

# 403(b) Plan Adoption Agreement

The employer named in Section I ("Employer") hereby establishes, or amends and restates, a retirement plan ("Plan") for the purpose of establishing investment arrangements for its Employees pursuant to Section 403(b) of the Internal Revenue Code of 1986, as amended ("Code").

## SECTION I - EMPLOYER INFORMATION

1-1 **Employer Information:**

Name: ISD 877 Buffalo-Hanover-Montrose Schools

Address: 214 1<sup>st</sup> Ave. NE, Buffalo, MN 55313

Telephone: (763) 682-8708 Fax: (763) 682-8785

E-mail Address: cklaassen@buffalo.k12.mn.us

1-2 **Employer Identification Number:** 41-6004776

1-3 **Type of Employer:**

- a. Public School
- b. IRC §501(c)(3) organization sponsoring a Non-ERISA 403(b) Plan

## SECTION II - PLAN INFORMATION

2-1 **Plan Name:** ISD 877 Buffalo-Hanover-Montrose Schools 403(b) Plan

2-2 **Effective Date:**

- a. **New Plan.** The Effective Date of the Plan is: 01/01/2009 .
- b. **Restated Plan.** The restated Effective Date is: \_\_\_\_\_ .  
This Plan is an amendment and restatement of an existing 403(b) Plan originally established effective as of: \_\_\_\_\_ .

2-3 **Plan Year:**

- a. The 12 consecutive month period ending every December 31.
- b. The 12 consecutive month period ending every (specify): August 31 .
- c. In addition to the above, the Plan will have a short Plan Year: commencing on : \_\_\_\_\_ and ending on: \_\_\_\_\_ .

2-4 **List of Funding Vehicles that are authorized to receive contributions under the Plan, including Annuity Contracts and Custodial Accounts:**

See Appendix A.

2-5 **List of Funding Vehicles that can receive Contract Exchanges :**

See Appendix A.

2-6 **Eligible Employees:** Eligible Employee means, for any Plan Year, any common-law employee of the Employer who is entitled to receive compensation paid by the Employer and group insurance benefits according to M.S. 471.61 and applicable district policy, employment agreements, or collective bargaining agreements to which an employee is subject for employment services performed for the Employer, other than (check all that apply):

- a. All Employees are eligible – there are no exclusions.
- b. Employees who normally work fewer than at least 20 hours per week.  
An Employee normally works fewer than 20 hours per week if, for the 12-month period beginning on the date the employee's employment commenced, the Employer reasonably expects the Employee to work fewer than 1,000 hours of service (as defined under section 410(a)(3)(C) of the Code) and, for each plan year ending after the close of that 12-month period, the Employee has worked fewer than 1,000 hours of service.
- c. Employees who are students and regularly attending classes at the Employer institution during the Plan Year.
- d. Employees who are nonresident aliens and perform no services in the U.S. during the Plan Year.

2-7 **Roth 403(b) Contributions (see Section III Article X):** : A Participant may elect to have part or all of his or her salary reductions made on an after-tax basis to any approved Funding Vehicle that accepts and separately accounts for Roth 403(b) contributions in accordance with Section 402A of the Code.

- a. Shall be permitted under the Plan.
- b. Shall not be permitted under the Plan.

2-8 **After-Tax Employee Contributions (see Section III Article II):**

- a. Shall be permitted under the Plan.
- b. Shall not be permitted under the Plan.

2-9 **15 Year of Service Catch-up Contributions (see Section III Article III):**

- a. Shall be permitted under the Plan.
- b. Elective Deferrals and/or Roth 403(b) Contributions in excess of the limit under section 402(g) of the Code, without regard to section 402(g)(7) of the Code, shall not be permitted under the Plan unless made as an Age 50 Catch-up Contribution as allowed by the Plan.

2-10 **Age 50 Catch-up Contributions (see Section III Article III):**

- a. Shall be permitted under the Plan.
- b. Shall not be permitted under the Plan.

2-11 **Employer Contributions (nonelective) (see Section III Article XI):**

- a. Shall be permitted under the Plan.
- b. Shall not be permitted under the Plan.
- c. Plan only permits contributions to be made for former employees

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If permitted, the Employer Nonmatching Contribution for each Plan Year shall be:

- d. Discretionary Contribution. The Employer will determine in its sole discretion how much, if any, it will make as an Employer Contribution.
- e. Fixed contribution.
  - \_\_\_\_\_ % of each Participant's Compensation.
  - \$ \_\_\_\_\_ for each Participant.
  - An amount, determined uniformly with respect to each Employee classification within the applicable collective bargaining agreement, to the Employer Contributions Account of each Participant as specified in the applicable collective bargaining agreement.

If permitted, Employer Contributions shall be made to the following Participants.

- a. All Employees.
- b. Collective bargained Employees who participate in the following unions:  
\_\_\_\_\_
- c. Employees whose employment is not governed by a collective bargaining agreement between the Employer and employee representatives.
- d. Superintendent
- e. Principals
- f. Other (specify):  
\_\_\_\_\_

2-12 **Employer Matching Contributions (see Section III Article XI):**

- a. Shall be permitted under the Plan.
- b. Shall not be permitted under the Plan.

If permitted, Employer Matching Contributions shall match a Participant's (select all that apply):

- a. Elective Deferrals
- b. Roth 403(b) Contributions

If permitted, the amount of Employer Matching Contribution for each Plan Year shall be:

- a. A matching contribution equal to \_\_\_\_\_ % of each Participant's contribution to the Plan.
- b. A matching contribution equal to \$ \_\_\_\_\_ of each Participant's contribution made for each period designated below.
- c. A matching contribution equal to each Participant's contribution to the Plan in an amount to be determined each Plan Year by the Employer or the applicable collective bargaining agreement.

Period for determining Matching Contributions. The Matching Contribution formula(s) selected above are based on Participant contributions for the Plan Year. To apply a different period for determining the Matching Contribution, select the applicable time period below.

- a. Payroll period
- b. Plan Year quarter
- c. Calendar month
- d. Other: \_\_\_\_\_

If permitted, Employer Contributions shall be made to the following Participants.

- a. All Employees.
- b. Collective bargained Employees who participate in the following unions:  
\_\_\_\_\_
- c. Employees whose employment is not governed by a collective bargaining agreement between the Employer and employee representatives.
- d. Superintendent
- e. Principals
- f. Other (specify):  
District-wide Directors, Phoenix Learning Center Coordinator  
\_\_\_\_\_

2-13 **Vesting** : Check one of a-c to apply for all employer contribution sources. Check d if applicable. Forfeitures will be used to reduce future employer contributions or pay plan expenses.

- a. 100% Immediate
- b. 3 Year Cliff (0% Years 1-2, 100% at end of 3<sup>rd</sup> year)
- c. 6 Year Graded
 

After Year (of service)	Percent
1 Year	0%
2 Years	20%
3 Years	40%
4 Years	60%
5 Years	80%
6 Years	100%

- d. 100% Vesting at death, disability, early and normal retirement

2-14 **Vesting Upon Death or Disability**: An Employee's vesting percentage increases to 100% if, while employed with the Employer, the Employee

- a. Dies
- b. terminates employment due to becoming Disabled

2-15 **Normal Retirement Age:**

- a. Age 65 (not to exceed 65).
- b. The later of (1) age \_\_\_\_\_ (not to exceed 65) or (2) the \_\_\_\_\_ (not to exceed 5<sup>th</sup>) Anniversary of the date the Employee is hired. effective as of: \_\_\_\_\_.

2-16 **Loans (see Section III Article IV):**

- a. Shall be permitted only from Elective Deferrals.
- b. Shall be permitted from Elective Deferrals and Employer Contributions.
- c. Shall not be permitted under the Plan.

2-17 **Hardship Withdrawals (see Section III Article V):**

- a. Shall be permitted under the Plan
- b. Shall not be permitted under the Plan.

2-18 **Rollovers (see Section III Article VI):**

- a. Shall be permitted under the Plan
- b. Shall not be permitted under the Plan.

SECTION III – BASIC PLAN DOCUMENT

ARTICLE I

DEFINITIONS

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

- 1.1 **“Account”**: The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.
- 1.2 **“Account Balance”**: The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant’s Account under all Accounts, including the Participant’s Elective Deferrals, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or the Participant’s Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant’s death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).
- 1.3 **“Administrator”**: Charles Klaassen, ISD 877 Buffalo-Hanover-Montrose Schools
- 1.4 **“After-Tax Employee Contributions”**: Employee contributions that may be made to the Plan by a Participant that are included in the Participant’s gross income in the year such amounts are contributed to the Plan and are maintained under a separate After-Tax Contribution Account to which earnings and losses are allocated. For this purpose, Roth 403(b) Contributions are not considered as After-Tax Employee Contributions.
- 1.5 **“Alternate Payee”**: Any spouse, former spouse, child or other dependent of a Participant who is recognized by a Domestic Relations Order, or similar order recognized under section 414(p) of the Code, as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to the Participant.
- 1.6 **“Annuity Contract”**: A nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in MN and that includes payment in the form of an annuity.
- 1.7 **“Beneficiary”**: The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.
- 1.8 **“Custodial Account”**: The group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.
- 1.9 **“Code”**: The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.
- 1.10 **“Compensation”**: All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee’s gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee’s gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election under Section 2 made to reduce compensation in order to have Elective Deferrals under the Plan). Effective for Limitation Years beginning on or after January 1, 2005, Compensation shall include Compensation paid within 2½ months after separation from service if such Compensation would have been paid if the Participant had continued employment, or if for bona fide sick, vacation or other leave.
- 1.11 **“Disabled”**: The definition of disability provided in the applicable Individual Agreement.

- 1.12 **“Elective Deferral”**: The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.
- 1.13 **“Employee”**: Each individual, whether appointed or elected, who is a common law employee of the Employer performing services for a Public School as an employee of the Employer. This definition is not applicable unless the employee’s compensation for performing services for a Public School is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a Public School unless such 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. A public office includes any elective or appointive office of a State or local government.
- 1.14 **“Employer”**: ISD 877 Buffalo-Hanover-Montrose Schools Notwithstanding anything herein to the contrary, with the consent of the Employer, any Related Employer may adopt this Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer.
- 1.15 **“Employer Contribution”**: Contributions made to the Plan by the Employer, without a corresponding reduction to the Participant’s salary.
- 1.16 **“Funding Vehicles”**: The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by Employer for use under the Plan.
- 1.17 **Includible Compensation**”: An Employee’s actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). The amount of Includible Compensation is determined without regard to any community property laws.
- 1.18 **Individual Agreement**”: The agreements between a Vendor and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.
- 1.19 **“Participant”**: An individual for whom Elective Deferrals are currently being made, or for whom Elective Deferrals have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.
- 1.20 **“Participating Employer”**: Any Related Employer that adopts this Plan by executing the Participating Employer Adoption Page. See Article XII.
- 1.21 **“Plan”**: ISD 877 Buffalo-Hanover-Montrose Schools 403(b) Plan
- 1.22 **“Plan Year”**: The 12-consecutive month period designated under Section II – Plan Information. If the Plan Year is amended to create a Short Plan Year or if a new Plan has an initial Short Plan Year, the Employer may document such Short Plan Year under Section II – Plan Information. A Short Plan Year is defined as any Plan Year that is less than 12 months long, either because of the amendment of the Plan Year, or because the Effective Date of a new Plan is less than 12 months prior to the end of the first Plan Year.
- 1.23 **“Public School”**: A Public School is a State-sponsored educational organization described under section 170(b)(1)(A)(ii) of the Code and includes an elementary school, middle school, high school, college or university.
- 1.24 **“Related Employer”**: The Employer and any other entity which is under common control with the Employer under section 414(b) or (c) of the Code.
- 1.25 **“Roth 403(b) Contributions”**: Roth 403(b) Contributions are deferrals contributed to the Plan in lieu of cash Compensation at the election of the Participant that are includible in the Participant’s gross income at the time deferred and have been irrevocably designated as Roth 403(b) Contributions in the Participant’s Compensation Reduction Election. A Participant’s Roth 403(b) Contributions will be maintained in a separate Account containing only the Roth 403(b) Contributions and gains and losses attributable to those Roth 403(b) Contributions. See Section III, Article X.

- 1.26 **“Severance from Employment”**: For purpose of the Plan, Severance from Employment means Severance from Employment with the Employer and any Related Employer. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a Public School, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a Public School or in a capacity that is not employment with a Public School (i.e., ceasing to be an employee performing services for a Public School but continuing to work for the same State or local government employer).
- 1.27 **“Valuation Date”**: The date or dates upon which Plan assets are valued as set forth in this paragraph and the Individual Agreements. Plan assets will be valued as of the last day of each Plan Year. In addition, the Employer, Administrator and/or Vendor may agree to more frequent valuation dates.
- 1.28 **“Vendor”**: The provider of an Annuity Contract or Custodial Account.
- 1.29 **“Vested”**: The nonforfeitable portion of any Account maintained on behalf of a Participant.



## ARTICLE II

### Participation and Contributions

2.1 **Eligibility.** Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals or Roth 403(b) Contributions in accordance with Section 10 made on his or her behalf hereunder immediately upon becoming employed by the Employer.

2.2 **Compensation Reduction Election.**

**General Rule.** An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral and/or Roth 403(b) Contributions in accordance with Section 10 on his or her behalf) and filing it with the Administrator. This compensation reduction election shall be made on the forms (including making an electronic election) provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals and/or Roth 403(b) Contributions are to be made and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation to make contributions under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. All Elective Deferrals shall be made on a pre-tax basis. All Roth 403(b) Contributions shall be made in accordance with the terms of Section 10. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the employee's election.

Employees shall be provided notice of the opportunity to have Elective Deferrals and/or Roth 403(b) Contributions contributed on their behalf, of the opportunity to start, stop or change the amount of such deferrals/contributions and of any limitations on such opportunities, at least once in any Plan Year.

A Participant shall at all times have a fully vested and nonforfeitable interest in his Account attributable to Elective Deferrals and Roth 403(b) Contributions.

2.3 **Information Provided by the Employee.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

2.4 **Change in Elective Deferrals Election.** Subject to the provisions of the applicable Individual Agreements, an Employee may, as of the dates designated under the Compensation Reduction Election or other written procedures adopted by the Administrator, revise his or her participation election, including a change of the amount of his or her Elective Deferrals, his or her Roth 403(b) Contributions, his or her investment direction, and his or her designated Beneficiary. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

2.5 **Contributions Made Promptly.** Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

2.6 **Leave of Absence.** Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals and/or Roth 403(b) Contributions under the Plan shall continue to the extent that Compensation continues.

2.7 **After-Tax Employee Contributions.** The Employer may elect to allow Participants to make After-Tax Employee Contributions under the Plan. Any After-Tax Contributions made under this Plan will be held in Participants' After-Tax Employee Contribution Account, which is always 100% Vested. A Participant may

withdraw amounts from his/her After-Tax Employee Contribution Account at any time, in accordance with the distribution rules under Article V, except as prohibited by an Individual Agreement. No forfeitures will occur solely as a result of an Employee's withdrawal of After-Tax Employee Contributions. After-Tax Contributions will only be accepted through payroll reduction. The Administrator may establish a separate written administrative procedures addressing the acceptance of After-Tax Employee Contributions. Any separate procedures will apply uniformly to all Participants under the Plan.

## ARTICLE III

### Limitations on Amounts Deferred

- 3.1 **Basic Annual Limitation.** Except as provided in Sections 3.2 and 3.3, the maximum amount of the Elective Deferral and/or Roth 403(b) Contributions to the extent permitted under Section 10 under the Plan for any calendar year shall not exceed the lesser of (a) the applicable dollar amount or (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under section 402(g)(1)(B) of the Code, which is \$15,500 for 2008, and is adjusted for cost-of-living thereafter to the extent provided under section 415(d) of the Code.
- 3.2 **Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service.** If the Employer is a qualified organization (within the meaning of § 1.403(b)-4(c)(3)(ii) of the Income Tax Regulations), and the Plan allows, the applicable dollar amount under Section 3.1(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:
- (a) \$3,000;
  - (b) The excess of:
    - (1) \$15,000, over
    - (2) The total special 403(b) catch-up Elective Deferrals and, if applicable, Roth 403(b) Contributions made for the qualified employee by the qualified organization for prior years; or
  - (c) The excess of:
    - (1) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over
    - (2) The total Elective Deferrals and, if applicable, Roth 403(b) Contributions made for the Employee by the qualified organization for prior years.

For purposes of this Section 3.2, a "qualified employee" means an Employee who has completed at least 15 years of service taking into account only employment with the Employer. A "qualified organization" means an eligible employer that is (1) An educational organization described in section 170(b)(1)(A)(ii) of the Code; (2) A hospital; (3) A health and welfare service agency (including a home health service agency); (4) A church-related organization; or (5) Any organization described in section 414(e)(3)(B)(ii) of the Code.

- 3.3 **Age 50 Catch-up Elective Deferral Contributions.** If permitted by the Plan, an Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals and/or Roth 403(b) Contributions, up to the maximum age 50 catch-up Elective Deferrals or Roth 403(b) Contributions for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals or Roth 403(b) Contributions for a year is \$5,000 for 2008, and is adjusted for cost-of-living thereafter to the extent provided under the Code.
- 3.4 **Coordination.** Amounts in excess of the limitation set forth in Section 3.1 shall be allocated first to the special 403(b) catch-up under Section 3.2 and next as an age 50 catch-up contribution under Section 3.3 (if permitted by the Plan). However, in no event can the amount of the Elective Deferrals or Roth 403(b) Contributions for a year be more than the Participant's Compensation for the year.
- 3.5 **Special Rule for a Participant Covered by Another Section 403(b) Plan.** For purposes of this Section 3, if the Participant is or has been a participant in one or more other plans under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the

foregoing, another plan maintained by a Related Entity shall be taken into account for purposes of Section 3.2 only if the other plan is a Code section 403(b) plan.

- 3.6 **Correction of Excess Elective Deferrals.** If the Elective Deferrals and/or Roth 403(b) Contributions on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferrals and/or Roth 403(b) Contributions on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the employer under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral and/or Roth 403(b) Contributions, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.
- 3.7 **Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional Elective Deferrals and/or Roth 403(b) Contributions upon resumption of employment with the Employer equal to the maximum Elective Deferrals and Roth 403(b) Contributions that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals and Roth 403(b) Contributions, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

## ARTICLE IV

### Loans

- 4.1 **Loans.** Loans shall be permitted under the Plan to the extent elected by the Employer in Section II – Plan Information and permitted by the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured.
- 4.2 **Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 4.3, including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.
- 4.3 **Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of:
- (a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or
  - (b) one half of the value of the Participant's vested Account Balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 4.3, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

- 4.4 **Loan Procedures.** The Participant must complete any loan application or approval procedure required by the Employer as well as agreements or promissory notes as the Vendor actually extending the loan may require. No loans will be made if a loan is in default or the Administrator is made specifically aware of any similar default on a loan from another 403(b) account or annuity or other arrangement subject to section 72(p) of the Code. The Account may be charged such fees as are specified by the Vendor in the annuity contract or custodial account for loans.
- 4.5 **Loan Terms.** All loans shall bear a rate of interest determined by the Vendor, commensurate with similar loans issued by commercial lenders. Generally, the maximum repayment period shall be five years from the date of the loan. If the loan is to be used to acquire a dwelling unit that is the principal residence of the Employee, the maximum loan repayment period may be extended, but in no event shall it exceed the usual repayment period required by commercial lenders for similar loans. All loans shall provide for level amortization with payments to be made not less frequently than quarterly.
- 4.6 **Loan Default.** If a loan payment is not paid by the end of any grace or cure period provided by the Vendor within the limits prescribed by regulations under section 72(p) of the Code, the loan will be deemed to be in default. As required by the Code, the entire outstanding loan balance plus any accrued interest will then be reported to the IRS as a taxable deemed distribution. Interest will continue to accrue on the loan, but will not be reported as an additional taxable distribution. If the defaulted loan balance is still outstanding at the time of any distributable event, the total outstanding loan balance will be offset from the Participant's Account. Regularly scheduled loan payments will not be accepted after a loan is defaulted. However, the principal plus accrued interest may be repaid in full at any time.

- 4.7 **Loan Guidelines**. Except as outlined above, the issuance of loans under this Plan shall be subject to written guidelines set forth in a separate document by the Vendor of the Annuity Contract or Custodial Account, which shall govern the availability, terms, and procedures for Participants to obtain loans under that Annuity Contract or Custodial Account.

**ARTICLE V**  
**Benefit Distributions**

5.1 **Benefit Distributions At Severance from Employment or Other Distribution Event.** Except as permitted under Section 3.6 (relating to excess Elective Deferrals), Section 5.4 (relating to withdrawals of amounts rolled over into the Plan), Section 5.5 (relating to hardship), or Section 8.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

Notwithstanding the foregoing, Elective Deferrals made to an Annuity Contract and corresponding earnings as of December 31, 1988 are "grandfathered" and withdrawal restrictions do not apply to the extent that such amounts can be appropriately identified by the Vendor.

5.2 **Small Account Balances.** Once eligible for a distributable event, the terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed \$5,000 (determined without regard to any separate account that holds rollover contributions under Section 6.1) and any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

5.3 **Minimum Distributions.** Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of section 1.408-8 of the Income Tax Regulations, except as provided in section 1.403(b)-6(e) of the Income Tax Regulations.

5.4 **In-Service Distributions From Rollover Account.** If a Participant has a separate account attributable to rollover contributions to the plan, to the extent permitted by the applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

5.5 **Hardship Distributions.**

- (a) Hardship distributions shall be permitted under the Plan in accordance with the financial need safe harbor rules described in section 1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations to the extent elected by the Employer in Section II – Plan Information and permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship. Hardship distributions may only be made on account of the following events, which are deemed to be "immediate and heavy financial needs of the Participant":
  - (i) to pay expenses incurred or necessary for medical care (as described in section 213(d) of the Code) for the Participant, the Participant's spouse, children, dependents or the Participant's primary Beneficiary (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
  - (ii) for the purchase (excluding mortgage payments) of a principal residence for the Participant;
  - (iii) for payment of tuition and related educational fees (including room and board) for the next 12 months of post-secondary education for the Participant, the Participant's spouse, children, dependents or the Participant's primary Beneficiary;
  - (iv) for payment of amounts necessary to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence;
  - (v) to pay funeral or burial expenses for the Participant's deceased parent, spouse, child, dependent or the Participant's primary Beneficiary;
  - (vi) to pay expenses to repair damage to the Participant's principal residence that would qualify for a casualty loss deduction under section 165 of the Code (determined without regard to whether the

- loss exceeds the 10% of adjusted gross income limit); or
- (vii) such other event that the IRS recognizes as a safe harbor hardship distribution event under ruling, notice or other guidance of general applicability.

For this purpose, a “primary Beneficiary” is an individual who is named as a Beneficiary and has an unconditional right to all or a portion of the Account Balance upon the death of the Participant.

- (b) All hardship distributions shall be made in accordance with section 1.401(k)-1(d)(3)(iv)(C) of the Income Tax Regulations to the extent such need may not be satisfied from other resources that are reasonably available to the Participant, including commercially available loans and loans available under the Investment Arrangement established under the Plan. The determination as to whether the Participant’s circumstances are a case of hardship shall be based on the merits of each individual case; provided, however, that all determinations as to hardship shall be made uniformly and consistently for all Participants in similar circumstances under the Investment Arrangement.
- (c) A hardship distribution may be adjusted upwards to cover any federal, state or local taxes, including penalty taxes, which can reasonably be anticipated to result from the distribution. The need for a hardship distribution will be determined based on the facts and circumstances.
- (d) Hardship distributions shall be permitted only from 100% Vested Accounts. No Elective Deferrals, Roth 403(b) Contributions or After-Tax Employee Contributions shall be allowed under the Plan during the 6-month period beginning on the date the Participant receives a distribution on account of hardship.
- (e) The Individual Agreements shall provide for the exchange of information among the Employer and the Vendors to the extent necessary to implement the Individual Agreements, including, in the case of a hardship distribution that is automatically deemed to be necessary to satisfy the Participant’s financial need (pursuant to §1.401(k)-1(d)(3)(iv)(E) of the Income Tax Regulations), the Vendor notifying the Employer of the distribution in order for the Employer to implement the resulting 6-month suspension of the Participant’s right to make Elective Deferrals or Roth 403(b) Contributions under the Plan.

## 5.6 **Rollover Distributions.**

- (a) A Participant or the Beneficiary of a deceased Participant (or a Participant’s spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant’s death was neither the spouse of the Participant nor the spouse or former spouse of the participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).
- (b) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.
- (c) A Participant or spouse who is the designated Beneficiary of the Participant may elect to roll over amounts in accordance with section 408A(e) of the Code directly to a Roth IRA.
- (d) To the extent permitted by the Individual Agreements, a non-spouse beneficiary who is a “designated beneficiary” under section 401(a)(9)(E) of the Code and the regulations thereunder, may elect to directly roll over all or any portion of his/her distribution to an individual retirement account (including a Roth IRA) the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution under section 402(c)(4) of the Code.



## ARTICLE VI

### Rollovers to the Plan and Transfers

#### 6.1 Eligible Rollover Contributions to the Plan.

- (a) **Eligible Rollover Contributions.** To the extent elected by the Employer in Section II – Plan Information and provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. A Participant may make a rollover contribution to his or her Roth 403(b) Contribution Account only if the rollover is a direct rollover from another Roth 403(b) Contribution Account under an eligible retirement plan and only to the extent the rollover is permitted under the rules of section 402(c) of the Code. A rollover of Roth 403(b) Contributions may not be made to this Plan from a Roth IRA. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code.
- (b) **Eligible Rollover Distribution.** For purposes of Section 6.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any distribution that is one of a series of equal periodic payments that are made at least once a year and that will last for (i) the life of the Participant (or the joint lives of the Participant and the Participant's Beneficiary), (ii) the life expectancy of the Participant (or the joint life and last survivor expectancy of the Participant and the Participant's Beneficiary), or (iii) any installment payment for a period of 10 years or more, (2) any hardship distribution as described in Section 5.5(a), (3) any other distribution, of which a portion or all is a required minimum distribution under section 401(a)(9) of the Code, (4) a distribution made to satisfy the requirements of section 415 of the Code or a distribution of excess deferrals or excess aggregate contributions as described in the Income Tax Regulations, together with income allocable to these distributions, (5) loans that are treated as deemed distributions pursuant to section 72(p) of the Code and (6) similar items designated by the Commissioner in revenue rulings, notices and other guidance published in an Internal Revenue Bulletin. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.
- (c) **Separate Accounts.** The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

#### 6.2 Plan-to-Plan Transfers to the Plan.

- (a) At the direction of the Employer, for a class of Employees who are participants or beneficiaries in another plan under section 403(b) of the Code, the Administrator may permit a transfer of assets to the Plan as provided in this Section 6.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an employee or former employee of the Employer. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with §1.403(b)-10(b)(3) of the Income Tax Regulations and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.
- (b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer in accordance with section 414(l) (1) of the Code.

- (c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that (1) the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan and (2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

### 6.3 **Plan-to-Plan Transfers from the Plan.**

- (a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another plan that satisfies section 403(b) of the Code in accordance with § 1.403(b)-10(b)(3) of the Income Tax Regulations. A transfer is permitted under this Section 6.3(a) only if the Participants or Beneficiaries are employees or former employees of the Employer (or the business of the Employer) under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred in accordance with section 414(l) (1) of the Code.
- (b) The other plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the other plan shall impose restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).
- (c) Upon the transfer of assets under this Section 6.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.3 (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to §1.403(b)-10(b)(3) of the Income Tax Regulations.

### 6.4 **Contract and Custodial Account Exchanges.**

- (a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Vendors identified in Appendix A, subject to the terms of the Individual Agreements. However, an investment change that includes an investment with a Vendor that is not eligible to receive contributions under Section II – Plan Information (referred to below as an exchange) is not permitted unless the conditions in paragraphs (b) through (d) of this Section 6.4 are satisfied.
- (b) The Participant or Beneficiary must have an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both section 403(b) contracts or custodial accounts immediately before the exchange).
- (c) The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

- (d) The Employer enters into an agreement with the receiving Vendor for the other contract or custodial account under which the Employer and the Vendor will from time to time in the future provide each other with the following information:
- (1) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the Employer, to satisfy section 403(b) of the Code, including the following: (i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5.1); (ii) the Vendor notifying the Employer of any hardship distribution under Section 5.5 if the distribution results in a 6-month suspension of the Participant's right to make Elective Deferrals and, if applicable, Roth 403(b) Contributions under the Plan; and (iii) the Vendor providing information to the Employer or other Vendors concerning the Participant's or Beneficiary's section 403(b) contracts or custodial accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship distribution rules of Section 5.5); and
  - (2) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following: (i) the amount of any plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional plan loan satisfies the loan limitations of Section 4.3, so that any such additional loan is not a deemed distribution under section 72(p)(1); and (ii) information concerning the Participant's or Beneficiary's after-tax employee contributions and if applicable, Roth 403(b) Contributions, for a Vendor to determine the extent to which a distribution is includible in gross income.
- (e) If any Vendor ceases to be eligible to receive Elective Deferrals or Roth 403(b) Contributions under the Plan, the Employer will enter into an information sharing agreement as described in Section 6.4(d) to the extent the Employer's contract with the Vendor does not provide for the exchange of information described in Section 6.4(d)(1) and (2) in order for such Vendor to be listed in Appendix A.

## 6.5 **Permissive Service Credit Transfers.**

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.5(a) may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 6.5(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.
- (c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

## ARTICLE VII

### Investment of Contributions

- 7.1 **Manner of Investment.** All Elective Deferrals, Roth 403(b) Contributions or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.
- 7.2 **Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in Section 6.4 of the Plan, the Individual Agreements and permitted under applicable Income Tax Regulations.
- 7.3 **Current and Former Vendors.** The Administrator shall maintain a list of all Vendors under the Plan including those eligible to receive Elective Deferrals, Roth 403(b) Contributions, and Employer Contributions, if applicable, and, those only eligible to receive contract exchanges made under Section 6.4, if applicable. Such list shall be recorded in Appendix A and is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Elective Deferrals or Roth 403(b) Contributions under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals or Roth 403(b) Contributions under the Plan and a Vendor holding assets under the Plan in accordance with Section 6.2 or 6.4), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

## ARTICLE VIII

### Amendment and Plan Termination

- 8.1 **Termination of Contributions**. The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.
- 8.2 **Amendment and Termination**. The Employer reserves the authority to amend or terminate this Plan at any time.
- 8.3 **Distribution upon Termination of the Plan**. The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed as soon as administratively practicable under the Plan, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Income Tax Regulations.

**ARTICLE IX**  
**Miscellaneous**

- 9.1 **Non-Assignability.** Except as provided in Section 9.2 and 9.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.
- 9.2 **Domestic Relation Orders.** Notwithstanding Section 9.1, if the Employer is a State or local governmental entity, if the Administrator is presented with a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant that has been made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.
- 9.3 **IRS Levy.** Notwithstanding Section 9.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.
- 9.4 **Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals and, if applicable, Roth 403(b) Contributions, which constitute wages under section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Employment Tax Regulations thereunder). A payee shall provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.
- 9.5 **Payments to Minors and Incompetents.** If a distribution is to be made to a minor or incompetent Participant or Beneficiary, payments may be made to the person's legal guardian, conservator recognized under state law, or custodian in accordance with the Uniform Gifts to Minors Act or similar law as permitted under the laws of the state where the Participant or Beneficiary resides. The Administrator will not be liable for any payments made in accordance with this section 9.5 and shall, to the extent made, be deemed to discharge any corresponding liability under the Plan. The Administrator will not be required to make any inquiries with respect to the competence of any person entitled to benefits under the Plan
- 9.6 **Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.
- 9.7 **Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

- 9.8 **Incorporation of Individual Agreements**. The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code.
- 9.9 **Governing Law**. The Plan will be construed, administered and enforced according to the Code and the laws of the State in which the Employer has its principal place of business.
- 9.10 **Headings**. Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.
- 9.11 **Gender**. Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.
- 9.12 **Not Subject to ERISA**. This Plan is established and maintained as a plan that is exempt from the requirements of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), as provided by Section 4 of such statute.

**ARTICLE X**  
**Roth 403(b) Contributions**

**10.1 Definitions.**

- (a) **“Roth 403(b) Contributions”** means, if so elected by the Employer in Section II – Plan Information, contributions that are:
- (i) made by the Employer to the Plan pursuant to a Compensation reduction agreement entered into by a Participant, which qualifies as a “designated Roth contribution” within the meaning of Code section 402A;
  - (ii) irrevocably designated by the Participant at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of cash compensation and in lieu of contributions in the form of Elective Deferrals that the Participant is otherwise eligible to make under the Plan; and
  - (iii) treated by the Employer as includible in the Participant’s income at the time the Participant would have received that amount as if the Participant had not made a cash or deferred election.
- (b) **“Roth 403(b) Contributions Account”** means the account established and maintained by the Administrator for each Participant with respect to his interest (including any earnings and losses attributable thereon) under the Plan attributable to Roth 403(b) Contributions.

**10.2 Roth 403(b) Contributions.** For each Plan Year, each Participant may elect to make Roth 403(b) Contributions to the Plan up to the applicable limit under Code section 402(g) aggregated with any Elective Deferrals as described in Section 3.1, 3.2 and 3.3, and subject to any limitations imposed under applicable law or under any applicable collective bargaining agreement. Such contributions will be allocated to the Participant’s Roth 403(b) Contributions Account.

**10.3 Distribution of Roth 403(b) Contributions.**

- (a) **Qualified Distributions.** Distributions from a Roth 403(b) Contributions Account will be tax-free for federal income tax purposes if:
- (i) The amounts are held for a 5-year holding period, measured from the first year that the initial Roth 403(b) Contribution was made on behalf of the Participant to a Roth 403(b) Contributions Account, and
  - (ii) The distribution is due to a Participant’s attainment of age 59 ½, death or in the event of the Participant’s becoming Disabled.
- (b) **Non-qualified Distributions.** Amounts distributed from a Roth 403(b) Contributions Account that are not “Qualified Distributions” as defined in Section 10.3(a), may be distributed from a Roth 403(b) Contributions Account subject to the distribution rules applicable to Elective Deferrals as described in Section 5.1. Such nonqualified distributions shall be subject to federal income tax to the extent that the amount distributed exceeds the value of the Roth 403(b) Contributions.
- (c) **Restrictions.** If permitted by Individual Agreement, amounts held in a Roth 403(b) Contributions Account may be used for a loan in accordance with Section 4, distributed due to a financial hardship distribution under Section 5.4, transferred in accordance with Sections 6.3 or 6.5, or exchanged in accordance with Section 6.4.



**ARTICLE XI**  
**Employer Contributions**

11.1 This Plan may include Employer Contributions. If the Plan includes such contributions, the Employer shall make its contribution as set forth in Section II – Plan Information for each Plan Year. Such contributions shall be allocated to each eligible Employee’s account at the time and in the manner set forth in Section II – Plan Information.

11.2 **Definitions.**

- (a) **“Employer Contributions Account”** means the accounts established and maintained by the Administrator for each Participant with respect to his total vested and nonvested interests (including any earnings and losses attributable thereon) under the Plan resulting from Employer Nonelective Contributions and/or Employer Matching Contributions.
- (b) **“Employer Nonelective Contributions”** means the Employer’s discretionary contributions to the Plan in accordance with the formula selected by the Employer in the Section II - Plan Information section.
- (c) **“Employer Matching Contributions”** means the Employer’s contributions to the Plan that match a Participant’s Elective Deferrals or Roth 403(b) Contributions in accordance with the formula selected in the Section II - Plan Information section.

11.3 **Employer Contributions.** For each Plan Year, the Employer will contribute to the Plan the amount and form of contributions as specified in the Section II – Plan Information subject to any limitations imposed under applicable law or under any applicable collective bargaining agreement. Such contributions will be allocated to the Participant’s Employer Contributions Account.

11.4 **Contributions for Former Employees.** The Employer, in its discretion, may make Employer Contributions on behalf of a former Employee. For purposes of determining Employer Contributions for a former Employee, the former Employee is deemed to have monthly Compensation through the end of the taxable year of the Employee in which he or she ceases to be an Employee and through the end of each of the next five taxable years. The amount of monthly Compensation is equal to 1/12 of the former Employee’s Compensation during the former Employee’s most recent year of service, as defined in section 1.403(b)-4(e) of the Treasury Regulations.

11.5 **Maximum Annual Additions.**

- (a) The Limitation Year is the measuring period for determining whether the Plan satisfies the Code section 415 Limitation. The Limitation Year shall be the calendar year, beginning on January 1 and ending on December 31, unless otherwise specified in other Plan documentation.
- (b) The maximum permissible Annual Additions that may be contributed or allocated to each Participant’s Account under the Plan for any Limitation Year will not exceed the lesser of:
  - (i) \$40,000, as adjusted for increases in the cost of living under Code section 415(d), or
  - (ii) 100 percent of the Participant’s Includible Compensation for the Limitation Year.
- (c) For purposes of this Section, “Annual Additions” means, for any Limitation Year, the sum of Elective Deferrals, Roth 403(b) Contributions, Employer Contributions, After-Tax Employee Contributions and forfeitures to the Plan made to the Participant’s Account and the sum of any employee and employer contributions made on behalf of such individual under any other 403(b) plan maintained by the Employer.
- (d) If a Participant has a “controlling interest” in another employer and participates in that employer’s qualified 401(a) defined contribution plan, a welfare benefit fund (as defined in Code section 419(e)),

an individual medical account (as defined in Code section 415(l)(2)) or a simplified employee pension (as defined in Code section 408(k)) which provides Annual Additions, the amount of Annual Additions which may be credited to a Participant's Account for any Limitation Year will not exceed the maximum permissible amount described in subsection (b), taking into account employer contributions that have been allocated to such other plans as described in this subsection.

- (e) If, notwithstanding the application of section 3.1 and 3.2, the Annual Additions are greater than the maximum permissible amount described in subsection (b) in a Limitation Year, to the extent timely identified and to the extent consistent with applicable Code provisions and IRS guidance, the Employer shall notify one or more of the Vendors, as appropriate, and Elective Deferrals will be returned to the Participant until contributions are within the Section 415 limits. If timely correction of such excess is not made, such excess will remain in the Plan and will be separately accounted for in accordance with Code section 403(c). If, after return of Elective Deferrals, an excess amount still exists, the excess amount will be held unallocated in a suspense account. Such suspense account will be used to reduce future Employer contributions under the Plan.

11.6 **Vesting**. Unless otherwise provided in Section II - Plan Information section, a Participant will have a fully vested and nonforfeitable interest in any Employer Discretionary Contributions and Employer Matching Contributions. If a Participant is not fully vested in his or her interest, then an Employee will be credited an additional year for each Plan Year in which he or she completes at least one-thousand (1,000) hours. In the event Employer contributions are not fully vested, non-vested amounts shall be accounted for separately for purposes of the Plan consistent with the requirements of the Code and underlying regulations.

11.7 **Forfeiture of Benefits**. A Participant will forfeit the nonvested portion of his or her Employer Contributions Account upon the occurrence of any of the events described below. Each Vendor has the responsibility to determine the amount of a Participant's forfeiture. Until an amount is forfeited, pursuant to this Section 11.7, a Participant's entire Account must remain in the Plan and continue to share in gains and losses. A Participant will not forfeit any of his or her nonvested Account until the occurrence of one of the following events.

- (a) **Cash-Out Distribution**. Following termination of employment, a Participant may receive a total distribution of his or her vested benefit under the Plan (a "Cash-Out Distribution"). If a Participant receives a Cash-Out Distribution upon termination of employment, the Participant's nonvested benefit under the Plan will be forfeited in accordance with subsection (1) below. If at the time of termination, a Participant is totally nonvested in his or her Employer Contributions Account, the Participant will be deemed to receive a total Cash-Out Distribution of his or her entire vested Employer Contributions Account as of the date of termination, subject to the forfeiture provisions under subsection (1) below.

If a Participant receives a distribution of less than the entire vested portion of his or her Employer Contributions Account (including any additional amounts to be allocated under section (1)(ii) below, the Participant will not be treated as receiving a Cash-Out Distribution until such time as the Participant receives a distribution of the remainder of the vested portion of his or her Employer Contributions Account.

- (1) **Timing of forfeiture**. If a Participant receives a Cash-Out Distribution of his or her vested Employer Contributions Account, the Participant will immediately forfeit the nonvested portion of such Account, as of the date of the distribution or deemed distribution (as determined under subsection (i) or (ii) below, whichever applies).
  - (i) **No further allocations**. For purposes of applying the Cash-Out Distribution rules, a terminated Participant who receives a total distribution of his or her Employer Contributions Account will be treated as receiving the Cash-Out Distribution as of the date the Participant receives such distribution or deemed distribution, provided the Participant is not entitled to any further allocations under the Plan for the Plan Year in which the Participant terminates employment. The Participant will forfeit his or her nonvested benefits as of the date the Participant receives the Cash-Out Distribution.

- (ii) **Additional allocations.** For purposes of applying the Cash-Out Distribution rules, if upon termination of employment, a Participant is entitled to an additional allocation for the Plan Year in which the Participant terminates, such Participant will not be deemed to receive a Cash-Out Distribution until such time as the Participant receives a distribution of his or her entire vested Employer Contributions Account, including any amounts that are still to be allocated under the Plan. In the case of a deemed Cash-Out Distribution, if the Participant is entitled to an additional allocation under the Plan for the Plan Year in which the Participant terminates employment, the deemed Cash-Out Distribution is deemed to occur on the first day of the Plan Year following the Plan Year in which the termination occurs, provide the Participant is still totally nonvested in his or her Employer Contributions Account.
  
- (2) **Repayment of Cash-Out Distribution.** If a Participant receives a Cash-Out Distribution that results in a forfeiture and the Participant resumes employment covered under the Plan, such Participant may repay to the Plan the amount received as a Cash-Out Distribution. A Participant will only be permitted to repay his or her Cash-Out Distribution if such repayment is made before the earlier of:
  - (i) five years after the first date on which the Participant is subsequently re-employed by the Employer, or
  - (ii) the date the Participant incurs a Five-Year Forfeiture Break in Service.

If a Participant receives a deemed Cash-Out Distribution and the Participant resumes employment covered under this Plan before the date the Participant incurs a Five-Year Forfeiture Break in Service, the Participant is deemed to repay the Cash-Out Distribution immediately upon his or her reemployment.
  
- (3) **Restoration of forfeited benefit.** If a rehired Participant repays a Cash-Out Distribution in accordance with subsection (2) above, any amounts that were forfeited on account of such Cash-Out Distribution (unadjusted for any interest that might have accrued on such amounts after the distribution date) will be restored to the Plan no later than the end of the Plan Year following the Plan Year in which the Participant repays the Cash-Out Distribution (or is deemed to repay the Cash-Out Distribution under subsection (2) above). No amount will be restored under the Plan, however, until such time as the Participant repays the entire amount of the Cash-Out Distribution. In no event will a Participant be entitled to a restoration under this subsection (3) if the Participant returns to employment after incurring a Five-Year Forfeiture Break in Service (as defined in subsection (b) below).
  
- (4) **Sources of restoration.** If a Participant's forfeited benefit is required to be restored under subsection (3), the restoration of such forfeited benefit will occur from the following sources. If the following sources are not sufficient to completely restore the Participant's benefit, the Employer must make additional contribution to the Plan.
  - (i) Any unallocated forfeitures for the Plan Year of the restoration.
  - (ii) Any unallocated earnings for the Plan Year of the restoration.
  - (iii) Any portion of a discretionary Employer Contribution to the extent such contribution has not been allocated to Participants' Accounts for the Plan Year of the restoration.
  
- (b) **Five-Year Forfeiture Break in Service.** If a Participant has five (5) consecutive Breaks in Service (a "Five-Year Forfeiture Break in Service"), all Years of Service after such Breaks in Service will be disregarded for the purpose of vesting in the portion of the Participant's Employer Contributions Account that accrued before such Breaks in Service. A Participant who incurs a Five-Year Forfeiture Break in Service will forfeit the nonvested portion of his or her Employer Contributions Account as of

the end of the Plan Year in which the Participant incurs the fifth consecutive Break in Service. A Participant incurs a Break in Service for any Plan Year during which the Employee does not completed more than five hundred (500) hours of service with the Employer.

- 11.8 Forfeitures will be used to reduce future Employer contributions under this Plan in the Plan Year following the Plan Year in which the forfeitures occur, or may be made available to pay any administrative expenses of the Plan.
- 11.9 Regardless of the Plan's vesting schedule, a Participant's right to his/her Account Balance is fully vested upon the date he/she attains Normal Retirement Age provided the Participant is an Employee on or after such date.

**ARTICLE XII**  
**Participating Employers**

- 12.01 **Participation by Participating Employers.** An Employer (other than the Employer that executes the Employer Signature Page) may elect to participate under this Plan by executing a Participating Employer Adoption Page. A Participating Employer may not contribute to this Plan unless it executes the Participating Employer Adoption Page.
- 12.02 **Participating Employer Adoption Page.**
- (a) **Application of Plan provisions.** By executing a Participating Employer Adoption Page, a Participating Employer adopts all the provisions of the Plan, including the elective choices made by the signatory Employer under the Adoption Agreement. The Participating Employer may elect under the Participating Employer Adoption Page to modify the specified elective provisions under the Adoption Agreement as they apply to the Participating Employer.
  - (b) **Plan Amendments.** In addition, unless provided otherwise under the Participating Employer Adoption Page, a Participating Employer is bound by any amendments made to the Plan in accordance with Section 8.2.
  - (c) **Custodian/Insurance Company Declaration.** The Participating Employer agrees to use the same Custodians/Insurance Companies as is designated in Appendix A, except as provided in a separate agreement.
- 12.03 **Compensation of Related Employers.** In apply the provisions of this Plan, Compensation includes amounts earned with a Related Employer, only if such Related Employer executes a Participating Employer Adoption Page.
- 12.04 **Allocation of Contributions.** Unless otherwise selected under the Participating Employer Adoption Page, any contributions made by a Participating Employer will be allocated to all Participants employed by the Employer and Participating Employers in accordance with the provisions of this Plan. A Participating Employer may elect under the Participating Employer Adoption Page to allocate its contributions only to the Participants employed by the Participating Employer making such contributions. If so elected, Employees of the Participating Employer will not share in an allocation of contributions made by an other Participating Employer (except in such individual's capacity as an Employee of that other Participating Employer).
- 12.05 **Discontinuance of Participation by a Participating Employer.** A Participating Employer may discontinue its participation under the Plan at any time. To implement a Participating Employer's cessation of participation, the following procedures must be followed: (1) the Participating Employer adopts a resolution that formally terminates active participation in the Plan as of a specified date, (2) the Employer that has executed the Employer Signature Page should reexecute such page indicating an amendment to the Plan has occurred, and (3) the withdrawing Participating Employer should provide any notices to its Employees that are required by law. Discontinuance of participation means that no further benefits accrue after the effective date of such discontinuance with respect to employment with the withdrawing Participating Employer. The portion of the Plan attributable to the withdrawing Participating Employer may continue as a separate plan, under which benefits may continue to accrue, through the adoption by the Participating Employer of a successor plan (which may be created through the execution of a separate Plan by the Participating Employer) or by spin-off of the portion of the Plan attributable to such Participating Employer which may follow a merger or transfer into another existing plan, as specified in a merger or transfer agreement.
- 12.06 **Operational Rules for Related Employer Groups.** If an Employer has one or more Related Employers, the Employer and such Related Employer(s) constitute a Related Employer group. In such case, the following rules apply to the operation of the Plan.

- (a) If the term “Employer” is used in the context of administrative functions necessary to the operation, establishment, maintenance, or termination of the Plan, only the Employer executing the Employer Signature Page, and any Related Employer executing a Participating Employer Adoption Page, is treated as the Employer.
- (b) The term Excluded Employee is determined by treating all members of the Related Employer group as the Employer.
- (c) An Employee is not treated as terminated from employment if the Employee is employed by any member of the Related Employer group.
- (d) The Code section 415 limitation described in Section 11.5 is applied by treating all members of the Related Employer group as the Employer.

In all other contexts, the term “Employer” generally means a reference to all members of the Related Employer group, unless the context requires otherwise. If the terms of the Plan are ambiguous with respect to the treatment of the Related Employer group as the Employer, the Administrator has the authority to make a final determination on the proper interpretation of the Plan.

**SECTION IV – EMPLOYER SIGNATURE PAGE**

IN WITNESS WHEREOF, the Employer has caused this Plan to be executed by its duly authorized officers on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Employer: ISD 877 Buffalo-Hanover-Montrose Schools  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

- New Plan Adoption, effective 01/01/2009.
- Restatement of an existing plan, effective \_\_\_\_\_.
- An amendment of the Plan. If this Plan is being amended, the updated pages of the Adoption Agreement may be substituted for the original page in the Adoption Agreement. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.

(1) Identify the section(s) of the Adoption Agreement being amended: \_\_\_\_\_  
(2) Effective Date(s) of such changes: \_\_\_\_\_

It is recommended that the Employer consult with legal counsel before executing this Agreement.

**SECTION V – PARTICIPATING EMPLOYER ADOPTION PAGE**

- Check this selection and complete this page if a Participating Employer (other than the Employer that signs the Signature Page above) will participate under this Plan as a Participating Employer. [Note: See Section III, Article XII of the Plan for rules relating to the adoption of the Plan by a Participating Employer. If there is more than one Participating Employer, each one should execute a separate Participating Employer Adoption Page. Any reference to the "Employer" in this Adoption Agreement is also a reference to the Participating Employer, unless otherwise noted.]**

**PARTICIPATING EMPLOYER INFORMATION:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

**EMPLOYER IDENTIFICATION NUMBER (EIN):** \_\_\_\_\_

**TYPE OF ENTITY:** \_\_\_\_\_

**EFFECTIVE DATE:**

- New plan.** The Participating Employer is adopting this Plan as a new Plan effective \_\_\_\_\_
- Restated plan.** The Participating Employer is adopting this Plan as a restatement of \_\_\_\_\_ [insert name of Participating Employer's plan(s) being restated].
- (a) This restatement is effective \_\_\_\_\_
- (b) The original effective date of the plan(s) being restated is: \_\_\_\_\_

**ALLOCATION OF CONTRIBUTIONS.** Any contributions made under this Plan will be allocated to all Participants of the Employer (including the Participating Employer identified on this Participating Employer Adoption Page).

To override this default provision, check below.

- Check this box if contributions made by the Participating Employer signing this Participating Employer Adoption Page will be allocated only to Participants actually employed by the Participating Employer making the contribution. If this box is checked, Employees of the Participating Employer signing this Participating Employer Adoption Page will not share in an allocation of contributions made by the Employer or any other Participating Employer.

**SIGNATURE.** By signing this Participating Employer Adoption Page, the Participating Employer agrees to adopt (or to continue its participation in) the Plan identified on page 1 of this Agreement. The Participating Employer agrees to be bound by all provision of the Plan as completed by the signatory Employer, unless specifically provided otherwise on this Participating Employer Adoption Page. The Participating Employer also agrees to be bound by any future amendments (including any amendments to terminate the Plan) as adopted by the signatory Employer.

\_\_\_\_\_  
(Name of Participating Employer)

\_\_\_\_\_  
(Name of authorized representative) (Title)

\_\_\_\_\_  
(Signature) (Date)



**APPENDIX A**

**APPROVED 403(B) PLAN VENDOR LIST**

Plan Name: ISD 877 Buffalo-Hanover-Montrose Schools 403(b) Plan

Plan Sponsor: ISD 877 Buffalo-Hanover-Montrose Schools

Effective Date: 01/01/2009 Ref. No.: 105139

A. The following vendors are authorized to receive contributions and contract exchanges between vendors under the 403(b) Plan:

Name of Vendor

Ameriprise Financial, Inc.  
AXA Equitable  
Educators' Financial Services  
Horace Mann  
ING Financial  
403(b) ASP

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B. The following vendors have signed information sharing agreements and are authorized to only receive contract exchanges between vendors under the 403(b) Plan maintained by ISD 877 Buffalo-Hanover-Montrose Schools and are not authorized to receive new contributions:

Name of Vendor

Thrivent Financial for Lutherans  
Symetra Financial  
Variable Annuity Life Insurance Company  
Great American Financial Resources Incorporated  
Ameritas Life Insurance Company  
Waddell & Reed Financial Services  
Education Minnesota - Commonwealth Annuity & Life Insurance Company for itself Protective Life & Kemper  
Investors Life  
Education Minnesota - Security Benefit Group of Co

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