THE OHIO STATE UNIVERSITY
403(b) RETIREMENT PLAN

As amended and restated, effective as of January 1, 2009
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ARTICLE I BACKGROUND

1.1 Plan History. The Employer previously established the Plan, a retirement plan governed by Code Section 403(b), for the benefit of certain employees. Effective January 1, 2004, the Employer established a written Plan document setting forth the terms of the Plan, and also amended the Plan at that time in certain respects effective as of that date. The January 1, 2004 amendments included the addition of provisions allowing the Employer to make discretionary contributions on behalf of certain employees of the Employer from time to time.

1.2 Plan Restatement. The Plan is hereby amended and restated effective as of January 1, 2009 to comply with recently published Treasury Regulations under Code Section 403(b) and other guidance of general applicability promulgated under Code Section 403(b).

1.3 Purpose of Plan. The purpose of the Plan is to provide retirement income for Participants and their Beneficiaries who qualify for Plan benefits. The Plan is intended to continue to comply with the requirements of Code Section 403(b), and is not intended to qualify under Code Section 401(a). The Employer is a governmental entity as defined in Code Section 414(d) and, as such, is exempt from the provisions of the Employee Retirement Income Security Act of 1974, as amended.

ARTICLE II RULES OF CONSTRUCTION

2.1 Gender and Number. Except when otherwise indicated by context, masculine gender shall include the feminine and words used in the singular shall include the plural whenever appropriate.

2.2 Titles to Articles and Sections. Titles to Articles and Sections are for general information only, and are not to be considered in the interpretation or construction of the Plan’s provisions.

2.3 Applicable Law. The Plan shall be construed and enforced in a manner that is consistent with the Code. To the extent that state law has not been preempted by federal law, the laws of the State of Ohio shall control. In the event any provision of the Plan is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the requirements of Code Section 403(b).

2.4 Severability. If any provision of the Plan is held to be illegal or invalid for any reason or would result in a failure to comply with the requirements of Code Section 403(b) or other applicable law, that provision shall not affect the remaining provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included in the Plan during the applicable period of time for which that provision is held to be illegal, invalid or would result in a failure to comply with Code Section 403(b) or other applicable law.

ARTICLE III DEFINITIONS

Whenever used in the Plan, the terms set forth in this Article III shall have the meanings ascribed to them herein unless the Plan expressly states otherwise, and when the defined meaning is intended, the term shall be capitalized.

3.1 Account. “Account” means the record of the account or accumulation established and maintained by the Provider for the benefit of a Participant with respect to his or her total interest in the Plan attributable to Elective Deferrals, Age 50 Catch-Up Contributions, Special Code Section 403(b) Contributions for Employees with 15 Years of Service, Discretionary Matching Contributions,
Discretionary Non-elective Contributions, Rollover Contributions, Roth 403(b) Contributions (if permitted), and Transfer Contributions under a Funding Vehicle. “Account” may refer to any or all of the following:

(a) “Elective Deferral Account” means the record established and maintained for each Participant with respect to his or her total interest in the Plan attributable to Elective Deferrals pursuant to Section 5.1.

(b) “Matching Contribution Account” means the record established and maintained for each Participant with respect to his or her total interest in the Plan attributable to Discretionary Matching Contributions pursuant to Section 5.5.

(c) “Non-elective Contribution Account” means the record established and maintained for each Participant with respect to his or her total interest in the Plan attributable to Discretionary Non-elective Contributions pursuant to Section 5.6.

(d) “Loan Account” means the record of unpaid principal and accrued interest on a loan to a Participant under a loan program provided under a Funding Vehicle.

(e) “Rollover Contribution Account” means the record of Participant rollovers to the Plan in accordance with Section 10.1.

(f) “Roth Contribution Account” means the record established and maintained for each Participant with respect to his or her total interest in the Plan attributable to Roth 403(b) Contributions, if permitted, pursuant to Section 5.4.

(g) “Transfer Contribution Account” means the record established and maintained for each Participant with respect to his or her total interest in the Plan attributable to plan-to-plan transfers pursuant to Section 10.2.1.

The Employer or the Provider may establish additional sub-accounts within the various Accounts or combine similar Accounts or sub-accounts.

3.2 Account Balance. “Account Balance” means the bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant’s Account(s), the earnings or losses of each Funding Vehicle (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 Article X 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.

3.3 Administrator. “Administrator” means the person, committee or entity selected by the Employer to administer the Plan or, if none, the Employer.

3.4 Alternate Payee. “Alternate Payee” means an “alternative payee” as defined in Code Section 414(p)(8).
3.5 **Annual Addition.** "Annual Addition" means, with respect to each Participant, the sum, for the Limitation Year, of all amounts credited to his or her Accounts under the Plan (and, to the extent required pursuant to the Code or applicable Treasury Regulations, to his or her accounts in any other qualified retirement plans).

3.6 **Annuity Contract.** "Annuity Contract" means a nontransferable contract, as defined in Code Sections 403(b)(1) and 401(g), established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in a State, and that includes payment in the form of an annuity.

3.7 **Beneficiary.** "Beneficiary" means a designated person who is entitled to receive benefits under the Plan by reason of the Participant's death, subject to such additional rules as may be set forth in the Individual Agreements.

3.8 **Code.** "Code" means the Internal Revenue Code of 1986, as amended from time to time, any successor tax code, and any valid regulations or other guidance of general applicability promulgated thereunder.

3.9 **Credited Compensation.**

(a) **For Elective Deferrals.** For purposes of Elective Deferrals, "Credited Compensation" means 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 Code Sections 125, 132(f), 401(k), 403(b), or 457(b) (including an election under Section 5.1 to reduce compensation in order to make Elective Deferrals under the Plan).

(b) **For Discretionary Matching Contributions and Discretionary Non-elective Contributions.** For purposes of Discretionary Matching Contributions or Discretionary Non-elective Contributions, "Credited Compensation" of a Participant for any period means wages within the meaning of Code Section 3401(a) and all other payments of compensation to the Participant by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052, but excluding any amounts of severance pay that are paid in installments or any amounts paid subsequent to a terminal agreement. Credited Compensation shall be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed. The compensation of each Participant taken into account in determining Credited Compensation for any Plan Year shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B) ($245,000 in 2009) (except as otherwise permitted pursuant to Treasury Regulation Section 1.401(a)(17)-1(d)(4)(ii) (or any successor thereto)).

3.10 **Custodial Account.** "Custodial Account" means the group or individual custodial account or accounts, as defined in Code Section 403(b)(7), established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.
3.11 Disability or Disabled. “Disability” or “Disabled” has the meaning set forth in Code Section 72(m)(7), that is, the inability 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. The permanence and degree of the impairment shall be supported by medical evidence acceptable to the Employer. The Employer shall have sole discretion to determine whether a Participant has a Disability or is Disabled.

3.12 Discretionary Matching Contribution. “Discretionary Matching Contribution” means an Employer contribution for a Plan Year allocated to a Participant’s Account pursuant to Section 5.5.

3.13 Discretionary Non-elective Contribution. “Discretionary Non-elective Contribution” means an Employer contribution for a Plan Year allocated to a Participant’s Account pursuant to Section 5.6.

3.14 Elective Deferral. “Elective Deferral” means a contribution made to the Plan during the Plan Year by the Employer at the election of the Participant in lieu of receiving cash compensation and pursuant to the requirements of Section 5.1. Elective Deferrals are limited to pre-tax salary reduction contributions and after-tax Roth 403(b) Contributions (if permitted).

3.15 Employee. “Employee” means any individual, whether appointed or elected, who is employed as a common law employee of the Employer and who is performing services as an employee of the Employer. This definition is not applicable unless the Employee’s Credited Compensation for performing services is paid by the Employer. Further, an individual occupying an elective or appointive public office is not an Employee performing services 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 the State or local government.

3.16 Employer. “Employer” means The Ohio State University, which is a State-sponsored educational organization described in Code Section 170(b)(1)(A)(ii). Solely for purposes of applying the limits set forth in Section 6.2, Employer shall mean The Ohio State University and any employer required to be aggregated with The Ohio State University under Code Sections 414(b) (as modified by Code Section 415(h)), 414(c) (as modified by Code Section 415(h)), 414(m) and 414(o) and Treasury Regulation Section 1.414(c)-5.

3.17 Excess Deferral Amount. “Excess Deferral Amount” means the amount of Elective Deferrals for a calendar year that a Participant contributes to the Plan pursuant to Section 5.1 which, when added to amounts deferred under the Plan and other plans or arrangements described in Code Section 401(k), 408(k), 408(p)(2), 403(b), or 501(c)(18), exceeds the limit imposed on the Participant by Code Section 402(g) for the calendar year in which the deferral occurred.

3.18 Fund. “Fund” means the assets of the Plan as the same shall exist from time to time, which shall be invested exclusively in one or more Funding Vehicles.

3.19 Funding Vehicle or Funding Vehicles. “Funding Vehicle” or “Funding Vehicles” means the Annuity Contracts and/or Custodial Accounts issued for funding amounts held under the Plan. Funding Vehicles held under the Plan shall conform to all provisions of the Plan. The provisions of the Funding Vehicle(s) are, to the extent not inconsistent with the Plan, incorporated in the Plan by reference.

3.20 Includible Compensation. “Includible Compensation” means an Employee’s actual compensation received from the Employer that is includible in the Participant’s gross income for Federal income tax purposes (computed without regard to Code Section 911 relating to U.S. citizens or residents
living abroad) for the most recent period that is a Year of Service. Includible compensation also includes any elective deferral or other amount contributed or deferred by the Employer at the election of the Participant that would be includible in the gross income but for the rules of Code Section 125, 132(f)(4), 401(k), 402(e)(3), 402(h)(1)(B), 402(k), 403(b), or 457(b). The amount of Includible Compensation is determined without regard to any community property laws. The amount of Includible Compensation of each Participant taken into account in determining contributions shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B) ($245,000 in 2009). For purposes of applying the limitations on Annual Additions to non-elective employer contributions pursuant to Code Section 415, Includible Compensation for a Participant who is permanently and totally disabled (as defined in Code Section 22(e)(3)) is the compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.

3.21 Individual Agreement. “Individual Agreement” means the agreement(s) between a Provider and a Participant that constitute or govern a Funding Vehicle. Such agreements must comply with Code Section 403(b).

3.22 Limitation Year. “Limitation Year” generally means the calendar year. However, if the Participant is in control of an employer pursuant to Section 6.2.3, the Limitation Year shall be the Limitation Year in the defined contribution plan controlled by the Participant.

3.23 ORC. “ORC” means the Ohio Revised Code, as amended from time to time.

3.24 Participant. “Participant” means an Employee who enters the Plan as provided herein and for whom Elective Deferrals or any other contributions are currently being made, or for whom Elective Deferrals or any other contributions have previously been made, under the Plan, and whose participation has not been terminated due to receipt of a distribution of his or her entire benefit under the Plan or death.

3.25 Plan. “Plan” means The Ohio State University 403(b) Retirement Plan, the terms and provisions of which are set forth herein, as the same may be amended or restated from time to time. The Plan is a governmental plan, as defined in Code Section 414(d).

3.26 Plan Year. “Plan Year” means the consecutive 12-month period commencing each January 1.

3.27 Provider. “Provider” means the provider of a Funding Vehicle; provided, however, each such entity that fails to meet the requirements of ORC Sections 9.91(A) and 9.91(B) shall not be eligible to become or remain a Provider hereunder. Participants may select among the Providers who have entered into a Service Provider Agreement with the Employer.

3.28 Qualified Domestic Relations Order. “Qualified Domestic Relations Order” means a “qualified domestic relations order” as defined in Code Section 414(p). The Employer shall forward any “domestic relations order” (as defined in Code Section 414(p)) to the applicable Provider(s).

3.29 Qualified Employee. “Qualified Employee” means an Employee who has completed at least fifteen (15) Years of Service taking into account only employment with the Employer.

3.30 Related Employer. “Related Employer” means the Employer and any other entity that is under common control with the Employer, as determined under Code Section 414(b), (c), (m) or (o). For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable,
good faith standard and taking into account the special rules applicable under Notice 89-23 (1989-1 C.B. 654).

3.31 Required Beginning Date. “Required Beginning Date” means April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains age 70½, or (b) the calendar year in which the Participant retires from employment with the Employer.

3.32 Roth 403(b) Contribution. “Roth 403(b) Contribution” means an Elective Deferral that:

(a) Qualifies as a “designated Roth contribution” within the meaning of Code Section 402A;

(b) Is irrevocably designated by the Participant when made as a Roth 403(b) Contribution that is being made in lieu of all or a portion of the Elective Deferrals that the Participant is otherwise eligible to make under the Plan; and

(c) Is treated by the Employer as includible in the Participant’s income at the time the Participant would have received that amount in cash if the Participant had not made an Elective Deferral regarding such amount.

3.33 Severance from Employment. “Severance from Employment” means, for purposes of the Plan only, the Employee ceases to be employed by the Employer or a Related Employer that is eligible to maintain a plan subject to Code Section 403(b). However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of The Ohio State University, 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 (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).

3.34 State. “State” means a State, a political subdivision of a State or an agency or instrumentality of a State. “State” includes the District of Columbia, pursuant to Code Section 7701(a)(10). An Indian tribal government is treated as a State pursuant to Code Section 7871(a)(6)(B) for purposes of Code Section 403(b)(1)(A)(ii).

3.35 VPHR. “VPHR” means the Vice President for Human Resources of the Employer or, if none, such other individual designated by the Employer.

3.36 Year of Service. “Year of Service” means, for purposes of determining Includible Compensation or Special Catch-Up Contributions, each full year during which an individual is a full-time Employee of the Employer, plus fractional credit for each part of a year during which the individual is either a full-time Employee for a part of a year or a part-time Employee of the Employer. The Employee must be credited with a full year of service for each year during which the Employee is a full-time Employee and a fraction of a year for each part of a work period during which the Employee is a full-time or part-time Employee of the Employer. An Employee’s number of years of service equals the aggregate of the annual work periods during which the Employee is employed by the Employer. The work period is the Employer’s annual work period.
ARTICLE IV ELIGIBILITY

4.1 Eligibility Requirements.

4.1.1 Eligibility to Participate in Elective Deferrals. Each Employee shall be eligible to make Elective Deferrals to the Plan as of the first day of the first pay period beginning on or after the date he or she becomes an Employee.

4.1.2 Eligibility to Participate in Discretionary Matching Contributions and Discretionary Non-elective Contributions. An Employee (or, to the extent provided under Section 5.6, a former Employee) shall be eligible to participate in Discretionary Matching Contributions and Discretionary Non-elective Contributions for any period or periods that the Employer, in its discretion, designates the Employee or former Employee as eligible to participate in such contributions.

4.2 Subsequent Eligibility. Each Employee shall continue to be eligible to make Elective Deferrals until the date he or she ceases to be an Employee. An Employee (or, to the extent provided under Section 5.6, a former Employee) who has become eligible to participate in Discretionary Matching Contributions or Discretionary Non-elective Contributions for any period or periods shall not be eligible to participate in such contributions for any other period or periods unless the Employer, in its discretion, specifically designates the Employee or former Employee as eligible to participate in such contributions for such other period or periods.

4.3 Employees Must Furnish Data. To become a Participant in the Plan, an Employee shall furnish the Employer, the Administrator and the Provider with such information and data, and execute such forms and answer all questions fully and truthfully as the Employer, the Administrator and the Provider deem necessary or desirable for the administration of the Plan, including but not limited to completion of a salary reduction agreement and the provision of any information required under the Individual Agreements.

4.4 Effect of Erroneous Statement of Participant. If, in furnishing the information or data required by Section 4.3, an Employee misstates his or her age or the age of any person who will receive a benefit under the Plan if such person survives the Employee, or any other material fact, and the fact which was misstated would alter the benefits payable under the Plan to such Employee or such Employee’s Beneficiary, the benefits payable under the Plan shall not be terminated, but the amount of the benefit payable to such Employee or his or her Beneficiary shall be adjusted retroactively to equal the amount which would have been payable if such fact or facts had not been misstated; provided, however, that in no event shall the Plan be liable to pay a benefit greater than that which would have been payable on the basis of the actual facts.

ARTICLE V CONTRIBUTIONS TO THE PLAN

5.1 Elective Deferrals.

5.1.1 Elective Deferrals. Subject to the limitations of Sections 5.1.2 and Article VI hereof, the Employer shall contribute to the Provider selected by a Participant for each Plan Year an amount equal to the amount deducted and withheld from the Participant’s Credited Compensation during the Plan Year as an Elective Deferral pursuant to the Participant’s election.

5.1.2 Elective Deferral Election. Each Employee may elect to participate in the Plan by (i) executing an election to reduce his or her Credited Compensation for the Plan Year that
would be paid on or after the effective date of the election and to have the reduction contributed by the Employer on the Participant’s behalf to the Participant’s Elective Deferral Account and (ii) filing the election with the Employer or its designee. The election shall be made on a salary reduction agreement provided by the Employer or its designee under which the Employee agrees to be bound by the terms and conditions of the Plan. Elections shall be made at least fifteen (15) days before the beginning of the first pay period as of which the Participant first chooses to participate in contributions pursuant to this Section, or as of such other dates as the Employer may permit in accordance with uniform, nondiscriminatory rules, and shall become effective beginning with the first payroll date on or after such date. Any election shall remain in effect until a new election is filed in accordance with the terms of the Plan. All Elective Deferrals shall be deemed to be Employer and not Employee contributions.

Elective Deferral elections shall be further subject to the following rules and limitations:

(a) **Amounts.** All amounts are to be expressed as flat dollar amounts of Credited Compensation. The amount contributed each pay period must be such that it would be expected to total at least $180 annually for Employees paid on a monthly basis and at least $182 annually for Employees paid on a bi-weekly basis.

(b) **Designation of Funding Vehicles; Beneficiary.** The Employee’s election to reduce his or her Credited Compensation to make Elective Deferrals shall include designation of the Funding Vehicle and accounts therein to which Elective Deferrals are to be made and a Beneficiary designation.

(c) **Changes in Elective Deferral Elections.** Subject to the provisions of the applicable Individual Agreement(s), after a Participant’s initial entry into the Plan, the Participant may change the amount to be contributed to his or her Elective Deferral Account by giving the Employer fifteen (15) days prior written notice, or such shorter or longer period as the Employer may elect. Such notice shall be on a form provided by the Employer and signed by the Participant specifying the amount to be contributed to his or her Elective Deferral Account.

(d) **Termination of Elective Deferral Elections.** Upon notice on a form provided by the Employer and signed by the Participant, a Participant may terminate (or suspend) his or her Elective Deferral election as of the beginning of a pay period, by giving the Employer (or Administrator, if designated by the Employer) fifteen (15) days prior written notice, or such shorter or longer period as the Employer may elect. As of the effective date of the termination (or suspension) of a Participant’s Elective Deferral election, no further Elective Deferrals will be made to the Participant’s Elective Deferral Account until the Participant makes a new Elective Deferral election, but such termination (or suspension) shall not affect any amounts which have already been allocated to the Participant’s Elective Deferral Account pursuant to Section 5.1.4. Any Participant who has so terminated (or suspended) his or her Elective Deferral election may enter into a new election as of the beginning of a succeeding pay period by completing a new salary reduction agreement pursuant to the rules set forth in this Section 5.1.2.

(e) **Leave of Absence.** Unless an Elective Deferral election is otherwise revised, if an Employee is absent from work by reason of a leave of absence, Elective Deferrals under the Plan shall continue to the extent that Credited Compensation continues.
(f) **Contributions Made Promptly.** Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within fifteen (15) business days following the end of the month in which the amount would otherwise have been paid to the Participant.

(g) **Hardship Distribution Penalties.** If a Participant receives a hardship distribution from his or her Elective Deferral Account, and relies upon the "deemed necessity standard" described in Section 8.8.2 by which the distribution is deemed necessary to satisfy a financial need, the Participant's Elective Deferrals shall be suspended until the first payroll period beginning at least six (6) months after receipt of the hardship distribution.

5.1.3 **Payment.** The amount designated by the Participant for contribution to his or her Elective Deferral Account shall be reflected in one or more payroll deductions during the Plan Year or through such other means as the Employer shall prescribe under rules of uniform application. The Participant's contributions so collected shall be remitted to the Provider as of the earliest date on which the contributions can reasonably be transferred, but in no event later than the time specified in Section 5.1.2(f).

5.1.4 **Allocation to Account.** The amount contributed for a Participant pursuant to this Section 5.1 shall be allocated to the Participant's Elective Deferral Account maintained under the Plan as of the date during the Plan Year on which the amount is deducted and withheld from the Participant's Credited Compensation.

5.2 **Age 50 Catch-Up Contributions.** All Participants who are eligible to make Elective Deferrals under the Plan and who will attain age fifty (50) or more by the end of the Plan Year shall be permitted to elect an additional amount of Elective Deferrals, up to the maximum age fifty (50) catch-up Elective Deferrals for the year in accordance with, and subject to the limitations of, Code Section 414(v)(2) ($5,500 for 2009), as adjusted for cost-of-living to the extent provided under the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code Sections 402(g) and 415. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code Section 403(b) by reason of the making of such catch-up contributions.

5.3 **Special Code Section 403(b) Catch-Up Limitation for Employees with 15 Years of Service.** Because the Employer is a "qualified organization" (within the meaning of Treasury Regulation Section 1.403(b)-4(c)(3)(ii)), the applicable dollar amount under Section 6.1 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:

   (i) $15,000, over

   (ii) The total elective deferrals described in Code Section 402(g)(7)(A)(ii) made for the Qualified Employee by the Employer for prior years; or

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The excess of:

(i) $5,000 multiplied by the number of Years of Service of the Employee with the Employer, over

(ii) The total elective deferrals (as defined in Treasury Regulation Section 1.403(b)-2) made for the Employee by the Employer for prior years.

5.4 Roth 403(b) Contributions. If designated by the Employer in writing, for each succeeding Plan Year thereafter until such authorization is rescinded in writing, each Participant may elect to make Roth 403(b) Contributions to the Plan up to the applicable limit under Code Section 402(g) and as aggregated with Elective Deferrals, as described in Sections 5.1, 5.2 and 5.3, and subject to any limitations imposed under applicable law or under any applicable collective bargaining agreement. Such contributions (including gains, losses and other credits and charges) will be allocated to the Participant’s Roth 403(b) Contributions Account and shall be treated as Elective Deferrals for all purposes under the Plan.

5.5 Employer Discretionary Matching Contributions.

5.5.1 Amount. The Employer may elect to make a Discretionary Matching Contribution to the Plan on behalf of one or more Employees (or class of Employees) for any period or periods. The Employee(s) (or class of Employees) eligible to receive a Discretionary Matching Contribution, and the period or periods for which the Discretionary Matching Contribution will be made, shall be determined by the Employer from time to time in its sole and absolute discretion. Unless so designated by the Employer, no Employee shall be eligible to receive a Discretionary Matching Contribution under the Plan, and a Participant who has previously been designated by the Employer as eligible to receive such a contribution for a period or periods shall not be eligible to receive such a contribution for any other period or periods. The Discretionary Matching Contribution for a Participant (who has been designated as eligible to receive such a contribution) for any period or periods may (but is not required to) be equal to a percentage (which may be different from Participant to Participant) of the Elective Deferrals the Participant makes for the period or periods, and may be further limited to a percentage of the Participant’s Credited Compensation for the period or periods, as determined by the Employer in its sole discretion. No Discretionary Matching Contribution will be made with respect to an Excess Deferral Amount. The Employer shall not contribute any amount in excess of the maximum permitted pursuant to Article VI.

Until and unless changed by the Employer pursuant to a written resolution, contributions pursuant to this Section 5.5 shall be made according to a schedule adopted by the VPHR, which schedule may be amended by the VPHR from time to time in the VPHR’s discretion.

5.5.2 Time of Making Discretionary Matching Contributions. The Employer will contribute its Discretionary Matching Contributions for a Plan Year no later than the 15th day of the sixth calendar month following the end of the Plan Year for which the Discretionary Matching Contribution is made. The VPHR shall establish rules for determining the dates on which contributions pursuant to this Section 5.5 shall be credited to a Participant’s Account.

5.5.3 Allocation. Discretionary Matching Contributions made on behalf of a Participant pursuant to this Section shall be allocated to the Participant’s Matching Contribution Account.
5.6 Employer Discretionary Non-Elective Contributions.

5.6.1 General Rules.

(a) The Employer may elect to make a Discretionary Non-elective Contribution to the Plan on behalf of one or more Employees (or class of Employees) or former Employees (or class of former Employees) for any period or periods. The Employees (or class of Employees) or former Employees (or class of former Employees) eligible to receive a Discretionary Non-elective Contribution, and the period or periods for which the Discretionary Non-elective Contribution will be made, shall be determined by the Employer from time to time in its sole and absolute discretion. Unless so designated by the Employer, no Employee or former Employee shall be eligible to receive a Discretionary Non-elective Contribution under the Plan, and a Participant who has previously been designated by the Employer as eligible to receive such a contribution for a period or periods shall not be eligible to receive such a contribution for any other period or periods. The Discretionary Non-elective Contribution for a Participant (who has been designated as eligible to receive such a contribution) for any period or periods may (but is not required to be) a percentage (which may be different from Participant to Participant) of the Participant’s Credited Compensation for the period or periods, as determined by the Employer in its sole discretion. The Employer shall not contribute any amount in excess of the maximum permitted pursuant to Article VI.

(b) Until and unless changed by the Employer pursuant to a written resolution, Discretionary Non-elective Contributions pursuant to this Section 5.6 shall be made according to a schedule adopted by the VPHR, which schedule may be amended by the VPHR from time to time in the VPHR’s discretion.

(c) For purposes of this Section 5.6, a former Employee is deemed to have monthly Includible Compensation for the period 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 the next five (5) taxable years. The amount of the monthly Includible Compensation is equal to one-twelfth of the former Employee’s Includible Compensation during the Employee’s most recent Year of Service. No contribution shall be made after the end of the Employee’s fifth taxable year following the year in which the Employee terminated employment.

5.6.2 Time of Making Discretionary Non-elective Contributions. Subject to Section 5.6.1(c), the Employer shall make a Discretionary Non-elective Contribution pursuant to this Section 5.6 for a Plan Year, or partial payments of such contribution, at any time during the Plan Year for which the Discretionary Non-elective Contribution is to be made or following the end of such Plan Year, but the entire Discretionary Non-elective Contribution must be made no later than the 15th day of the sixth calendar month following the end of such Plan Year. The VPHR shall establish rules for determining the dates on which contributions pursuant to this Section 5.6 shall be credited to a Participant’s Account.

5.6.3 Allocation. Discretionary Non-elective Contributions made on behalf of a Participant pursuant to this Section 5.6 shall be allocated to the Participant’s Non-elective Contribution Account.
ARTICLE VI  MAXIMUM CONTRIBUTIONS AND ANNUAL ADDITIONS

6.1  Limitation on Elective Deferrals.

6.1.1  In General. Any Elective Deferral election shall at all times be subject to the limitations set forth in this Article VI. Except as provided in Sections 5.2 and 5.3, the maximum amount of the Elective Deferral 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 Code Section 402(g)(1)(B), which is $16,500 for 2009, and is adjusted for cost-of-living to the extent provided under Code Section 402(g)(4). The Employer may disregard any election to make Elective Deferrals to the extent it would result in the contribution of an Excess Deferral Amount.

In allocating income or losses to Excess Deferral Amounts, the Provider may use any reasonable method otherwise used by the Plan for allocating gains, earnings and losses to Participants’ Accounts generally, provided such method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year. Income or losses shall not be allocated for the period between the end of the Participant’s taxable year and the date of distribution.

6.1.2  Coordination of Catch-Up Contributions. Amounts in excess of the limitation set forth in Section 6.1.1 shall be allocated first to the Special Code Section 403(b) Catch-Up under Section 5.3 and next as an age fifty (50) catch-up contribution under Section 5.2. However, in no event can the amount of the Elective Deferrals for a year be more than the Participant’s Credited Compensation for the year.

6.1.3  Special Rule for a Participant Covered by Another Section 403(b) Plan. For purposes of this Section 6.1, if a Participant is or has been a Participant in one or more other plans under Code Section 403(b) (and any other plan that permits elective deferrals under Code Section 402(g)), then the Plan and all such other plans shall be considered as one plan for purposes of applying the limitations in this Article VI. 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 Employer shall be taken into account for purposes of Section 5.3 only if the other plan is a Section 403(b) plan.

6.1.4  Correction of Excess Elective Deferrals. If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral 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 Code Section 403(b) (and any other plan that permits elective deferrals under Code Section 402(g) for which the Participant provides information that is accepted by the Employer), then the Elective Deferrals, 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.

6.2  Limitations on Annual Additions.

6.2.1  In General. Except to the extent permitted under Sections 5.2 and 5.3 and Code Section 414(v), if applicable, the Annual Addition that may be contributed or allocated to an Account under the Plan for any Limitation Year shall not exceed the lesser of:
(a) $49,000, as adjusted for increases in the cost-of-living under Code Section 415(d) for periods after 2009; or

(b) One hundred percent (100%) of the Participant’s Includible Compensation for the Limitation Year.

The Includible Compensation limit referred to in 6.2.1(b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code Section 401(h) or Section 419A(f)(2)) which is otherwise treated as an Annual Addition.

Notwithstanding anything contained in the Plan to the contrary, the limitations, adjustments and other requirements prescribed in the Plan shall at all times comply with the provisions of Code Section 415 and the Treasury Regulations thereunder, the terms of which are specifically incorporated herein by reference.

6.2.2 Aggregation of Section 403(b) Contracts. All Funding Vehicles purchased by the Employer (including plans purchased through Elective Deferral elections) for the Participant are treated as one Section 403(b) Funding Vehicle and contributions received under all Funding Vehicles of the Employer will be aggregated for purposes of this Section 6.2. Contributions made for a Participant are aggregated to the extent applicable under Code Sections 414(b) and (c) (each as modified by Code Section 415(h)).

6.2.3 Aggregation Where Participant is in Control of Employer. If a Participant receives an allocation under a Funding Vehicle and such Participant is in control of any employer for a Limitation Year, the Funding Vehicle will be considered a defined contribution plan maintained by both the controlled employer and the Participant for such Limitation Year. Accordingly, the Funding Vehicle will be aggregated with all defined contribution plans maintained by the controlled employer and the limitations of Code Section 415(c) will be applied in the aggregate to all annual additions allocated to the Participant in the Funding Vehicle and all other defined contribution plans of the controlled employer. For purposes of this Section 6.2.3, a Participant is in control of an employer based upon rules of Code Sections 414(b) and 414(c) (each as modified by Code Section 415(h)).

6.2.4 Coordination of Limitation on Annual Additions Where Employer Maintains Another Section 403(b) Plan or Participant is in Control of Employer. The Annual Additions which may be credited to a Participant’s Account under the Plan for any Limitation Year will not exceed the maximum Annual Addition under Section 6.2.1, reduced by the Annual Additions credited to the Participant’s Account under any other Code Section 403(b) plans maintained by the Employer in addition to the Plan and under any defined contribution plans maintained by an employer that is controlled by the Participant, provided in the latter case that the Administrator receives sufficient information from the Participant concerning his or her participation in such defined contribution plan. The contributions allocated to the Participant’s Account under the Plan will be reduced to the extent necessary to prevent this limitation from being exceeded.

6.2.5 Excess Annual Additions.

(a) Notwithstanding Sections 6.2.1 through 6.2.4, if a Participant’s Annual Additions under the Plan, or under the Plan and any other Code Section 403(b) plans maintained by the Employer and any defined contribution plans maintained by an employer controlled by the Participant, result in an excess Annual Addition for a
Limitation Year, the excess Annual Addition will be deemed to consist of the Annual Additions last allocated, except Annual Additions to a defined contribution plan maintained by an employer controlled by the Participant will be deemed to have been allocated first.

(b) If an excess Annual Addition was allocated to a Participant on an allocation date of the Plan which coincides with an allocation date of another Code Section 403(b) plan maintained by the Employer, the excess Annual Addition attributable to the Plan will be the product of:

(i) the total excess Annual Addition allocated as of such date; times

(ii) the ratio of (A) the Annual Additions allocated to the Participant for the Limitation Year as of such date under the Plan to (B) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under the Plan and all other Code Section 403(b) plans maintained by the Employer.

(c) Any excess Annual Addition attributable to the Plan will be corrected in the manner described in Section 6.2.6.

6.2.6 Correction of Excess Annual Additions. The portion of the Code Section 403(b) contract that includes the excess Annual Additions attributable to the Plan fails to be a Funding Vehicle and the remaining portion of the contract is a Funding Vehicle. The issuer of the Funding Vehicle that includes the excess Annual Addition shall maintain a separate account for such excess Annual Addition for the year of the excess and for each year thereafter. In the case where a Participant is in control of an employer and the excess Annual Addition needs to be maintained in a separate account under the Plan, the Administrator shall only be required to establish such separate account if it receives sufficient information from the Participant concerning his or her participation in such other defined contribution plan controlled by the Participant.

6.3 Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee’s employment with the Employer had continued (at the same level of Credited Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

ARTICLE VII FUNDING AND INVESTMENT OPTIONS

7.1 Funding Policy. The Fund shall be invested, in its entirety, in Funding Vehicles. The Participant has the sole authority and discretion, fully and completely, to select and to direct the investment of all assets in his/her Account(s) among the available Funding Vehicles in accordance with the terms of the Individual Agreements and the Plan. The Participant accepts full and sole responsibility for the success or failure of any selection he or she makes.
7.2 Funding Vehicles.

7.2.1 In General. In recognition of the fact that existing and future Participants may have diverse economic situations which make it desirable to permit some degree of individual selection of different types of investments in the Fund, Participants may select one of various Providers, subject to the following provisions of this Section 7.2.

7.2.2 Designation of Funding Vehicle. Each Provider may at any time or from time to time permit Participants to select from one or more separate Funding Vehicles. Any separate Funding Vehicle shall at all times remain subject to all Plan provisions, and the total of such Funding Vehicles existing at any time, shall comprise the total Fund attributable to Accounts.

7.2.3 Exchanges within Plan. A Participant shall be permitted to change the investment of his or her Account Balance among the Providers that are eligible to receive contributions under the Plan in accordance with rules established by the Employer.

7.2.4 Addition or Elimination of Providers. At such time or times as the Employer may determine, one or more separate Providers may be added or eliminated. Any addition or elimination of Providers shall be governed by such uniform terms, restrictions, rules and conditions as the Employer may determine. The consent of any individual Participant or Beneficiary shall not be required to permit any such addition, elimination or consolidation.

7.3 Current and Former Providers. The Employer shall maintain a list of all Providers under the Plan. Such list is hereby incorporated as part of the Plan. The Administrator, each Provider and the Employer shall exchange such information as may be necessary to satisfy Code Section 403(b) or other requirements of applicable law. In the case of a Provider which is not eligible to receive Elective Deferrals under the Plan (including a Provider which has ceased to be a Provider eligible to receive Elective Deferrals under the Plan and a Provider holding assets under the Plan), the Employer shall keep the Provider informed of the name and contact information of the Administrator, if any, in order to coordinate information necessary to satisfy Code Section 403(b) or other requirements of applicable law.

ARTICLE VIII VESTING AND DISTRIBUTION OF BENEFITS

8.1 Vesting. A Participant shall always be one hundred percent (100%) vested in his or her Account(s).

8.2 Distributions Generally. A Participant’s Account shall be distributed to him or her at the time and in the manner specified in the Funding Vehicle(s) in which the Account is invested. Notwithstanding the preceding sentence, distributions shall be subject to the terms and conditions set forth in this Article VIII.

8.2.1 Distribution of Elective Deferrals. Except as otherwise permitted in the case of excess Elective Deferrals, amounts rolled over into the Plan, a distribution made in the event of a hardship, a qualified reservist distribution as defined in Code Section 72(t)(2)(G), or termination of the Plan, or under the terms of a Qualified Domestic Relations Order, distributions of Elective Deferrals from a Participant’s Account may not be made earlier than the date on which the Participant (a) has a Severance from Employment, (b) dies, (c) becomes Disabled, or (d) attains age 59½.

8.2.2 Distributions of Employer Contributions from Funding Vehicles. Except as provided in Treasury Regulation Section 1.403(b)-4(f) (relating to correction of excess deferrals)
or Treasury Regulation Section 1.403(b)-10(a) (relating to Plan termination), Employer contributions held in an Annuity Contract after December 31, 2008 or in a Custodial Account may not be distributed earlier than the earliest date on which the Participant (a) has a Severance from Employment, (b) dies, (c) becomes Disabled or (d) attains age 59 1/2.

8.2.3 Grandfather Treatment for Certain Account Balances. If the Funding Vehicle(s) in which the Participant’s Account is invested keeps records to enable it to identify the Participant’s Account Balance in such Funding Vehicle(s) as of December 31, 1986 (the “Pre-'87 Account Balance”), then the Pre-'87 Account Balance will be subject to the distribution rules set forth in Treasury Regulation Section 1.403(b)-6(e)(6) (that apply to 403(b) plan account balances in place before 1987 that are separately accounted for) instead of the rules set forth in this Section 8.2.

8.3 Small Account Balances. 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 10.1) and any such distribution shall comply with the requirements of Code Section 401(a)(31)(B) (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of $1,000).

8.4 Distributions from Rollover Accounts. 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.

8.5 Minimum Distributions. The Plan and each Individual Agreement shall comply with the minimum distribution requirements of Code Section 401(a)(9), as modified by the Treasury Regulations under Code Section 403(b). For purposes of applying the distribution rules of Code Section 401(a)(9), each Funding Vehicle is treated as an individual retirement account and distributions shall be made in accordance with the provisions of Treasury Regulation Section 1.408-8, except as provided in the Treasury Regulations under Code Section 403(b). In no event shall benefits commence later than a Participant’s Required Beginning Date.

8.6 Direct Rollovers.

8.6.1 A Participant or the Beneficiary of a deceased Participant or a Participant’s spouse or former spouse who is an Alternate Payee (in each case, a “distributee”) may elect, at the time and in the manner prescribed by the Employer or as set forth in the Funding Vehicle, as applicable, to have any portion of an Eligible Rollover Distribution (as defined in Section 8.6.2) paid directly to an Eligible Retirement Plan (as defined in Section 8.6.2) specified by the distributee in a Direct Rollover (as defined in Section 8.6.2). 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, a Direct Rollover is payable only to an individual retirement account or individual retirement annuity (an “IRA”) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of Code Section 408(d)(3)(C)).
8.6.2 Definitions. For purposes of this Section 8.6:

(a) An “Eligible Rollover Distribution” is any distribution of all or any portion of the Account balance to the credit of the distributee, except that an Eligible Rollover Distribution does not include:

(i) Any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and his or her Beneficiary, or for a period of ten (10) years or more;

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

(iii) Any hardship distribution; and

(iv) The portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(b) An “Eligible Retirement Plan” means a qualified plan described in Code Section 401(a), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or an eligible plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, that accepts the distributee’s Eligible Rollover Distribution. This definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the Alternate Payee under a Qualified Domestic Relations Order.

(c) A “Direct Rollover” means a payment by the Plan to the Eligible Retirement Plan specified by the distributee.

8.6.3 Each Provider shall separately be responsible for providing, within a reasonable time period before making an 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.

8.6.4 Roth 403(b) Contribution Accounts. A Direct Rollover of a distribution from a Roth 403(b) Contribution Account under the Plan will only be made to another Roth 403(b) contribution account under an applicable retirement plan described in Code Section 402A(e)(1) or to a Roth IRA described in Code Section 408A, and only to the extent the rollover is permitted under the rules of Code Section 402(c).
8.7 Distributions of Roth 403(b) Contribution Accounts.

8.7.1 Qualified Distributions. Distributions from a Participant’s Roth 403(b) Contributions Account will not be includible in gross income for federal income tax purposes if:

(a) The amounts are held for a five (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

(b) The distribution is due to a Participant’s attainment of age 59 1/2, death, or in the event of the Participant’s becoming Disabled.

8.7.2 Nonqualified Distributions. Amounts distributed from a Roth 403(b) Contributions Account that are not considered “Qualified Distributions,” as defined in Section 8.7.1, may be distributed from a Roth 403(b) Contributions Account subject to the distribution rules applicable to Elective Deferrals, as provided 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 Account as of the date of such distribution.

8.7.3 Prohibited Loans. In no event shall amounts held in a Roth 403(b) Contributions Account be used for a loan under Article X, distributed due to a hardship under Section 8.8, transferred in accordance with Section 7.2 or 11.2, or exchanged in accordance with Section 10.3.

8.8 Hardship Distributions. Hardship distributions may be made to a Participant to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship and this Section 8.8. Notwithstanding anything in this Plan to the contrary, no hardship distribution shall be made to a Participant following the Participant’s Separation from Employment or following the elimination of the applicable Provider.

If permitted by the Funding Vehicle(s) in which the Participant’s Account is invested, hardship distributions may be made from a Participant’s Elective Deferral Account (excluding income allocated thereon after December 31, 1988) and from assets held in the Account as of December 31, 1988, subject to the requirements of the Plan. For purposes of this Section 8.8, a hardship distribution may be made only on account of an immediate and heavy financial need of the Participant and where the distribution is necessary to satisfy such immediate and heavy financial need.

Amounts shall be distributed under this Section 8.8 only after the Provider has determined that the applicable nondiscriminatory and objective criteria have been satisfied. A Participant requesting a hardship distribution shall submit such request to the Provider in writing at the time and in the manner specified by the Provider.

8.8.1 Immediate and Heavy Financial Need. In general, the determination of whether a Participant has an immediate and heavy financial need is to be made by the Provider on the basis of all relevant facts and circumstances. Unless the Provider adopts and obtains the Employer’s written approval regarding additional nondiscriminatory and objective criteria for making this determination (which shall be contained in the Funding Vehicle), a distribution will be deemed to be made on account of an immediate and heavy financial need of a Participant only if the distribution is for:
(a) Expenses for (or necessary to obtain) medical care described in Code Section 213(d) of the Participant, the Participant’s spouse or dependents (as defined in Code Section 152 (determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B) thereof)) or the Participant’s primary beneficiary (as defined in Q&A-5 of IRS Notice 2007-7);

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

(c) payment of tuition, related educational fees, and room and board expenses, for up to the next twelve (12) months of post-secondary education for the Participant, the Participant’s spouse, children or dependents (as defined above) or the Participant’s primary beneficiary (as defined above);

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

(e) payments for burial or funeral expenses for the Participant’s deceased parent, spouse, child or dependent (as defined above) or the Participant’s primary beneficiary (as defined above);

(f) expenses for the repair of damage to the Participant’s principal residence that would qualify for the casualty deduction under Code Section 165 (determined without regard to whether the loss exceeds ten percent (10%) of adjusted gross income); or

(g) such other events, expenses or conditions as the Commissioner of Internal Revenue may determine from time to time.

8.8.2 Necessary to Satisfy Financial Need. A distribution will be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant only if all of the following requirements are satisfied:

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

(b) the Participant has obtained all distributions, other than hardship distributions, and all nontaxable (determined at the time of the loan) loans currently available under the Plan and all other plans maintained by the Employer; and

(c) the Plan, and all other 403(b), qualified and nonqualified plans maintained by the Employer (excluding the mandatory employee contribution portion of a defined benefit plan or a health or welfare plan, including one that is part of a cafeteria plan), provide that the Participant’s elective deferrals and employee contributions will be suspended for at least six (6) months after receipt of the hardship distribution.

These three requirements constitute the “deemed necessity standard” referred to in Section 5.1.2(g). The provisions of this Section 8.8.2 may be modified by the Provider to the extent necessary or permissible to take into account any new standards prescribed by
the Commissioner of Internal Revenue by which distributions are deemed to be necessary to satisfy an immediate and heavy financial need. In addition, with prior approval by the Employer, the Provider may adopt rules for determining whether a hardship distribution is necessary to satisfy a Participant’s financial need under the “facts and circumstances” described in Treasury Regulation Section 1.401(k)-1(d)(3)(iii) in lieu of the rules described in Section 8.8.1, above.

(d) The Individual Agreements shall provide for the exchange of information among the Employer and the Providers 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 Treasury Regulation Section 1.401(k)-1(d)(3)(iv)(E)), the Provider notifying the Employer or its designee of the distribution in order for the Employer to implement the resulting six (6) month suspension of the Participant’s right to make Elective Deferrals under the Plan. In addition, in the case of a hardship distribution that is not automatically deemed to be necessary to satisfy the financial need pursuant to Treasury Regulation Section 1.401(k)-1(d)(3)(iii)(B), the Provider shall obtain information from the Employer, the Administrator and other Providers to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need.

8.8.3 Form of Distribution. Distributions pursuant to this Section 8.8 shall be distributed in the form permitted by the Funding Vehicle, subject to the distribution rules described in Section 8.2.

ARTICLE IX LOANS TO PARTICIPANTS

9.1 In General. Loans shall be permitted under the Plan with respect to a Participant’s Account, or portion thereof, invested in a Funding Vehicle to the extent permitted under the terms of the Funding Vehicle controlling the Account assets from which the loan is made and by which the loan will be secured. Notwithstanding anything in this Plan to the contrary, no loans may be made to a Participant following the Participant’s Separation from Employment or following the elimination of the applicable Provider. In all events, loans made under the Plan shall conform to the requirements of Code Section 72(p). An assignment or pledge of any portion of the Participant’s interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan under this Article IX.

9.2 Information Coordination Concerning Loans. Each Provider 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 Employer or its designee shall take such steps as may be appropriate to coordinate the limitations on loans set forth in this Article IX, including the collection of information from Providers, and transmission of information requested by any Provider, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Employer or its designee shall also take such steps as may be appropriate to collect information from Providers, and transmission of information to any Provider, concerning any failure by a Participant to repay timely any loans made to the Participant under the Plan or any other plan of the Employer.
9.3 **Maximum Loan Amount.** No loan to a Participant under the Plan can be made to the extent such loan when added to the outstanding balance of all other loans to the Participant or Beneficiary would exceed the lesser of:

(a) $50,000, reduced by the excess (if any) of (i) the highest outstanding balance of all other loans during the one-year period ending on the day before the loan is made, over (ii) the outstanding balance of loans from the Plan on the date the loan is made; or

(b) One-half of the present 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 Provider).

For purposes of this Section 9.3, 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 the 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.

9.4 **Loan Repayment Method.** Any loan shall be repaid by the Participant directly to the Provider in accordance with the terms and conditions of the Funding Vehicle from which the loan is made. Any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five (5) years from the date of the loan. If such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant, the amortization period shall not extend beyond fifteen (15) years from the date of the loan.

**ARTICLE X  ROLLOVERS AND TRANSFERS**

10.1 **Eligible Rollover Contributions to the Plan.**

10.1.1 **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, a Participant who is entitled to receive an eligible rollover distribution (as defined in Section 10.1.2) from another eligible retirement plan (as defined in Section 10.1.2) 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. The Provider may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an eligible retirement plan.

10.1.2 **Eligible Rollover Distribution.** For purposes of Section 10.1.1, 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 (a) any installment payment for a period of ten (10) years or more, (b) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the Participant, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under Code Section 401(a)(9). In addition, for purposes of Section 10.1.1, an “eligible retirement plan” means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a qualified trust described in Code Section 401(a), an annuity plan described in Code Section 403(a) or 403(b), or an eligible governmental plan described in Code Section 457(b).
10.1.3 **Roth 403(b) Contribution Rollovers.** The Plan will accept rollovers of Roth 403(b) Contributions only if the Employer has elected to allow Participants to make Roth 403(b) Contributions to the Plan as described in Section 5.4. If permitted by the Employer and the applicable Funding Vehicle, the Plan will accept a rollover contribution of a Roth 403(b) Contribution Account only if it is a direct rollover from another Roth elective deferral account under an applicable retirement plan described in Code Section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code Section 402(c). A rollover of an Eligible Rollover Distribution that includes Roth 403(b) Contributions will only be accepted if the Provider obtains information regarding the Participant's tax basis under Code Section 72 in the amount rolled over.

10.1.4 **Separate Account.** The Provider shall establish and maintain for the Participant a separate account to be known as the Rollover Contribution Account, for any eligible rollover distribution paid to the Plan pursuant to this Section 10.1.

10.2 **Plan-to-Plan Transfers.**

10.2.1 **Transfers to the Plan.** A transfer of assets to the Plan shall be permitted as provided in this Section 10.2.1. A Provider may accept a transfer of assets to the Plan for a Participant or Beneficiary only if: (a) the transferor plan provides for direct transfers of assets; (b) the Participant is an Employee or former Employee of the Employer; (c) 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; and (d) the transferred amounts are subject to restrictions on distributions that are not less stringent than those imposed by the transferor plan. The Employer or any Provider accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Provider shall establish and maintain for the Participant a separate account to be known as the Transfer Contribution Account for any plan-to-plan contribution made to the Plan pursuant to this Section 10.2.1.

10.2.2 **Transfers to Another Plan.** Participants and Beneficiaries may elect to have all or any portion of their Account Balance transferred to another plan that satisfies Code Section 403(b) in accordance with Treasury Regulation Section 1.403(b)-10(b)(3). The Provider shall permit the transfer of assets to another plan for a Participant or Beneficiary only if: (a) the Participant is a former Employee of the Employer; (b) 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; and (c) the transferred amounts are subject to restrictions on distributions that are not less stringent than those imposed by the transferor plan.

10.2.3 **Required Documentation.** The Employer, the Administrator or any Provider may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with the requirements of this Section 10.2 and Treasury Regulation Section 1.403(b)-10(b)(3) and to confirm that any other plan involved in the transfer is a plan that satisfies Code Section 403(b).

10.3 **Permissive Service Credit Transfers.**

10.3.1 If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) 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 10.3.1 may be made before the Participant has had a Severance from Employment.

10.3.2 A transfer may be made under Section 10.3.1 only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

10.4 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 XI PLAN ADMINISTRATION

11.1 Plan Administrator. The Employer shall administer the Plan and shall have all powers necessary to carry out its terms, including but not limited to the power, to be exercised according to its discretion, to:

(a) adopt rules and regulations not inconsistent with the declared purposes and specific provisions of the Plan for its administration in accordance with its terms and requirements under Code Section 403(b);

(b) interpret and construe the provisions of the Plan;

(c) determine from time to time the status of all Employees, Participants and Beneficiaries for the purposes of the Plan;

(d) determine the rights of Employees, Participants and Beneficiaries to participate in the Plan, their right to benefits under the Plan, the amount thereof and the method and time or times of payment of the same;

(e) determine whether contributions comply with the applicable limitations;

(f) determine whether hardship distributions and loans comply with applicable requirements and limitations;

(g) determine whether transfers, rollovers or purchases of service credit comply with applicable requirements and limitations; and

(h) maintain a list of all Providers under the Plan.

11.2 Delegation. The Employer shall have the power to delegate specific duties and responsibilities, including those duties and responsibilities described in Section 11.1. Such delegations may be to officers or other employees of the Employer, the Providers, the Administrator, or other individuals or entities. Any delegation by the Employer may, if specifically stated, allow further delegations by the individual or entity to whom the delegation has been made. Any delegation may be rescinded by the Employer at any time. Each person or entity to whom a duty or responsibility has been delegated shall be responsible for the exercise of such duties or responsibilities. The Employer assumes no obligation or responsibility to any of its Employees, Participants or Beneficiaries for any act of, or
failure to act, on the part of the Provider. Notwithstanding any provision hereof to the contrary or the terms of any Funding Vehicle, in no case shall administrative duties be allocated to Participants (other than permitting Participants to designate a Funding Vehicle, make investment elections or vote shares of any investment fund selected by the Participants).

11.3 Reports and Records. The Employer and those to whom the Employer has delegated duties shall keep records of all their proceedings and actions, and shall maintain all such books of account, records and other data as shall be necessary for the proper administration of the Plan and to comply with applicable law.

11.4 Claims Procedure. A Participant’s or Beneficiary’s claim for benefits under the Plan shall be made in accordance with the procedures for filing claims set forth in the Funding Vehicle(s) in which the Participant’s Account is invested.

ARTICLE XII AMENDMENT, TERMINATION AND MERGER

12.1 Duration of Plan. It is the expectation of the Employer that it will continue the Plan and the payment of its contributions hereunder indefinitely, but continuance of the Plan is not assumed as a contractual obligation of the Employer, and the right is reserved by the Employer to terminate the Plan or to reduce, suspend, or discontinue its contributions hereunder at any time and for any reason.

12.2 Amendment of Plan. The Employer shall have the right at any time and from time to time by action of the VPHR to modify or amend the Plan in full or in part, in any respect, including, but not limited to, the authority to designate the availability of Roth 403(b) Contributions pursuant to Section 5.4, and each such modification or amendment shall become effective as of any current, prior or later date specified in such amendment; provided, however, that no such amendment shall either directly or indirectly have the effect of giving the Employer any interest in any part of the corpus or income of the Fund or cause any part of the Fund to be used for or diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries.

Any amendment adopted under the provisions of this Section 12.2 shall be deemed a part of the Plan as if incorporated herein, and the Plan shall be deemed accordingly amended.

12.3 Termination of the Plan.

12.3.1 In General. The Employer shall have the right at any time to terminate the Plan. Upon termination of the Plan, the Account Balances of all Participants, to the extent funded, shall remain one hundred percent (100%) vested.

12.3.2 Distribution upon Termination of the Plan. The Employer may provide that, upon a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed; provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative Code Section 403(b) contract that is not part of the Plan during the period beginning on the date of the Plan termination and ending twelve (12) months after the distribution of all assets from the Plan, except as permitted by the Code.

ARTICLE XIII MISCELLANEOUS

13.1 Employment Status of Participant. The establishment of the Plan shall not be construed as conferring any legal rights upon any Employee or any other person to a contract or
continuation of employment, nor shall it interfere with the rights of the Employer to discharge any Employee and to treat him or her without any regard to the effect which such treatment might have upon him or her as a Participant hereunder.

13.2 Compliance with USERRA. Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

13.3 Beneficiary Designation. In the event an Individual Agreement does not contain procedures for designating a Beneficiary or default provisions addressing to whom benefits are to be distributed in the event a Participant does not have an effective Beneficiary designation on file at the time of the Participant’s death (and under the terms of the Funding Vehicle there is no effective Beneficiary designation on file at the time of the Participant’s death), then the rules set forth below in this Section 13.3 shall apply:

(a) Upon commencing participation in the Plan, each Participant shall designate a Beneficiary on a form furnished by the applicable Provider. Such forms shall be maintained in files held by the Provider. From time to time, the Participant may change the Participant’s Beneficiary by written notice on forms furnished by and returned to the Provider. Upon such change, the rights of all previously designated Beneficiaries to receive any benefits under the Plan shall cease.

(b) To the extent there is no Beneficiary designation under the Plan at the date of death of the Participant, the Beneficiary designated has died prior to the death of the Participant, or the Participant has revoked a prior designation in writing filed with the Provider without having filed a new designation, then any benefits which would have been payable to the Beneficiary hereunder shall be payable to the Participant’s surviving spouse or, if there is not surviving spouse, to the Participant’s estate.

13.4 Facility of Payment. Any amounts payable hereunder to any person who is under legal disability may be paid to the legal representative of such person or may be applied for the benefit of such person in any manner that the Employer may select, and any such payment shall be deemed to be payment for such person’s Account.

13.5 Non-Alienation of Benefits. No benefit payable under the provisions of the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void. Neither shall any benefit be in any manner liable for or subject to the debts, contracts, liabilities, obligations, engagements or torts of any Participant or Beneficiary by attachment, garnishment, execution after judgment or other legal process. The foregoing shall not apply to any loan to a Participant pursuant to Article IX, or to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order that the Provider determines is a Qualified Domestic Relations Order.

13.6 Use of Electronic Media. Notwithstanding anything in the Plan to the contrary, but subject to the requirements of the Code or other applicable law, any action or communication otherwise required to be taken or made in writing by a Participant or Beneficiary or by the Employer or a Provider shall be effective if accomplished by another method or methods required or made available by the Employer or Provider with respect to that action or communication, including e-mail, telephone response systems, intranet systems, or the Internet.
13.7 IRS Levy. Notwithstanding Section 13.5, the Provider may pay from a Participant's or Beneficiary's Account Balance the amount that the Employer 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.

13.8 Tax Withholding. Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under Code Section 3121). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including the requirements under Code Section 3401). A payee shall provide such information as the Employer or its designee may need to satisfy income tax withholding obligations, and any other information that may be required under the Code.

13.9 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Provider, benefits will be paid to such person as the Provider may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

13.10 Domestic Relations Order. If a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments or the marital property rights of a spouse or former spouse, child or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), 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. Each Provider shall establish reasonable procedures for, and shall be solely responsible for, determining the status of any such decree or order and for effectuating distribution pursuant to a domestic relations order.

13.11 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 (1) year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Employer, the amount of the mistaken contribution (adjusted for any increase or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Employer, to the Employer.

13.12 Procedure When Distributee Cannot Be Located. The applicable Provider 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 Provider'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 six (6) months. If the Employer 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.

13.13 Incorporation of Individual Agreements. The Plan, together with the Individual Agreements, is intended to satisfy the requirements of Code Section 403(b). 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 Code Section 403(b). In the case of any conflict between the provisions of the Plan and any Individual Agreement or Funding Vehicle, the provisions of the Plan shall govern.
IN WITNESS WHEREOF, the Employer has caused the Plan to be executed this 23rd day of December, 2009.

EMPLOYER:

THE OHIO STATE UNIVERSITY

By: William J. Shkurti  
Date: 12/30/09

Title: Senior Vice President for Business & Finance