual (and for purposes of this 4.5.e., to the extent provided in rules prescribed by the Secretary of Treasury or the Secretary’s delegate, a trust maintained for the benefit of one or more designated beneficiaries will be treated in the same manner as a trust designated beneficiary);

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12 Excess deferrals are salary reduction contributions that exceed the annual limit in IRC Sections 401(a)(30), 402(g), 414(v), and 414(u). IRC Sections 401(a)(30) and 402(g) state the basic annual limit. IRC Section 414(u) allows elective deferrals for periods of military service. IRC Section 414(v) increases the annual limit for individuals age 50 or over.

13 IRC Section 415 limits annual additions (contributions) for a Participant.

14 IRC Section 401(a)(9) generally requires that distributions start to a Participant by April 1 of the calendar year following the calendar year the Participant attains age 70½ or retires from employment with the Employer, whichever occurs later, and, if the Participant dies before then, that distributions either start to the Participant’s designated beneficiary by the end of the calendar year after the calendar year the Participant dies or be made to the Participant’s beneficiary by the end of the 5th calendar year starting after the calendar year the Participant dies.

15 IRC Section 401(a)(31) generally requires that the contract or account allow the distributee to elect a direct rollover when an eligible rollover distribution is to be made to a Participant, a Participant’s surviving spouse, or an Alternate Payee who is a Participant’s spouse or former spouse.

16 IRC Section 401(a) describes the requirements for qualified retirement plans. Treasury Regulation Section 1.401-1(b)(1)(i) allows qualified retirement plans to provide incidental death benefits.
f. **Direct Rollovers.** The contract or account accepts direct rollovers thereto to the extent allowed by law and will separately account for the direct rollovers except to the extent otherwise allowed by the Employer, except that the contract or account:

1. **Cash.** May accept the direct rollover of only cash or a cash equivalent;

2. **Alternate payees.** May not accept the direct rollover of any amount payable to an alternate payee (with respect to the person for whom the direct rollover is made) under a domestic relations order; and

3. **Nontaxable amounts.** Must provide for separate accounting, as required by IRC Section 402(c)(2)(A), for any amounts received by direct rollover (and earnings thereon) that include amounts not includible in gross income, including separate accounting for the portion transferred that is includible in gross income and for the portion transferred that is not so includible;

g. **Rollovers.** The contract or account accepts rollovers thereto to the extent allowed by law (for this purpose a rollover does not include a direct rollover) and will separately account for the rollovers except to the extent otherwise allowed by the Employer, except that the contract or account may accept the rollover of only cash or a cash equivalent;

h. **Transfers.** The contract or account accepts transfers thereto to the extent allowed by Revenue Ruling 90-24 and will separately account for the transfers except to the extent otherwise allowed by the Employer, except that the contract or account:

1. **Cash.** May accept the transfer of only cash (or a cash equivalent) and the loans described in 4.5.h.(2);

2. **Loans.** May accept the transfer of loans from an Annuity Contract or a Custodial Account;

3. **Alternate payees.** May not accept the transfer of any amount payable to an alternate payee (with respect to the person for whom the transfer is made) under a domestic relations order except from an Annuity Contract or a Custodial Account;

4. **Revenue Ruling 90-24.** Must provide that transferred amounts (including any earnings allocable to the amounts) that are subject to the early distribution restrictions of IRC Section 403(b)(7)(A)(ii) or 403(b)(11) will be accounted for separately and will continue to be subject to the same or more stringent distribution restrictions; and

5. **Nontaxable amounts.** Must provide for separate accounting, consistent with IRC Section 402(c)(2)(A), for any amounts transferred (and earnings thereon) that include amounts not includible in gross income, including separate accounting for the portion transferred that is includible in gross income and for the portion transferred that is not so includible;
i. **Beneficiaries and benefit payments and Transfers.** The contract or account permits benefit payments and Transfers consistent with the provisions of Sections 5. (about beneficiary) and 6. (about benefits);

j. **Loans.** The contract or account permits loans under the terms described in 7.2.a. through g., except that the contract or account need not accept transfers of loans from another contract or account;

k. **Universal availability requirement.** Any contribution minimums imposed with respect to the contract or the account must be consistent with IRC Section 403(b)(12)(A)(ii).

l. **Voting proxies.** The issuer of the contract or the custodian of the account, or a person designated by the issuer or custodian who accepts the designation, accepts responsibility to determine whether to vote, and to vote, all proxies with respect to assets held in the contract or account;

m. **Employer acting for Employees and beneficiaries.** The issuer of the contract or the custodian of the account will with reasonable promptness implement directions given by the Employer or the Employer’s delegatee under the right described in 3.4.b.;

n. **Changes in law.** The issuer of the contract or the custodian of the account will cause the contract or account to be timely amended and administered to comply with all applicable changes in law, including without limitation changes in applicable Treasury regulations (and all the other requirements in this 4.5. are subject to all applicable changes in law);

o. **Correcting errors.** The contract or account permits all corrections of 403(b) failures with respect to this Plan that are allowed by the Internal Revenue Service’s Employee Plans Compliance Resolution System, and the issuer of the contract or the custodian of the account will promptly notify the Employer of all those 403(b) failures that are known to the issuer or custodian and will with reasonable promptness cooperate with the Employer to correct all those 403(b) failures in a manner allowed by that System;

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17IRC Section 403(b)(12)(A)(ii) requires that “all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement,” excluding “employees who are students performing services described in section 3121(b)(10).” IRC Section 3121(b)(10) describes service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at the school, college, or university.
p. Additional requirements for annuity contracts. In the case of an annuity contract:

(1) **Owner.** The contract must be owned by the Employer;

(2) **No taxable life insurance.** The contract may not include any life insurance protection that requires including the cost of the protection in a Participant’s gross income;

(3) **Nontransferable.** The contract expressly contains the provisions that are necessary to make each Participant’s interest in the contract nontransferable within the meaning of and to the extent required by Treasury Regulation Section 1.401-9;

(4) **Distribution restrictions.** Except as allowed in Section 6. (about benefits), distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of IRC Section 3121(a)(5)(D)) may be paid only when the Participant dies, attains age 59½, has a severance from employment, or becomes disabled (within the meaning of IRC Section 72(m)(7)) or in the case of hardship; but the contract may not provide for the distribution of any income attributable to the contributions in the case of hardship;

(5) **Oregon qualification.** The contract is issued by an insurance company qualified to issue annuities in the State of Oregon;

(6) **Qualifying contract.** The contract is not a life insurance contract (as defined in IRC Section 7702), an endowment contract, a health or accident insurance contract, or a property, casualty, or liability insurance contract;

(7) **Investments.** The contract offers investments in a broad range of asset classes, including stable value investments and money market, bond, and stock funds, and the investments satisfy the applicable requirements of Revenue Procedure 99-44 with respect to annuity contracts; and

(8) **Forms of benefit payments.** The contract offers benefit payments in the form of:

(a) **Fixed annuities.** Fixed annuities, i.e. contracts under which the issuer makes and guarantees fixed periodic payments for a specified period, such as for a period of years or for life; and

(b) **Variable annuities.** Variable annuities, i.e. contracts under which the issuer makes variable periodic payments (which vary with the investment return on the

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18IRC Section 72(m)(7) defines disabled as “unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.”
specified underlying investments) for a specified period, such as for a period of years or for life; and

q. **Additional requirements for custodial accounts.** In the case of a custodial account:

1. **Custodian.** The assets thereof are held by a bank (as defined in IRC Section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary of Treasury or the Secretary’s delegate, that the manner in which the person will hold the assets will be consistent with the requirements of IRC Section 401;

2. **Investments.** All amounts held in the account are invested only in stock of domestic corporations that are regulated investment companies (mutual funds) within the meaning of IRC Section 851(a) (which funds must represent a broad range of asset classes, including money market, bond, and stock funds);

3. **Nontransferable.** The agreement for the account expressly contains the provisions that are necessary to make each Participant’s interest in the account nontransferable within the meaning of and to the extent required by Treasury Regulation Section 1.401-9, determined by treating Treasury Regulation Section 1.401-9 as applying to the account;

4. **Distribution restrictions.** Except as allowed in Section 6. (about benefits), under the account no amounts may be paid or made available to any distributee before the Participant dies, attains age 59½, has a severance from employment, becomes disabled (within the meaning of IRC Section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of IRC Section 3121(a)(5)(D)), encounters financial hardship; and

5. **Exclusive benefit.** The assets held in the custodial account cannot be used for, or diverted to, purposes other than for the exclusive benefit of Participants or their beneficiaries (for example, the assets cannot be borrowed by the Employer).
SECTION 5. BENEFICIARY

5.1. Participant’s Beneficiary. A Participant may deliver to the Employer a designation of beneficiary designating the Beneficiary or Beneficiaries who are to receive any benefits payable under this Plan to the Participant's Beneficiary in the event of the Participant's death.

   a. Requirements. A designation of beneficiary must be on a written paper document or through an electronic medium made available by the Employer for this purpose and is effective when properly completed by the Participant and delivered to the Employer during the Participant’s life at the place specified in the document or medium or instructions therefore, and when effective revokes all earlier designations of beneficiary by the Participant with respect to the Participant’s Accrued Benefit.

   b. Default Beneficiary. If at the Participant's death there is not an effective designation of beneficiary, or if none of the Beneficiaries designated by the Participant survives the Participant, the Participant's Beneficiary will be the following person or persons in the following order of priority: The Participant's (1) surviving spouse, (2) surviving children in equal shares, (3) surviving parents in equal shares, or (4) estate.

   c. Controlling statutes. For purposes of this Section 5.: 

      (1) ORS 112.175 to 112.195, about adoption, or successor Oregon statutes, apply to determine relationships. ORS 112.105, about paternity, or successor Oregon statutes, and other comparable state laws apply without regard to any limitation therein regarding intestate succession. ORS 112.455 to 112.555, regarding certain deaths caused by an individual, or successor Oregon statutes, apply without regard to whether the death occurs or the individual resides in Oregon and will be applied by treating this Plan as a pension plan.

      (2) The Oregon Uniform Disclaimer of Property Interests Act, ORS 105.623 to 105.649, or its successor, and the Oregon Uniform Simultaneous Death Act, ORS 112.570 to ORS 112.590, or its successor, apply to determine whether a person survives the Participant. The Oregon Uniform Simultaneous Death Act, ORS 112.570 to ORS 112.590, or its successor will be applied by treating this Plan as a pension plan. However, if a Participant’s designation of beneficiary requires an individual to survive the Participant’s death for a specified period of time in order to be the Participant’s Beneficiary, that specified period, and not the 120-hour period in the Oregon Uniform Simultaneous Death Act, will apply.

   d. Alternate Payees. If a qualified domestic relations order as defined in IRC Section 414(p)(11) specifies the Alternate Payee's beneficiary and a copy of the order acceptable to the Employer is delivered to the Employer during the Alternate Payee’s life, the order will be treated as an effective designation of beneficiary and that beneficiary will be the Alternate Payee's Beneficiary for purposes of this Plan, but subject to 6.11.c.(3), this Section 5., and the order.
e. **Limitation to part of Accrued Benefit.** A designation of beneficiary that applies to only part of a Participant’s Accrued Benefit does not apply to any other part of the Participant’s Accrued Benefit and does not, as to any other part of the Participant’s Accrued Benefit, revoke earlier designations of beneficiary.

f. **Inapplicability of designation of beneficiary not made under this Plan.**
Only a designation of beneficiary with respect to part or all of a Participant’s Accrued Benefit is an effective designation of beneficiary under this Plan. A designation of beneficiary with respect to the Participant’s interest under an annuity contract or a custodial account that is not an Annuity Contract or a Custodial Account is not, and is not affected by, a designation of beneficiary under this Plan.
SECTION 6. BENEFITS

6.1. Payment of benefits.

a. Benefits available at earlier of Severance from Employment or age 59½ and must be paid by the date required by law. The person to whom a Participant’s Accrued Benefit is payable:

(1) Earliest payment date. May elect, in the manner the Employer requires, to receive the Accrued Benefit after the Participant’s Severance from Employment or, if earlier, after the Participant attains age 59½; and

(2) Latest payment date. Will receive the Participant’s Accrued Benefit by the date required under IRC Sections 401(a)(9)\(^{19}\) and the incidental death benefit requirements of IRC Section 401(a)\(^{20}\) as they apply under IRC Section 403(b).

b. When election to receive benefits becomes irrevocable. An election of the date to receive any part of the Participant’s Accrued Benefit becomes irrevocable when that part is paid or at any earlier date specified by the Employer or the issuer of an annuity contract for paying that part, and may be changed before becoming irrevocable.

c. Form of payment and person to whom paid. The Participant's Accrued Benefit will be paid as provided in 6.2. (about form of payment), 6.3. (about forms of payment available), and 6.4. (about to whom payment is to be made).

d. Exceptions to the above. Despite 6.1.a., b., and c.:

(1) Corrective distribution of excess deferrals. A Participant will receive a corrective distribution of excess deferrals as provided in 6.5.

(2) Qualified reservist distribution of 403(b) elective deferrals. A Participant may elect to receive a qualified reservist distribution as provided in 6.6.

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\(^{19}\)IRC Section 401(a)(9) generally requires that distributions start to a Participant by April 1 of the calendar year following the calendar year the Participant attains age 70½ or retires from employment with the Employer, whichever occurs later, and, if the Participant dies before then, that distributions either start to the Participant’s designated beneficiary by the end of the calendar year after the calendar year the Participant dies or be made to the Participant’s beneficiary by the end of the 5th calendar year starting after the calendar year the Participant dies.

\(^{20}\)IRC Section 401(a) describes the requirements for qualified retirement plans. Treasury Regulation Section 1.401-1(b)(1)(i) allows qualified retirement plans to provide incidental death benefits.
(3) **Amounts attributable to Rollover or Direct Rollover.** A Participant may elect to receive amounts attributable to a Rollover or Direct Rollover to this Plan to the extent provided in 6.7.

(4) **Transfer to defined benefit plan to purchase service credit.** A Participant may elect to have the Participant’s Accrued Benefit transferred to a defined benefit governmental plan to the extent provided in 6.8.

(5) **Transfer under Revenue Ruling 90-24 to an Annuity Contract or a Custodial Account.** A Participant or Beneficiary may elect to have the Participant’s Accrued Benefit transferred to an Annuity Contract or a Custodial Account as provided in 6.9.

(6) **Hardship distribution of 403(b) elective deferrals.** A Participant may receive a distribution on account of hardship to the extent provided in 6.10.

(7) **Alternate Payees.** A Participant’s Accrued Benefit will be paid to an Alternate Payee or to the Alternate Payee’s beneficiary to the extent provided in 6.11.

(8) **Correcting errors.** A Participant’s Accrued Benefit will be paid as and to the extent the Employer deems advisable to correct one or more 403(b) failures with respect to the Participant’s Accrued Benefit in a manner allowed by the Internal Revenue Service’s Employee Plans Compliance Resolution System.

6.2. **Form of payment.** The amount payable (except amounts payable under 6.1.d.(1), (4), (5), or (6) and 6.5., 6.8., 6.9., or 6.10. or under 6.1.d.(8)) will be paid in the form or forms elected by the Participant or Beneficiary from among the available forms of payment described in 6.3.

a. **ELECTING THE FORM.** The Participant or Beneficiary must make the election, in the manner the Employer requires, no later than 60 days before the date the amount is to be paid to the Participant or Beneficiary (or no later than the lesser number of days before the date the amount is to be paid to the Participant or Beneficiary as is allowed by the Employer). However, if a direct rollover under IRC Section 401(a)(31) is available to the Participant or Beneficiary, or if a direct trustee-to-trustee transfer under IRC Section 402(c)(11) is available to the Beneficiary, no election to receive payment of the Participant’s Accrued Benefit is valid if obtained before the Participant or Beneficiary receives the Special Tax Notice required by IRC Section 402(f) and the regulations thereunder. The Special Tax Notice will be given no more than 180 days and no less than 30 days before the distribution begins, except that a distribution may begin less than 30 days after the Special Tax Notice is provided if (i) the Special Tax Notice clearly indicates to the Participant or Beneficiary that the Participant or Beneficiary has a right to a period of at least 30 days after the Special Tax Notice is provided to consider the decision of whether to elect a direct rollover or a direct trustee-to-trustee transfer and (ii) the Participant or Beneficiary, after receiving the Special Tax Notice, affirmatively elects a form of payment.

(1) **When irrevocable.** An election of an annuity becomes irrevocable when the first annuity payment is made to the Participant or Beneficiary or at any earlier date.
specified by the Employer or the issuer of the annuity contract, and may be changed before becoming irrevocable. An election of a form other than an annuity becomes irrevocable as to a payment when the payment is made to the Participant or Beneficiary or at any earlier date specified by the Employer, and may be changed before becoming irrevocable.

(2) When the election is to be made by the Participant. If the amount is first payable to the Participant, the election must be made by the Participant.

(3) When the election is to be made by the Beneficiary. If the amount is first payable to the Beneficiary, the election must be made by the Beneficiary.

b. Form if election not made.

(1) Lump sum. Absent an election and except as provided in 6.2.b.(2), the amount payable will be paid in the form of one lump sum.

(2) Automatic Direct Rollover. Despite any contrary provision of this Plan or of any Annuity Contract or Custodial Account, any eligible rollover distribution described in this 6.2.b.(2) will be paid in a direct rollover to an individual retirement plan designated by the payor of the distribution and the payor will notify the Participant in writing (either separately or as part of the Special Tax Notice required by IRC Section 402(f)) that the distribution may be transferred to another individual retirement plan. An eligible rollover distribution is described in this 6.2.b.(2) if:

(a) The distribution (i) is more than $1,000, (ii) is made with respect to a Participant before the Participant's normal retirement age, and (iii) may be made without the Participant's consent; and

(b) The Participant does not elect to have the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly.

For purposes of this 6.2.b.(2), (i) an individual retirement plan is an individual retirement account described in IRC Section 408(a) or an individual retirement annuity described in IRC Section 408(b) and (ii) a Participant's normal retirement age is age 65.

c. Contract to pay benefits. If an annuity contract is distributed to pay benefits under this Plan:

(1) No liability for nonpayment. None of the State of Oregon, the Employer, the Board, and the Vice Chancellor for Finance and Administration is liable to a Participant, beneficiary, or any other person (the payee) for any loss due to failure of the issuer of the contract to make payments as provided in the contract or due to a lack of financial soundness of the issuer when or after the contract is purchased or distributed.
(2) **No recourse.** The contract will be in full satisfaction of the rights under this Plan of the payee and the payee's contingent annuitant and estate, and upon the delivery thereof those persons will have no further interest under this Plan with respect to the benefits to be paid under the contract and must look solely to the issuer of the contract for the payment of those benefits.

(3) **Comply with requirements of this Plan; nontransferable.** The contract must comply with the requirements of this Plan and be nontransferable. The terms of this Plan control in the event of any conflict between the terms of this Plan and the terms of the contract.

6.3. **Forms of payment available.** This 6.3. describes the forms of payment available under this Plan. The forms of payment available for the part of a Participant’s Accrued Benefit held in an Annuity Contract are described in 6.3.a., c., and d. The forms of payment available for the part of a Participant’s Accrued Benefit held in a Custodial Account are described in 6.3.b., c., and d. All the forms of payment described in this 6.3. are subject to the requirements referred to in 4.5.d.

a. **Annuity Contracts.** The forms of payment available for the part of a Participant’s Accrued Benefit held in an Annuity Contract are:

   (1) **Equal installments.** Equal monthly, quarterly, semi-annual, or annual payments of not less than $100 in an amount chosen by the Participant or Beneficiary, continuing until the Accrued Benefit is exhausted.

   (2) **Approximately equal installments.** Approximately equal monthly, quarterly, semi-annual, or annual payments of not less than $100, calculated to continue for a period certain chosen by the Participant or Beneficiary.

   (3) **Annual minimum distributions.** Annual payments of not less than $100 equal to the minimum distributions required under IRC Section 401(a)(9), including the incidental death benefit requirements of IRC Section 401(a)(9)(G).

   (4) **Partial lump sum.** Partial lump-sum payment.

   (5) **Lump sum.** One lump-sum payment.

   (6) **Annuity.** Any annuity form made available by the issuer of the Annuity Contract under its contracts with respect to this Plan. The parts of those contracts describing those annuity forms are incorporated into and are part of this Plan. The terms of this Plan, excluding the incorporated parts of those contracts, control in the event of any conflict between the terms of this Plan, excluding those incorporated parts, and the terms of those contracts.
b. **Custodial Accounts.** The forms of payment available for the part of a Participant’s Accrued Benefit held in a Custodial Account are those described in 6.3.a.(1) through (5).

c. **Direct Rollover for distributee.** A distributee may elect to have any portion of an eligible rollover distribution be paid directly to an eligible retirement plan specified by the distributee in a direct rollover. This election will be made under the terms of the Annuity Contract or Custodial Account that implement the requirements referred to in 4.5.d. relating to IRC Section 401(a)(31) and will be allowed despite any contrary provision of this Plan, the Annuity Contract, or the Custodial Account that would otherwise limit this election. For purposes of this 6.3.c., (1) a distributee is a Participant and (2) a Participant’s surviving spouse and a Participant’s spouse or former spouse who is an Alternate Payee under a qualified domestic relations order (as defined in IRC Section 414(p)(11)) are distributees with regard to the interest of the spouse or former spouse.

d. **Direct Rollover for non-spouse designated beneficiary.** An individual who is a designated beneficiary (as defined in IRC Section 401(a)(9)(E)) of a deceased Participant and who is not the Participant’s surviving spouse may elect to have any portion of a distribution be made, to the extent allowed by IRC Section 402(c)(11), as a direct trustee-to-trustee transfer to an individual retirement plan specified by the individual and established for the purposes of receiving the distribution on behalf of the individual. For purposes of this 6.3.d., to the extent provided in rules prescribed by the Secretary of Treasury or the Secretary’s delegate, a trust maintained for the benefit of one or more designated beneficiaries will be treated in the same manner as a trust designated beneficiary. This election will be made under the terms of the Annuity Contract or Custodial Account that implement 4.5.e. and will be allowed despite any contrary provision of this Plan, the Annuity Contract, or the Custodial Account that would otherwise limit this election.

6.4. **To whom payment is to be made.**

a. **Payments during and after the Participant’s life.** Payments made during the Participant's life will be made to the Participant. Payments made after the Participant's death will be made to the Participant's Beneficiary or the Beneficiary's estate or, in the case of an annuity, as provided under the terms of the annuity.

b. **Payments for a minor or disabled individual.** If any person to whom an amount of a Participant’s Accrued Benefit is payable is a minor or (as determined by the Employer) incompetent by reason of physical or mental disability, the Employer may direct the issuer of an Annuity Contract and the custodian of a Custodial Account to make the payments becoming due to the person to another for the person's benefit without responsibility for the Employer, the issuer, or the custodian to see to the application of those payments, including without limitation to a custodian for the person, selected by the Employer without liability for the selection made, under the Oregon Uniform Transfers to Minors Act or under any other comparable state law. Any payment made pursuant to that direction and consistent with applicable law, including without limitation ORS 126.700 and the Oregon Uniform Transfers to Minors Act, will as to the payment operate as a complete discharge of the Employer, the issuer,
and the custodian. This 6.4.b. does not obligate the Employer to determine whether a person is a minor or incompetent.

c. **Proof of death.** None of the State of Oregon, the Employer, any delegatee (of the Employer), the Board, the Vice Chancellor for Finance and Administration, any issuer of an Annuity Contract, and any custodian of a Custodial Account is liable for any payments due to a beneficiary (including a contingent annuitant) but made instead in the name of a Participant, Beneficiary, or other person (“decedent”) before receiving proof of the decedent’s death and having a reasonable time to stop making payments in the name of the decedent.

6.5. **Corrective distribution of excess deferrals.**

a. **In same taxable year.** A Participant who has excess deferrals\(^\text{21}\) under IRC Section 402(g) for a taxable year of the Participant may receive a corrective distribution of excess deferrals during the same taxable year if:

1. The Participant designates the distribution as an excess deferral in the manner the Employer requires;
2. The corrective distribution is made after the date on which an Annuity Contract or a Custodial Account received the excess deferral; and
3. The Employer designates the distribution as a distribution of excess deferrals.

The Employer will make every reasonable effort to cause the excess deferral (adjusted for allocable income or loss in accordance with IRC Section 402(g)(2)) to be distributed to the Participant during the taxable year. A Participant is deemed to have designated the distribution as an excess deferral to the extent the Participant has excess deferrals for the taxable year calculated by taking into account only elective deferrals\(^\text{22}\) under this Plan and other plans and programs of the Employer.

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\(^{21}\text{Excess deferrals}\) are salary reduction contributions that exceed the annual limit in IRC Sections 401(a)(30), 402(g), 414(v), and 414(u). IRC Sections 401(a)(30) and 402(g) state the basic annual limit. IRC Section 414(u) allows elective deferrals for periods of military service. IRC Section 414(v) increases the annual limit for individuals age 50 or over.

\(^{22}\text{Elective deferrals}\) are employer contributions under a salary reduction agreement to a 401(k) plan, a 403(b) plan, a simplified employee pension under IRC Section 408(k)(6) (a SARSEP), a simple retirement account under IRC Section 408(p), or the Federal Thrift Savings Plan, and also deductible employee contributions to a trust described in IRC Section 501(c)(18) (which applies to pension trusts created before June 25, 1959, that are funded only by employee contributions). Accordingly, a Participant’s “elective deferrals under this Plan and other plans and programs of the Employer” consist of only the Employer’s 403(b) contributions for the Participant under ORS 243.810 to 243.830 and do not include contributions to a 457 plan (such as the Oregon Savings Growth Plan), to the Public Employees Retirement System (which includes the pension
b. **In next taxable year.** If any amount is included in a Participant's gross income for a taxable year of the Participant as an excess deferral under IRC Section 402(g), and the Participant notifies the Employer on or before the March 1 next following the taxable year, in the manner the Employer requires, that all or a specified part of a salary reduction contribution made on the Participant's behalf is an excess deferral, the Employer will cause the excess deferral (adjusted for allocable income or loss in accordance with IRC Section 402(g)(2)) to be distributed to the Participant no later than the next following April 15. A Participant is deemed to have notified the Employer of excess deferrals to the extent the Participant has excess deferrals under this Plan and other plans and programs of the Employer.

6.6. **Qualified reservist distribution of 403(b) elective deferrals.** A Participant ordered or called to active duty, as described in 6.6.b., after September 11, 2001, and before December 31, 2007, may elect, in the manner the Employer requires, to receive a qualified reservist distribution. A **qualified reservist distribution** means any distribution to a Participant if:

a. The distribution is from amounts attributable to employer contributions under IRC Section 403(b) pursuant to a salary reduction agreement (within the meaning of IRC Section 3121(a)(5)(D));

b. The Participant was (by reason of being a member of a reserve component (as defined in 37 United States Code Section 101)) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and

c. The distribution is made during the period beginning on the date of that order or call and ending at the close of the active duty period.

6.7. **Amounts attributable to Rollover or Direct Rollover.** A Participant whose Rollover or Direct Rollover to this Plan is separately accounted for may at any time elect, in the manner the Employer requires, to receive any part or all of the Participant's Accrued Benefit that is attributable to the Rollover or Direct Rollover.

6.8. **Transfer to defined benefit plan to purchase service credit.** To the extent allowed by IRC Section 403(b)(13) and Treasury regulations thereunder and accepted by the transferee defined benefit plan, a Participant may elect, in the manner the Employer requires, to have any part of the Participant’s Accrued Benefit transferred in a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in IRC Section 414(d)) that is qualified under IRC Section 401(a) if the transfer is:

a. For the purchase of permissive service credit (as defined in IRC Section 415(n)(3)(A) under the receiving defined benefit governmental plan; or

and individual account programs under the Oregon Public Service Retirement Plan), or to the Employer’s Optional Retirement Plan.

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b. A repayment to which IRC Section 415 does not apply by reason of IRC Section 415(k)(3) (about repayments of cashouts under governmental plans).

6.9. Transfer under Revenue Ruling 90-24 to an Annuity Contract or a Custodial Account. A Participant or (after the Participant’s death) Beneficiary may elect, in the manner the Employer requires, to have any part of the Participant’s Accrued Benefit transferred to an Annuity Contract or a Custodial Account designated by the Participant or Beneficiary that (1) will accept the transfer and (2) provides that any of those transferred amounts (including any earnings allocable thereto) that are subject to the early distribution restrictions of IRC Section 403(b)(7)(A)(ii) or 403(b)(11) will be accounted for separately and will continue to be subject to the same or more stringent distribution restrictions. This 6.9. applies to a Beneficiary only for the part of the Participant’s Accrued Benefit that 6.1. through 6.4. allow the Beneficiary to elect to receive in one lump-sum payment.

6.10. Hardship distribution of 403(b) elective deferrals.

a. Limitation on funds available for a hardship distribution. The amount (“that amount”) of a Participant’s Accrued Benefit consisting of 403(b) elective deferrals (i.e. contributions under IRC Section 403(b) made pursuant to a salary reduction agreement (within the meaning of IRC Section 3121(a)(5)(D)) may be paid on account of hardship to the extent permitted under this 6.10. For this purpose:

1) If the Participant’s Accrued Benefit includes both 403(b) elective deferrals and other contributions (such as transferred employer-funded contributions), that amount does not include any 403(b) elective deferrals that are not maintained in a separate account;

2) That amount also does not include any income on 403(b) elective deferrals; and

3) That amount (determined after applying 6.10.a.(1) and (2)) will be determined by treating all distributions under this Plan previously made to the Participant as consisting of 403(b) elective deferrals.

b. Application by Participant and determination by Employer. A Participant may apply to the Employer for a distribution on account of hardship. The application must be made on a written document or through an electronic medium made available by the Employer for this purpose and be properly completed and be accompanied by evidence showing the amount of the distribution to which the Participant is entitled on account of the hardship. If the application is approved by the Employer, distribution will be made in the amount and in the form of payment (other than a Direct Rollover or Transfer) approved by the Employer. If only part of the amount requested by the Participant is approved by the Employer, only that part will be distributed. If the Participant disagrees with the Employer's determination, the Employer will reconsider the determination (but only once) if the Participant requests reconsideration within 10 days after receiving notice of the Employer’s determination. 8.3. (about claim and decision) and
8.4. (about review of the decision) do not apply to the application or reconsideration but do apply (and apply only) after the reconsideration.

c. **Meaning of hardship.** A distribution is made on account of hardship only if the distribution:

   (1) Is made on account of an immediate and heavy financial need of the Participant, as determined under 6.10.d.; and

   (2) Is necessary to satisfy the financial need, as determined under 6.10.e.

d. **Meaning of immediate and heavy financial need.** A distribution is made on account of an immediate and heavy financial need of the Participant only if the distribution is for:

   (1) Expenses for (or necessary to obtain) medical care that would be deductible under IRC Section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);

   (2) Costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);

   (3) Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the Participant, or the Participant’s spouse, children, or dependents (as defined in IRC Section 152, without regard to IRC Section 152(b)(1), (b)(2) and (d)(1)(B));

   (4) Payments necessary to prevent the eviction of the Participant from the Participant’s principal residence or foreclosure on the mortgage on that residence;

   (5) Payments for burial or funeral expenses for the Participant’s deceased parent, spouse, children, or dependents (as defined in IRC Section 152, without regard to IRC Section 152(d)(1)(B)); or

   (6) Expenses for the repair of damage to the Participant’s principal residence that would qualify for the casualty deduction under IRC Section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

e. **Meaning of necessary to satisfy the financial need.** A distribution is necessary to satisfy the financial need only if:

   (1) The distribution is limited to the amount required to satisfy the financial need as determined under 6.10.d. (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution); and
(2) The financial need may not be relieved from other resources that are reasonably available to the Participant. The determination whether the financial need may be relieved from other resources that are reasonably available to the Participant generally is to be made on the basis of all the relevant facts and circumstances. For this purpose:

(a) The Participant’s resources are deemed to include those assets of the Participant’s spouse and minor children that are reasonably available to the Participant. Thus, for example, a vacation home owned by the Participant and the Participant’s spouse, whether as community property, joint tenants, tenants by the entirety, or tenants in common, generally will be deemed a resource of the Participant. However, property held for the Participant’s child under an irrevocable trust or under the Uniform Gifts to Minors Act (or comparable State law) is not treated as a resource of the Participant.

(b) The financial need generally may be treated as not capable of being relieved from other resources that are reasonably available to the Participant, if the Employer relies upon the Participant’s representation (made in writing or such other form as may be prescribed by the Commissioner of Internal Revenue and as the Employer requires), unless the Employer has actual knowledge to the contrary, that the need cannot reasonably be relieved:

(i) Through reimbursement or compensation by insurance or otherwise;

(ii) By liquidation of the Participant’s assets;

(iii) By cessation of elective contributions or Participant contributions under this Plan;

(iv) By other currently available distributions (including distribution of ESOP dividends under IRC Section 404(k)) and nontaxable (at the time of the loan) loans, under plans maintained by the Employer or by any other employer; or

(v) By borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.

(c) A need cannot reasonably be relieved by one of the actions described in 6.10.e.(2)(b) if the effect would be to increase the amount of the need. For example, the need for funds to purchase a principal residence cannot reasonably be relieved by a plan loan if the loan would disqualify the Participant from obtaining other necessary financing.

6.11. Alternate Payees. A Participant's Accrued Benefit will be paid to an Alternate Payee or to the Alternate Payee's beneficiary to the extent provided in this 6.11.

a. Payment to Alternate Payee. To the extent required by and subject to the restrictions of ORS 237.600 or other applicable law, the amount of a Participant's Accrued Benefit will be paid to an Alternate Payee if and to the extent expressly provided for in the terms
of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation, but only if the decree or order is a qualified domestic relations order as defined in IRC Section 414(p)(11).

b. **Required information and documentation.** However, no benefit under this Plan may be paid to an Alternate Payee under the terms of a court decree or order or court-approved property settlement agreement (“Order”) until the Employer receives a copy of the Order and any additional information and documentation needed to satisfy the Employer:

   (1) That the copy is a true copy of the Order;

   (2) If ORS 237.600 applies, that the Order is, within the meaning of ORS 237.600, a court decree of annulment or dissolution of marriage or of separation, or a court order or court-approved property settlement agreement incident to such a decree;

   (3) About the extent to which the terms of the Order expressly provide for payment of a benefit under this Plan to an Alternate Payee; and

   (4) About any other facts and matters required for the Employer to:

      (a) Determine the application of ORS 237.600 or other applicable law to the Order or the extent to which the Order applies to this Plan;

      (b) Comply with the Order or with ORS 237.600 or other applicable law; and

      (c) Administer this Plan under the terms of the Order.

c. **Coordination with other provisions of this Plan.** With respect to amounts payable to an Alternate Payee:

   (1) The amount payable to the Alternate Payee will be paid as soon as administratively practicable on or after the date of the Order or, if later, the date or dates provided for or allowed in the Order, but no later than as soon as administratively practicable after the Participant's Severance from Employment;

   (2) For any part of a Participant’s Accrued Benefit assigned to an Alternate Payee as a separate interest, 6.1. through 6.10. apply to the Alternate Payee as if the Alternate Payee were a Participant and the amount payable to the Alternate Payee were the amount of the Alternate Payee's Accrued Benefit, except that:

      (a) The following do not apply to the Alternate Payee:

         (i) 6.1.a.(1) (about earliest payment date) and 6.1.c. (about form of payment and person to whom paid);
(ii) 6.1.d.(1) and 6.5. (about corrective distribution of excess deferrals);

(iii) 6.1.d.(2) and 6.6. (about qualified reservist distribution of 403(b) elective deferrals);

(iv) 6.1.d.(3) and 6.7. (about amounts attributable to Rollover or Direct Rollover);

(v) 6.1.d.(4) and 6.8. (about transfer to defined benefit plan to purchase service credit);

(vi) 6.1.d.(6) and 6.10. (about hardship distribution of 403(b) elective deferrals); and

(vii) 6.2.b.(2) (about automatic Direct Rollover);

(b) A direct rollover under IRC Section 401(a)(31) is available to the Alternate Payee only if allowed by 6.3.c.; and

(c) A direct trustee-to-trustee transfer under IRC Section 402(c)(11) is available to the Alternate Payee only if allowed by 6.3.d.; and

(3) If a separate account under an Annuity Contract or a Custodial Account is established for the Alternate Payee:

(a) The account will be subject to the investment control of the Alternate Payee under the terms of 4.1. through 4.4.; and

(b) Section 5. (about Beneficiary), other than 5.1.d. (about Alternate Payees), will apply to the Alternate Payee as if the Alternate Payee were a Participant and the separate account were the Alternate Payee's Accrued Benefit.

6.12. **Source of benefit payments.** All benefits payable with respect to amounts paid or transferred to an Annuity Contract or a Custodial Account, or transferred to an annuity contract or a custodial account under the right described in 3.4.b., will be paid solely from the Annuity Contract or the Custodial Account, or solely from and only as provided in the transferee annuity contract or custodial account, and none of the State of Oregon, the Employer, the Board, and the Vice Chancellor for Finance and Administration is liable or responsible therefor.

6.13. **Claims under annuity contracts and custodial accounts receiving a transfer under 3.4.b.** Any claim to enforce any right under any annuity contract or custodial account to which amounts have been transferred under the right described in 3.4.b. must be made only against the issuer of the annuity contract or the custodian of the custodial account or a person designated by the issuer or custodian who accepts the designation. No such claim may be made
against the State of Oregon, the Employer, any delegatee (of the Employer), the Board, or the Vice Chancellor for Finance and Administration, and none of them is liable or responsible with respect to any such claim or right.
SECTION 7. PARTICIPANT LOANS

7.1. **Availability of loans.** This Plan will make loans available to Participants (but not beneficiaries) under a written loan policy adopted by the Employer. The Employer may amend the loan policy in writing from time to time as the Employer deems advisable.

7.2. **Certain requirements for the loan policy.** The terms of the loan policy will be determined by the Employer, except that the policy will:

   a. Allow loans to a Participant only from the Participant’s Accrued Benefit;

   b. Specify that a loan to a Participant is an investment of the Participant’s accounts under the Annuity Contracts and Custodial Accounts from which the loan is made or to which the loan is transferred and require that repayments of the loan be credited to those accounts and that any reduction of an account balance to repay the loan be made to those accounts;

   c. Not allow a loan to be repaid by payroll deduction or otherwise require the Employer to receive or transmit loan repayments;

   d. Require each loan to comply with the requirements in IRC Section 72(p) and Treasury regulations thereunder for the loan not to be treated as a distribution, and with any requirements in Treasury regulations under IRC Section 403(b) for the loan not to be treated as a distribution, but not including (1) a deemed distribution because repayments are not made in accordance with the terms of the loan or (2) a reduction of an account balance to repay a loan if the reduction is not prohibited under the applicable provisions of IRC Section 403(b)(7)(A)(ii) and 403(b)(11) prohibiting or limiting distributions to an employee;

   e. Require each loan to comply with any requirements in Treasury regulations under IRC Section 403(b) for the loan not to violate IRC Section 403(b) or Treasury regulations thereunder;

   f. Require each loan to comply with the applicable provisions of the Soldiers’ and Sailors’ Civil Relief Act of 1940; and

   g. Comply with, and require each loan to comply with, all other applicable requirements of law.
SECTION 8. CLAIMS PROCEDURE

8.1. Claims to which 8.3. and 8.4. apply. 8.3. and 8.4. apply to all claims in connection with this Plan other than (1) claims described in 8.2. and (2) applications and reconsiderations under 6.10.b. (about hardship distribution of 403(b) elective deferrals).

8.2. Claims to which 8.3. and 8.4. do not apply. 8.3. and 8.4. do not apply to a claim by a Participant, beneficiary, or other person with respect to a right under an annuity contract or custodial account to which amounts have been transferred under the right described in 3.4.b. Such a claim is governed by any claims procedure established for that purpose by the issuer of the annuity contract or the custodian of the custodial account or a person designated by the issuer or custodian who accepts the designation.

8.3. Claim and decision. Upon the request of a Participant, beneficiary, or other person desiring to make a claim under this Plan (the claimant), or by action of the Employer, the Employer will provide a claim form to the claimant.

a. The claimant must complete and submit the claim form to the Employer within 30 days after receiving it.

b. Upon receiving the completed claim form the Employer will review the appropriateness of the claim and, if the Employer decides to deny the claim in whole or part, will respond in writing to the claimant within 30 days after receiving the claim form or by a reasonable later date specified by the Employer to the claimant in writing during this 30-day period or during any such extension of this 30-day period.

c. The response required by 8.3.b. will include the specific reason or reasons for the denial, specific references to any pertinent Plan provisions on which the denial is based, a description of any additional material or information the claimant needs to supply for the Employer to accept the claim, and a copy of this Section 8.

d. If the Employer does not give the response required by 8.3.b. and c. within the period allowed by 8.3.b., the claim will be deemed denied when that period expires, except for any part of the claim that the Employer accepts by notice to the claimant within that period.

8.4. Review of the decision. Within 60 days after receiving the response required by 8.3.b. and c. or with 60 days after the claim is deemed denied, the claimant (or a representative) may appeal the Employer’s decision or the deemed denial by asking, in writing, the Employer to review the decision or deemed denial and pertinent documents.

a. If the claimant (or representative) appeals, the claimant (or representative) must submit issues and comments to the Employer in writing, specifying the reasons the decision or deemed denial is erroneous.
b. The Employer will review the contentions regarding the decision or deemed denial and will decide the appeal within 60 days after receiving the appeal, except that if the Employer decides to hold a hearing, the Employer will hold a hearing and decide the appeal within 120 days after receiving the appeal.

c. The Employer’s decision on the appeal will be in writing and will state the specific reasons for the decision and make specific references to any Plan provisions on which the decision is based.

8.5. Exhaustion of remedies; limitation on review after exhausting remedies. No Participant, beneficiary, or other person will be entitled to challenge in judicial or administrative proceedings any action or inaction with respect to this Plan of the Employer, any delegatee (of the Employer), the Board, or the Vice Chancellor for Finance and Administration (the “decisionmaker”) without first exhausting the remedies available under this Plan. Any judicial or administrative review of any such action or inaction will be based on the record made before the decisionmaker in exercising those remedies and, where this Plan vests discretion in the decisionmaker with respect to the action or inaction, will not be de novo and will be limited to whether the decisionmaker acted arbitrarily or capriciously in exercising the decisionmaker’s discretion.

8.6. Charging claim expenses. The Employer may charge a Participant’s Accrued Benefit with (i.e. reduce the Accrued Benefit by the amount of) the reasonable expenses of this Plan with respect to a claim to the Accrued Benefit. Before so charging those expenses the Employer will, under the authority in 9.2., adopt an amendment to this Plan that applies to all Participants’ Accrued Benefits, describes the expenses to be charged, and specifies procedure to charge the expenses. To the extent consistent with the requirements of 9.2., the expenses may include without limitation expenses of the Employer, delegatees (of the Employer), the Board, the Vice Chancellor for Finance and Administration, the issuers of Annuity Contracts, and the custodians of Custodial Accounts. This 8.6. does not prevent other charges to a Participant’s Accrued Benefit, such as charges provided in an Annuity Contract, a Custodial Account agreement, or documents for investments.
SECTION 9. MISCELLANEOUS

9.1. No contract rights. Except for rights required for this Plan to satisfy the requirements of ORS 243.810 to 243.830 and IRC Section 403(b), no Employee, Participant, beneficiary, or other person will acquire a right, contractual or otherwise, to (1) make or continue salary reductions under this Plan, (2) the terms or the continuance of (a) this Plan, (b) any Annuity Contract or Custodial Account, (c) any annuity contract or custodial account to which amounts have been transferred under the right described in 3.4.b., or (d) any investment fund, or (3) have the Participant's Accrued Benefit held or continue to be held in any particular Annuity Contract or Custodial Account or be invested or continue to be invested in any particular investment fund or funds.

9.2. Amendment and termination. The Employer may at any time or times amend or terminate this Plan to any extent and in any manner that the Employer deems advisable, including retroactively, by adopting a writing making the amendment or termination, except that no amendment or termination may (1) cause this Plan to fail to satisfy any requirement of ORS 243.810 to 243.830 or IRC Section 403(b) or Treasury regulations thereunder or (2) limit the Board’s obligations under 9.12. (about indemnification) with respect to an act or failure to act that occurs before the amendment or termination. None of the State of Oregon, the Employer, the Board, and the Vice Chancellor for Finance and Administration is liable to any person for any act or failure to act under this authority to amend or terminate.

9.3. Not contract of employment. This Plan is not a contract of employment between the Employer and any Employee. Nothing in this Plan gives any Employee the right to be retained in the employ of the Employer or to interfere with any right of the Employer to discharge any Employee at any time. Nothing in this Plan gives the Employer the right to require any Employee to remain in its employ or to interfere with any right of any Employee to terminate the Employee's employment at any time.

9.4. Discretionary authority. The Employer has discretionary authority in exercising, or deciding not to exercise, each of its functions under this Plan. Without limiting the foregoing, the Employer has discretionary authority to construe and interpret this Plan and to determine all questions that arise under this Plan, including for example and without limitation (1) whether a Participant has properly completed a Salary Reduction Agreement, a termination of a Salary Reduction Agreement, an enrollment or update of an enrollment, a designation of beneficiary, or an application for a distribution on account of hardship and (2) whether an agent or attorney-in-fact satisfies the requirements in 9.16. (about powers of attorney) to act for the principal. The Employer’s decisions made and actions done in good faith are final and binding on all parties and affected persons and their beneficiaries and successors.

9.5. Interpretation. This Plan will be interpreted according to the laws of the State of Oregon and will be interpreted and administered consistent with the requirements of ORS
243.810 to 243.830 and IRC Sections 401(a)(30), 402(g), 403(b), 414(u), 414(v), and 415\(^{23}\) and any other applicable provisions of Oregon law and the IRC. This Plan includes provisions adopted in good faith to comply with those requirements. Those provisions will be interpreted and administered consistent with those requirements, even where those requirements are inconsistent with a literal interpretation of those provisions.

9.6. **Captions.** The captions are for convenience only and have no substantive effect.

9.7. **Persons through whom the Employer acts; delegation.** The Employer, in fulfilling its functions under this Plan (including without limitation the function of delegating), will act through any one or more of the Board, the Vice Chancellor for Finance and Administration, and any delegates. Any one of the Board, the Vice Chancellor, or a delegatee or delegatees acting within the scope of a delegation may act for the Employer without the consent of any of the others, except as otherwise provided in a delegation. The Employer may from time to time delegate any or all of the Employer's functions under this Plan (including the power to further delegate) to one or more persons or groups of persons as the Employer deems advisable, including without limitation to Employees and independent contractors. A delegation must be in writing.

a. Unless a delegation provides otherwise:

1. Each of the Employer's delegated functions under this Plan may be fulfilled while the delegation is effective only by the delegatee or delegatees of the function. For example and without limitation, if the Employer delegates the functions under 3.5. of making available electronic media for enrollment and receiving delivery of the completed enrollment and the delegation does not reserve either of those functions to the Employer while the delegation is effective, then while the delegation is effective, such media for enrollment may be made available to Employees only by, and the completed enrollment may be delivered by Employees only to, the delegatee or delegatees.

2. 9.4. (about discretionary authority) applies to each delegatee by treating the delegatee as the Employer. For example and without limitation, if the Employer delegates its functions under 8.3. (about claim and decision) and 8.4. (about review of the decision) and the delegation does not limit the delegatee’s or delegatees’ discretionary authority in exercising those functions, the delegatee or delegatees will exercise those functions with the discretionary authority vested by 9.4. in the Employer.

3. The provisions of this Plan allowing the Employer to rely on matters in fulfilling the delegated functions apply to each delegatee by treating the delegatee as the Employer. For example and without limitation, if the Employer delegates its functions under 4.1. (about the Employer’s designation of Annuity Contracts, Custodial Accounts, and investment funds) and the delegation does not limit the delegatee’s or delegatees’ right to rely on

\(^{23}\)IRC Sections 401(a)(30), 402(g), 414(u), 414(v), and 415 relate to the annual limit on elective deferrals (salary reduction contributions) and the limit on annual additions (contributions) for an Employee.
matters, the delegatee or delegatees have the right to rely on statements as described in 4.1.a. and b.

(4) Each delegation to a person who is not an employee of the Employer while fulfilling the delegated functions includes the power to further delegate the delegated functions.

b. The provisions of this Plan protecting the Employer from liability in fulfilling the delegated functions apply to each delegatee who is an employee of the Employer while fulfilling the delegated functions, by treating the delegatee as the Employer. For example and without limitation, if the Employer delegates its functions under 4.1 to an employee of the Employer, the employee has the protection from liability provided in 4.4.

c. Despite the above provisions of this 9.7., no amendment or termination of this Plan by the Vice Chancellor, a delegatee, or delegatees may limit the Board’s power to amend this Plan, and no amendment or termination of this Plan by a delegatee or delegatees may limit the Vice Chancellor’s power to amend this Plan.

9.8. **Severability.** If a court of competent jurisdiction determines that any provision of this Plan is invalid or unenforceable, the remaining provisions will continue to be fully effective.

9.9. **Tax consequences.** The Employer does not represent or guarantee that any particular federal, state, or local income, payroll, or other tax consequences result from participation in this Plan. A Participant should consult with a professional tax advisor to determine the tax consequences of participation.

9.10. **Plan year.** The plan year of this Plan is the calendar year.

9.11. **Nonassignment.** Except as provided in 6.1.d.(7) and 6.11. (about Alternate Payees):

a. The rights of a Participant, beneficiary, or any other person to benefit payments under this Plan, and the interests of a Participant, beneficiary, or any other person under Annuity Contracts and Custodial Accounts, are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment, or garnishment by creditors of the Participant, beneficiary, or other person, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, attach, or garnish the Participant's, beneficiary's, or other person’s benefits under this Plan or those interests is void.

b. No amount deferred, or benefit under this Plan, or interest under any Annuity Contract or Custodial Account, will in any manner be liable for or subject to the debts, contracts, liabilities, or torts of a Participant, beneficiary, or any other person.
9.12. **Indemnification.** The Board agrees to provide the indemnification described in this 9.12.

a. This indemnification applies to and only to the following persons for their following acts:

(1) Each member of the Board for his or her acts with respect to this Plan in performing service as a member of the Board;

(2) The Vice Chancellor for Finance and Administration for his or her acts with respect to this Plan in performing service as Vice Chancellor for Finance and Administration; and

(3) Each employee of the Employer for his or her acts with respect to this Plan in performing service as both an employee of the Employer and a delegatee under 9.7.

For this purpose, *acts* includes failures to act. The Board’s agreement to provide this indemnification will continue after termination of the person’s service described above, but only for those acts in performing that service before the termination.

b. Subject to the limitations and conditions in this 9.12., the Board agrees to indemnify a person for and only for:

(1) All claims against the person for the person’s acts described in 9.12.a.;

(2) All the person’s expenses of defending those claims, including all legal fees for counsel selected with the Board’s consent and other costs of defense;

(3) All monetary recovery in any court or arbitration proceeding with respect to those claims; and

(4) If such a claim is settled out of court with the concurrence of the Board, all monetary liability under the settlement.

c. This indemnification is intentionally broad but does not provide indemnification for a person’s malfeasance in office or willful or wanton neglect of duty.

d. The Board has the right, but not the obligation, to conduct the defense of a person in a claim or proceeding to which this 9.12. applies.

e. The Board may satisfy its obligations under this 9.12. in whole or in part through the purchase of a policy or policies of insurance providing equivalent protection.
f. This indemnification is subject to any applicable limitations under Article XI, Section 7, of the Oregon Constitution, the Oregon Tort Claims Act (ORS 30.260 to 30.302), or other law and does not limit a person’s rights under ORS 30.260 to 30.302.

g. The terms of this 9.12. will survive any termination of this Plan and, after the death of the person, will be enforceable by the administrators and executors of the person’s estate.

9.13. Effect of Plan summary, Plan information, and Plan administrative forms. The terms of this Plan control in the event of any inconsistency between this Plan and any (1) written, electronic, or oral summary of, or information about, this Plan or any of its provisions or (2) administrative form provided (as a written paper document or through an electronic or other medium) in connection with this Plan. None of the State of Oregon, the Employer, the Board, and the Vice Chancellor for Finance and Administration is liable to any Participant, beneficiary, or any other person for the inconsistency.

9.14. Employer’s authority to establish alternative means for Plan administration forms. Where this Plan requires that a Salary Reduction Agreement, a termination of a Salary Reduction Agreement, an enrollment or update of an enrollment, a designation of beneficiary, or an application for a distribution on account of hardship, be on a written document or through an electronic medium, the Employer may establish other means therefor, such as telephone communication, but only if these other means satisfy the requirements, if any, under IRC Section 403(b) and other applicable provisions of the IRC with respect to the Agreement, termination, enrollment, update, designation, or application.

9.15. Reliance on evidence of a person’s identity. Where the Employer establishes reasonable means to identify a person (whether an Employee, Participant, beneficiary, or other person), including without limitation by password, identifying information (for example, social security number or mother’s maiden name), a document (for example, a driver’s license or other picture ID) or familiarity with the person (for example, with the person’s voice or physical appearance), the Employer may, unless the Employer has actual knowledge to the contrary, rely on that evidence as establishing the person’s identity, and none of the State of Oregon, the Employer, the Board, and the Vice Chancellor for Finance and Administration is liable to any person for any act or failure to act taken in reliance on that evidence.

9.16. Powers of attorney. The Employer may allow an Employee, Participant, or beneficiary (including an Alternate Payee) to act under this Plan through an agent or attorney-in-fact designated in a written power of attorney. For this purpose the following statutes and the principles of the following rules apply, including without limitation the provisions in those statutes and rules allowing the Employer to rely on the authority of the attorney-in-fact or agent and protecting the Employer from liability:

a. ORS 127.005 to 127.045 or successor Oregon statutes; and
b. Oregon Administrative Rules 459-005-0100 to 459-005-0150 (about powers of attorney for purposes of the Oregon Public Employees Retirement System) or successor Oregon administrative rules.

Additionally and without limiting the Employer’s protection from liability under those statutes and rules, none of the State of Oregon, the Employer, the Board, and the Vice Chancellor for Finance and Administration is liable to any person based on the Employer’s reliance in good faith on the authority of the attorney-in-fact or agent.

9.17. Correcting errors. The Employer may change the amount of a Participant’s Accrued Benefit as the Employer deems advisable to correct one or more 403(b) failures with respect to this Plan in a matter allowed by the Internal Revenue Service’s Employee Plans Compliance Resolution System.

DATED: _____________________, 2006.

FOR THE OREGON STATE BOARD OF HIGHER EDUCATION
ON BEHALF OF THE OREGON UNIVERSITY SYSTEM

____________________________________________________
Jay Kenton, Vice Chancellor for Finance and Administration