

**THE UNIVERSITY OF TEXAS SYSTEM
OPTIONAL RETIREMENT PROGRAM (ORP)**

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OPTIONAL RETIREMENT PROGRAM**

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THE UNIVERSITY OF TEXAS SYSTEM OPTIONAL RETIREMENT PROGRAM

WHEREAS, Chapter 830, Optional Retirement Program of the Texas Government Code (collectively, “Chapter 830”) authorizes Texas state-supported institutions of higher education to maintain an employee benefit program described in Code section 403(b) (defined below) and referred to in Chapter 830 as the “optional retirement program”; and

WHEREAS, Chapter 830 provides that participation in the Texas optional retirement program is an alternative to active membership in the Teacher Retirement System of Texas or the Employees Retirement System of Texas, as the context requires;

WHEREAS, Chapter 830 provides that the Texas Higher Education Coordinating Board (“THECB”) shall develop policies, practices, and procedures as necessary in accordance with applicable statutes to provide greater uniformity in the administration of the retirement program available to employees of Texas state colleges and universities through the Texas optional retirement program; and

WHEREAS, effective September 1, 1968, the University of Texas System (as defined in Section 65.02 of the Texas Education Code) (“U.T. System”) established The University of Texas System Optional Retirement Program (the “Plan”) and has heretofore maintained the Plan in a manner intended to ensure that the Plan complies with the requirements of Code section 403(b) and the Regulations promulgated thereunder, and in a manner consistent with the provisions of Chapter 830, policies consistent with the *Rules and Regulations* of the U.T. System Board of Regents, and the THECB Rules found at 19 Texas Administrative Code, Chapter 25;

WHEREAS, U.T. System amended and restated the existing policies and procedures governing the Plan, effective as of January 1, 2009, to provide that the Plan continued to comply with Code section 403(b) and the new final Regulations promulgated thereunder;

WHEREAS, U.T. System amended and restated the existing policies and procedures governing the Plan, effective as of January 1, 2012, to comply with the Heroes Earnings Assistance and Relief Tax Act of 2008 and incorporate the First Amendment to the Plan that implemented the provisions under the Worker, Retiree and Employer Recovery Act of 2008 (“WREA”);

WHEREAS, U.T. System amended and restated the existing policies and procedures governing the Plan, effective as of January 1, 2021, to incorporate changes under the Setting Every Community Up for Retirement Enhancement Act of 2019;

WHEREAS, U.T. System desires to amend and restate the existing policies and procedures governing the Plan, (1) effective as of January 1, 2022, to incorporate changes under the Setting Every Community Up for Retirement Enhancement Act of 2019 relating to required minimum distribution payment to beneficiaries, effective for participant deaths occurring after December 31, 2021 and (2) effective as of the execution of this amended and restated Plan, to update the beneficiary designation procedures.

NOW, THEREFORE, in consideration of the premises, U.T. System hereby amends and restates the Plan, effective as of January 1, 2022, unless a different effective date is expressly stated herein for any particular provision or provisions, as follows:

1. DEFINITION OF TERMS USED

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 Employee Nonelective Contributions, Employer Nonelective Contributions, any Employer Supplemental Contributions, 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 for an alternate payee pursuant to a QDRO under Section 5.3.4.

1.3 Active Participation

Period of employment during which a Participant makes regular employee contributions to the Plan or participates in any other Texas ORP Plan through payroll salary reduction based on the required statutory percentage of the employee's salary earned during that period, which, along with the employer nonelective contributions and any employer supplemental contributions, are sent by a Texas Public Institution of Higher Education on behalf of a participant in a Texas ORP Plan to a Currently Authorized Provider or previously authorized provider for a Texas ORP Plan. A faculty member who is not employed by a U.T. System Institution or any other Texas Public Institution of Higher Education during the three summer months but who was participating in the Plan or in any other Texas ORP Plan at the end of the spring semester immediately preceding the summer and who resumes participation in a Texas ORP Plan with the same or another U.T. System Institution or with another Texas Public Institution of Higher Education in the fall semester immediately following that summer shall be considered an active participant during the three summer months.

1.4 Administrator

Administrator means U.T. System or any other person or organization appointed or approved by the Employer to administer the Plan. However, various administrative functions may be delegated as identified in the Plan Provisions Section attached hereto as

Exhibit 1.4. The Administrator and each delegated person or organization shall only be responsible for administering those Plan functions and responsibilities that are set forth beside its name in the applicable Plan Provisions Section documents attached hereto. Any function or responsibility not expressly delegated to another person or organization shall be the responsibility of U.T. System.

1.5 Annual Additions

The sum, for any calendar year, of (A) Employer Contributions, (B) Employee Nonelective Contributions, (C) forfeitures allocated to the Participant's Account, if any, and (D) amounts described in Section 3.2.3, if any, and the sum of any employee and employer contributions made on behalf of such individual under any other Code section 403(b) plan maintained by the same employer or any Related Employer. For purposes of the foregoing sentence, contributions made on behalf of an Employee to the U.T. System voluntary, supplemental UTSAver Tax-Sheltered Annuity Program (UTSAver TSA) shall be included in the definition of Annual Additions. Employee Nonelective Contributions under subclause (B) are determined without regard to any rollover contributions (as defined in Code sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) and without regard to employee contributions to a simplified employee pension which are excludable from gross income under Code section 408(k)(6). Code section 415(c)(1)(B) shall not apply to any contribution for medical benefits (within the meaning of Code section 419A(f)(2)) after separation from service which is treated as an annual addition.

1.6 Annuity Contract

A group annuity contract or an individual nontransferable contract as defined in Code section 403(b)(1), established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in the State of Texas 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 Benefits Eligible Position

Any employee position (regardless of whether it is an ORP Eligible Position) with the Employer that is not a Non-Benefits-Eligible Position as defined in Section 4.7.1, but is a TRS-eligible position.

1.9 Break in Service

A period following a participant's termination of all employment with all Texas Public Institutions of Higher Education (including the Employer) that is at least one full calendar month in which no ORP Contributions are made to the Plan and no Texas ORP Contributions are made to any other Texas ORP Plan, excluding the three summer months

for faculty members who were participating in the Plan or any other Texas ORP Plan at the end of the spring semester immediately preceding the summer and who resume participation in the Plan with the Employer or participation in any other Texas ORP Plan with another Texas Public Institution of Higher Education in the fall semester immediately following that summer, and excluding periods of leave-without pay. A transfer within or between any Texas Public Institutions of Higher Education and the Employer with less than a full calendar month in which no ORP Contribution or Texas ORP Contribution is made to the Plan or any other Texas ORP Plan, respectively, shall not be considered a Break in Service.

1.10 Board of Regents

The Board of Regents of the University of Texas System.

1.11 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.

1.12 Compensation

Compensation as defined in TEX GOV'T CODE ANN. § 830.201(c). As of January 1, 2021, (i) TEX GOV'T CODE ANN. § 830.201(c) provides that "annual compensation" has the meaning assigned to that term by § 821.001(4), (ii) TEX GOV'T CODE ANN. § 821.001(4) defines annual compensation as the compensation to a member of the retirement system for service during a school year that is reportable and subject to contributions as provided by § 822.201 and (iii) TEX GOV'T CODE ANN. § 822.201 provides a definition of "member compensation".

1.13 Currently Authorized Provider

A Provider that, at the time in question, is currently authorized by U.T. System to receive new, or transfer of prior, ORP Contributions and to provide ORP products and Services to the Participant and the Plan. (See Exhibit 1.13 for a list of Currently Authorized Providers as of January 1, 2022)

1.14 Custodial Account

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.

1.15 Employee

Each individual, whether appointed or elected, who is a common law employee of the Employer performing services for a public school (as defined in Treas. Reg. §1.403(b)-2(b)(14)) 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. An Employee will include any individual receiving military differential wage payments, as defined in Code section 3401(h), from the Employer.

1.16 Employee Nonelective Contributions

Contributions made by the Employer on behalf of an ORP Eligible Employee pursuant to his or her salary reduction agreement made under the Plan in accordance with Section 2 and as described in Sections 3.1 and 3.6.1.

1.17 Employee Nonelective Contributions Account Balance

The bookkeeping account for each Participant with respect to his Employee Nonelective Contributions under the Plan, including any earning and losses attributable thereto.

1.18 Employer

U.T. System. For purposes of clarification, the University of Texas System is a single employer which includes all of the component educational institutions which are listed as U.T. System Institutions on Exhibit 1.52 attached hereto.

1.19 Employer Contributions

The Employer Nonelective Contributions and the Employer Supplemental Contributions.

1.20 Employer Contributions Account Balance

The bookkeeping account for each Participant with respect to his total interest (whether vested or unvested) (including any earning and losses attributable thereto) under the Plan resulting from Employer Nonelective Contributions and/or Employer Supplemental Contribution.

1.21 Employer Nonelective Contribution

Employer Contributions (other than Employer Supplemental Contributions) made pursuant to Sections 3.1 and 3.6.2 and described therein.

1.22 Employer Supplemental Contribution

Supplemental contributions, if any, made by the Employer pursuant to Sections 3.1 and 3.6.3 and described therein.

1.23 Full-Time

For purposes of determining initial eligibility to participate in the Plan, the term “Full-Time” shall mean employment for the standard full-time workload established by the U.T. System Institution at which the Participant is employed (“100 percent effort”) at a rate comparable to the rate of compensation for other persons in similar positions for a definite period of four and one-half months or a full semester of more than four calendar months.

1.24 Funding Vehicles

The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and with regard to Currently Authorized Providers, specifically approved by the Employer for use under the Plan.

1.25 Grandfathered Provider

A Provider, listed on Exhibit 1.13 and which was authorized by the Administrator to receive ORP Contributions from Participants who were contributing to that Provider prior to January 2012. A Grandfathered Provider may not receive contributions from new Participants and further may not receive any rollover or transfer contributions.

1.26 Includible Compensation

An Employee’s actual wages in box 1 of Form W-2 for a year for services to the Employer (including any military differential wage payments as defined in Code section 3401(h) received from the Employer), but subject to a maximum of \$200,000 (or such higher maximum as may apply under Code section 401(a)(17)) (\$305,000 for 2022) and increased (up to the dollar maximum) by any compensation reduction election under Code section 125, 132(f), 401(k), 403(b), or 457(b) (including any elective deferral under any other Code section 403(b) plan maintained by the Employer). The amount of Includible Compensation is determined without regard to any community property laws.

1.27 Individual Agreement

The agreement between a Provider and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract. The Administrator shall compile and update, from time to time, a list of Individual Agreements which are in effect to the extent that the Provider has provided the Administrator with such information. This list shall be made reasonably available to the Participants in such manner and form as determined by the Administrator from time to time.

1.28 Initial ORP Eligibility Date

The first day of an individual’s employment in an ORP Eligible Position with the Employer; provided, however, that if the individual has previously been employed with the Employer or at any other Texas Public Institution of Higher Education, the Initial ORP Eligibility Date shall be the first day of employment in an ORP Eligible Position with such

the Employer or in a position eligible to participate in a Texas ORP Plan maintained by such Texas Public Institution of Higher Education.

1.29 Investment Advisory Contract

An agreement between a Participant and a registered investment advisor in which the fee for such service is paid from the Participant's Account, and which meets the requirements of Section 830.107 of the Texas Government Code.

1.30 Major Department

One of the factors used to determine whether a position is ORP-eligible in the "Other Key Administrator" category as defined in Section 2.11.1(d) below (relating to ORP Eligible Positions). A department or budget entity at a U.T. System Institution shall be considered to be a major department if (A) the department or budget entity is considered a "major" department by the U.T. System Institution based on the specific organizational size and structure of that U.T. System Institution; and (B) the department or budget entity has its own budget, policies and programs.

1.31 Non-Benefits-Eligible Position

Defined in Section 4.7.1.

1.32 ORP or Plan

The University of Texas System Optional Retirement Program, as administered by U.T. System for and on behalf of its participating Employees in accordance with the terms of this Plan document, pursuant to Chapter 830 of the Texas Government Code and 19 Texas Administrative Code Chapter 25.

1.33 ORP Contributions or Plan Contributions

Any contributions, whether Employer Contributions or Employee Nonelective Contributions, made to this Plan.

1.34 ORP Election Period

The period of time during which an individual who is eligible to participate in the Plan has a once-per-lifetime, irrevocable opportunity to elect to participate in the Plan in lieu of participating in TRS. The ORP Election Period shall begin on an individual's Initial ORP Eligibility Date, and shall end on the earlier of

- (a) the date the individual makes an election to participate in the Plan; or
- (b) the 90th calendar day after the individual's Initial ORP Eligibility Date, not including the Initial ORP Eligibility Date but including the 90th calendar day. If the 90th calendar day after the Initial ORP Eligibility Date falls on a

weekend or holiday, the deadline shall be extended until the first working day after the 90th calendar day.

1.35 ORP Eligible Employee

An Employee who is employed in an ORP Eligible Position with a U.T. System Institution.

1.36 ORP Eligible Position

Any of the employment positions described in Section 2.11 with any U.T. System Institution which are eligible to participate in the Plan.

1.37 ORP Retiree

An individual who participated in the Plan while employed with any U.T. System Institution or in any other Texas ORP Plan while employed with another Texas ORP Employer and who established retiree status by meeting the applicable retiree insurance requirements and enrolling in retiree group insurance provided by the U.T. System, the Employees Retirement System of Texas or The Texas A&M University System, regardless of whether currently enrolled.

1.38 Participant

An individual who has satisfied the eligibility requirements set forth in Section 2 and has properly made an election to participate in the Plan (or has been automatically enrolled in the Plan in accordance with the terms of this Plan document). A Participant shall include any individual who has an Account Balance in the Plan.

1.39 Plan year

The calendar year.

1.40 Principal Activity

One of the factors used to determine whether a position is an ORP Eligible Position is the percent of effort required by the position to be devoted to ORP Eligible Position duties. An activity will be considered to be a principal activity if at least 51 percent of the position's duties are devoted to ORP-eligible duties in one of the ORP Eligible Position categories with two exceptions:

1.40.1 During ORP Election Period. During an Employee's ORP Election Period (when the position is required to be 100 percent effort devoted to ORP-eligible duties to qualify as an ORP Eligible Position), if the ORP-eligible duties associated with an ORP Eligible Position category are less than 51 percent of the activities for a particular position, the position shall be considered to meet the principal activity requirement if all of the position's other duties are ORP-eligible duties under one of the other ORP Eligible Position categories for a total of 100 percent effort devoted to ORP-eligible duties. For example, this exception would apply for a

position with required duties that are 50 percent instruction and/or research (faculty position) and 50 percent department chair (faculty administrator position).

1.40.2 After ORP Election Period. For a Plan Participant who has not fully vested in the Plan and who fills a position that is less than 100 percent effort but at least 50 percent effort, then the principal activity requirement shall be considered met if at least 50 percent effort is devoted to applicable ORP-eligible duties in one of the ORP Eligible Position categories.

1.41 Provider

The provider of an Annuity Contract or Custodial Account. Provider includes a Currently Authorized Provider, a Grandfathered Provider and a former Provider. A former Provider is a previously authorized provider which cannot receive any new ORP Contributions or rollovers or transfers of prior ORP Contributions.

1.42 Regulation or Regulations

The Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.43 Related Employer

The Employer and any other entity, if any, which is under common control with the Employer under Code section 414(b) or (c). 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.

1.44 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 the Employer, 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).

1.45 Texas ORP Contributions

Any employee contributions or employer contributions made to a Texas ORP Plan, other than this Plan.

1.46 Texas ORP Employer

Any employer maintaining a Texas ORP Plan (as defined herein).

1.47 Texas ORP Plan

Any optional retirement program maintained by a Texas Public Institution of Higher Education pursuant to Chapter 830 in which an employee may participate in lieu of participating in TRS, including without limitation this Plan. References to “another Texas ORP Plan” or “other Texas ORP Plan” means any Texas ORP Plan other than this Plan.

1.48 Texas Public Institution of Higher Education

Any “institution of higher education” as defined in Section 61.003(8) of the Texas Education Code (including, without limitation, U.T. System and any U.T. System Institution). References to “another Texas Public Institution of Higher Education” or “other Texas Public Institution of Higher Education” means any Texas Public Institution of Higher Education other than U.T. System or a U.T. System Institution.

1.49 THECB

The Texas Higher Education Coordinating Board.

1.50 TRS

The Teacher Retirement System of Texas.

1.51 U.T. System

For the purpose of this Plan, U.T. System means The University of Texas System, which includes its component institutions, listed as U.T. System Institutions on Exhibit 1.52, as established under Section 65.02 of the Texas Education Code. All actions taken by U.T. System under this Plan will be taken at the administration level and not at the component U.T. System Institution level unless expressly stated otherwise.

1.52 U.T. System Institution

A component or constituent institution of The University of Texas System listed on Exhibit 1.52.

1.53 UTRetirement Manager

The common remitter system currently authorized by The University of Texas System.

1.54 Valuation Date

Each business day.

1.55 Vested

The nonforfeitable portion of any Account maintained on behalf of a Participant.

1.56 Vesting Requirement

The minimum amount of participation in a Texas ORP Plan required to attain fully vested status in Employer Contributions in a Participant's Plan Accounts. A Participant shall be considered vested on the first day of the second year of Active Participation in this Plan or any other Texas ORP Plan. A vested Participant shall not be subject to forfeiture of any Employer Contributions in his or her Plan Accounts. A vested Participant shall remain in the Plan even if he or she is subsequently employed by a U.T. System Institution in a position that is not an ORP Eligible Position, so long as such position is a Benefits Eligible Position.

2. ELIGIBILITY AND PARTICIPATION REQUIREMENTS

2.1 Conditions of Participation/Eligibility Criteria

An ORP Eligible Employee shall be eligible to make a once-per-lifetime irrevocable election to participate in the Plan during the ORP Election Period, in lieu of being a member of and participating in TRS, if all of the following criteria are met:

- 2.1.1 ORP Eligible Position and Full-time Basis. The Employee is employed in an ORP Eligible Position performing ORP-eligible duties on a Full-Time basis.
- 2.1.2 Combining of Percent Effort at Different Institutions. The Full-Time requirement shall be satisfied by employment in an ORP Eligible Position with only one U.T. System Institution, unless an individual is simultaneously employed in ORP Eligible Positions with more than one U.T. System Institution, in which case, the Employee's percent effort at each U.T. System Institution may be combined.
- 2.1.3 First Election Opportunity. The Employee has not previously had an opportunity to elect to participate in any Texas ORP Plan during the current or any prior period of employment with any Texas ORP Employer; and
- 2.1.4 Active Membership in TRS. At the time of the Employee's Initial ORP Eligibility Date, the Employee then is a current member of or is eligible for active membership in TRS.

2.2 Automatic Enrollment in Plan

Pursuant to Sections 2.3.2, 2.7.3, and 2.10 and subject to Section 4.9, an Employee who has previously participated in this Plan or another Texas ORP Plan and is or becomes employed with the Employer in the situations described in such Sections will not have a right or ability to elect to participate in the Plan but instead will be automatically enrolled in the Plan by the Employer (so long as such Employee has provided the Employer with notice of such Employee's prior participation in another Texas ORP Plan). The Employer shall provide the Employee with all necessary paper forms and documents or electronically through UTRetirement Manager to accomplish the enrollment of the Employee in the Plan with one or more of the Plan's Currently Authorized Providers.

2.3 ORP Participation after Enrollment

Once an Employee makes an election to participate in the Plan, the Employee's eligibility to continue participating in the Plan shall be determined in accordance with the provisions of this Plan document.

- 2.3.1 If an ORP Eligible Employee elects to participate in the Plan he or she will continue participation in the Plan prior to vesting for so long as he or she remains continuously employed in an ORP Eligible Position with the Employer.
- 2.3.2 If a vested Participant terminates employment with the Employer and subsequently becomes re-employed with the Employer in a Benefits Eligible Position(s) (and such individual has not had intervening participation in TRS), such individual shall be automatically re-enrolled in the Plan.
- 2.3.3 If an unvested Participant terminates employment with the Employer, and subsequently becomes re-employed with the Employer, then whether or not such individual is re-enrolled in the Plan is governed by the provisions of Section 4.6.1.
- 2.3.4 If a Participant transfers to a Non-Benefits-Eligible Position with the Employer, or becomes concurrently employed in a Non-Benefits-Eligible Position and a Benefits Eligible Position, then such Participant's continued participation in the Plan shall be governed by the terms of Section 4.7.
- 2.3.5 Notwithstanding any other provisions of this Plan document, a person who before September 1, 1987, had chosen to participate in the Plan and who was participating in the Plan on September 1, 1987, is entitled to continue to participate in the Plan until the person terminates participation as provided by Section 830.105(a) of the Texas Government Code.

2.4 Non-Texas ORP Plans

Prior enrollment, participation or vested status in any plan other than the Plan or any other Texas ORP Plan authorized under Texas Government Code, Chapter 830, shall have no bearing on an Employee's eligibility to elect to participate in the Plan (or any other Texas ORP Plan), except that the Employee must be eligible for active membership in TRS.

2.5 Opportunity to Elect

The Employer shall provide an opportunity, as provided by the Board of Regents, to its ORP Eligible Employees who meet the eligibility criteria set forth in Section 2.1 to elect to participate in the Plan in lieu of participating in TRS.

2.6 90-Day ORP Election Period and Procedures

An Employee who meets the eligibility criteria in this Section 2 shall be provided by the U.T. System Institution at which the Employee is employed (i) within 15 business days of such Employee's Initial ORP Eligibility Date, notice of such eligibility to participate in the

Plan, (ii) the ORP Election Period dates, and (iii) a form to elect participation in the Plan in the manner designated by the U.T. System, which may include filing the paper documents with the benefits office at the U.T. System Institution at which the Employee is employed or electronically through utilization of the UTRetirement Manager system. This Plan election shall be made on the forms provided by U.T. System or through the UTRetirement Manager system. The participation election shall also include designation of the Currently Authorized Providers to which Employee Nonelective Contributions and Employer Contributions are to be made. The form will require information regarding any amounts described in Section 3.2.3. An ORP Eligible Employee electing to become a Participant in the Plan must designate Funding Vehicles and Beneficiaries with one or more Currently Authorized Providers. To change an existing election with regard to Funding Vehicles, Participant must complete and file such change in election either electronically through utilization of the UTRetirement Manager system or by filing the paper documents with the Benefits Office at the U.T. System Institution at which the Participant is employed. Each such Employee who becomes a Participant agrees to be bound by the terms and conditions of the Plan and the Individual Agreements.

An individual's election to participate in a Texas ORP Plan must be made during his or her ORP Election Period.

2.6.1 Once-per-Lifetime Irrevocable Election. An Employee who is eligible to elect to participate in the Plan shall have only one opportunity during his or her lifetime, including any future periods of employment with the Employer or any Texas ORP Employer, to elect to participate in the Plan (or any other Texas ORP Plan) in lieu of participating in TRS, and the Employee's election may never be revoked.

- (a) Default Election. An ORP Eligible Employee's failure to elect to participate in the Plan during his or her ORP Election Period shall be deemed to be a default election to continue membership in TRS. Any such default election shall be irrevocable.

An ORP Eligible Employee who does not elect to participate in the Plan during his or her ORP Election Period shall never again be eligible to participate in the Plan, even if subsequently employed in an ORP Eligible Position at the same or another U.T. System Institution or with another Texas ORP Employer.

- (b) Irrevocable. An Employee's election to participate in the Plan or any other Texas ORP Plan shall be irrevocable. Except for the vesting and participation exceptions provided in Section 4, an Employee who elects to participate in the Plan shall remain in this Plan.

2.6.2 ORP Provider Selection Required at Election or Automatic Enrollment. When an ORP Eligible Employee makes an election to participate in the Plan or is automatically enrolled in the Plan, the Employee must select an ORP Provider from the U.T. System list of Currently Authorized Providers in conjunction with the participation election. Failure to select and enroll with a Provider from the U.T.

System list of Currently Authorized Providers may result in disciplinary action up to and including termination of employment at the discretion of the U.T. System Institution that employs the Employee.

- 2.6.3 Waiver of Retirement System Benefits. An election to participate in the Plan (or any Texas ORP Plan) shall be a waiver of the Employee's rights to any benefits that may have accrued from prior membership in TRS, other than benefits resulting from employee contributions to TRS or from transfers of service credit between the Employee Retirement System ("ERS") and TRS and reinstatement of withdrawn service credit under the ERS/TRS service transfer law, even if the Participant has met the applicable vesting requirement. Except as provided by Section 4 of this Plan document (relating to Plan vesting and participation) and the ERS/TRS service transfer law, an ORP Participant shall not be eligible to become an active member of TRS or receive any benefits from TRS other than a return of employee contributions that may have been deposited with TRS (and accrued interest, if any).

2.7 Participation Start Date

The first day that an Employee begins participation in, and ORP Contributions are to be made on his or her behalf under, the Plan shall be determined as follows:

2.7.1 Election on Initial ORP Eligibility Date.

- (a) **New Employees.** For new Employees who are employed in an ORP Eligible Position and make an election through the benefits office of the U.T. System Institution at which the Employee is employed or through election in the UTRetirement Manager on or before their Initial ORP Eligibility Date, the participation start date shall be the Initial ORP Eligibility Date (*i.e.*, the first day of employment in an ORP Eligible Position).
- (b) **Transfers within the Employer.** For Employees who transfer to an ORP Eligible Position within the same or another U.T. System Institution, and who make an election on or before their Initial ORP Eligibility Date, the participation start date shall be the Initial ORP Eligibility Date (*i.e.*, first day of employment in an ORP Eligible Position), unless the Initial ORP Eligibility Date is not the first day of the month, in which case, to avoid dual contributions to both TRS and the Plan during the same month, the participation start date shall be the first day of the month following the month in which the Initial ORP Eligibility Date falls, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis.

2.7.2 Election After Initial ORP Eligibility Date. The participation start date for ORP Eligible Employees who make an election after their Initial ORP Eligibility Date shall be the first day of the month following the date that the election is made, with the following exceptions:

- (a) During Month of Initial ORP Eligibility Date. ORP Eligible Employees who elect to participate in the Plan after their Initial ORP Eligibility Date

but before the payroll cutoff for the month in which the Initial ORP Eligibility Date falls will have Plan Contributions made for the month beginning with the first day of the month. Those ORP Eligible Employees who elect to participate in the Plan after their Initial ORP Eligibility Date and after the payroll cutoff date for the month in which their Initial ORP Eligibility Date falls will be enrolled for participation in the Plan beginning with the first day of the next month.

- (b) After Month of Initial ORP Eligibility Date. ORP Eligible Employees who elect to participate in the Plan after the month in which their Initial ORP Eligibility Date falls, but before the payroll has been processed for the month in which the election is made, may start participating in the month in which the election is made rather than the first of the following month. To avoid partial month payments, contributions for these Participants shall be based on salary earned during the entire month in which the election is made, or during the entire pay period in which the election is made, if payroll is not processed on a monthly basis.

- 2.7.3 Dually Employed and Transfer Participants. If a non-vested participant in another Texas ORP Plan terminates employment with such other Texas ORP Employer and becomes subsequently employed in an ORP Eligible Position (and provided such Participant has not had intervening participation in TRS), then the U.T. System Institution at which the Employee is employed (so long as such Employee has provided such U.T. System Institution with notice of his or her participation in the other Texas ORP Plan) shall automatically enroll the individual in this Plan on the first date such individual is employed by such U.T. System Institution in the ORP Eligible Position.

If a vested participant in another Texas ORP Plan terminates employment with such other Texas ORP Employer and becomes subsequently employed with a U.T. System Institution in any Benefits Eligible Position (and provided such Employee has not had intervening participation in TRS) (so long as such Employee has provided such U.T. System Institution with notice of his or her participation in the other Texas ORP Plan) such U.T. System Institution shall automatically enroll such individual in this Plan on the first date such individual is employed by the such U.T. System Institution in the Benefits Eligible Position.

- 2.7.4 Termination of TRS Membership. Each U.T. System Institution will notify the TRS employer when any U.T. System Institution Employee becomes a participant in ORP.

2.8 Active Membership in TRS Requirement

Participation in the Plan shall be an alternative to active membership in TRS.

TRS Retirees Not Eligible. Employees who have retired from TRS are no longer active members of TRS; therefore, a TRS retiree who is employed at the Employer shall not be eligible to elect to participate in the Plan.

2.9 Automatic TRS Enrollment

A new Employee who is eligible to elect to participate in the Plan and who is not already a participant in this Plan or any other Texas ORP plan shall be automatically enrolled in TRS until an election to participate in the Plan is made.

2.10 Dual Employment in TRS/ORP Positions at Different Employers

2.10.1 Simultaneous Retirement Plan Membership Not Permitted.

- (a) Dual Employment with the Employer and Non-Higher Education TRS-Covered Employer. A member of TRS who is employed in the Texas public school system (including all Texas Independent School Districts and regional educational service centers) or with any other Texas public educational institution or state agency that is covered by TRS but does not offer a Texas ORP Plan, and who becomes concurrently employed in an ORP Eligible Position with the Employer and elects to participate in the Plan, may not remain an active member of TRS as an employee of the non-higher education TRS-covered employer once participation in the Plan has started at the Employer and no TRS contributions may be made by the non-higher education TRS-covered employer for that employee while he or she is actively participating in the Plan. If the employee is required to return to active TRS membership, TRS contributions will resume as provided in Section 2.10.2.
- (b) Dual Employment with Different Texas Public Institutions of Higher Education.
 - (1) Active TRS Membership Not Permitted. A member of TRS who is employed with the Employer in a position that is eligible for TRS but is not an ORP Eligible Position and who has concurrent employment with another Texas Public Institution of Higher Education in a position that is eligible to participate in another Texas ORP Plan and who elects to participate in such other Texas ORP Plan, may not remain an active member of TRS once participation in the other Texas ORP Plan has started and no TRS contributions may be made by the Employer for that employee while he or she is actively participating in another Texas ORP Plan at another Texas Public Institution of Higher Education. If the employee is required to return to active TRS membership, TRS contributions will resume as provided in Section 2.10.2.

- (2) Participation After Vesting in ORP. Once the Participant vests in another Texas ORP Plan, the Participant shall be considered to be vested in this Plan for all purposes herein.

2.10.2 Returning to TRS.

- (a) Dual Employment with the Employer and Non-Higher Education TRS-Covered Employer.
 - (1) Termination of Employment with the Employer. If the individual described in Section 2.10.1(a) above terminates all employment with the Employer while concurrently employed in a TRS-eligible position with a non-higher education TRS-covered employer, then, regardless of ORP vesting status, the individual shall return to active TRS membership with the non-higher education TRS-covered employer and shall be ineligible for any future participation in the Plan, even if subsequently employed in an ORP Eligible Position with the Employer.
 - (2) Transfer to Non-ORP Eligible Position at the Employer. If, prior to meeting the Plan's Vesting Requirement, the individual described in Section 2.10.1(a) above transfers to a position at the same or another U.T. System Institution that is not an ORP Eligible Position but is a Benefits Eligible Position, then the individual shall return to active TRS membership.
 - (3) Transfer to Non-Benefits-Eligible Position at the Employer. An individual described in Section 2.10.1(a) above (whether vested or unvested in the Plan) who transfers from a Benefits Eligible Position to a Non-Benefits-Eligible Position (and is not concurrently employed in any other Benefits Eligible Position) at the same or another U.T. System Institution shall not be eligible for ORP Contributions to the Plan nor for active TRS membership and shall remain ineligible for TRS contributions at the non-higher education TRS-covered employer while employed in the Non-Benefits-Eligible Position at the Employer. If such individual subsequently terminates all employment with the Employer, then the provisions in Section 2.10.2(a)(1) above will apply.
- (b) Dual Employment with Different Texas Public Institutions of Higher Education.
 - (1) Termination of Employment in ORP Eligible Position Before Vesting. If, prior to vesting in any Texas ORP Plan, the individual described in Section 2.10.1(b) discontinues employment (whether by Severance from Employment or transfer of positions) in all positions eligible for participation in a Texas ORP Plan at the other

Texas Public Institution of Higher Education but at such time is employed in a TRS-eligible position (which is not, at such time, an ORP Eligible Position) with a U.T. System Institution, then the individual shall return to active TRS membership and shall be ineligible for any future participation in the Plan, even if subsequently employed in an ORP Eligible Position with the same or another U.T. System Institution.

- (2) Termination of Employment in ORP Eligible Position After Vesting. After vesting in any Texas ORP Plan, the individual described in Section 2.10.1(b) shall be automatically vested in this Plan, regardless of such individual's continued employment in a position eligible for participation in a Texas ORP Plan at the other Texas Public Institution of Higher Education. Such individual shall not return to TRS membership but shall continue to participate in the Plan so long as such individual is employed in a Benefits Eligible Position with the Employer.
- (3) Transfer to Non-Benefits-Eligible Position. An individual described in Section 2.10.1(b) who transfers from a position eligible for participation in a Texas ORP Plan to a Non-Benefits-Eligible Position at the other Texas Public Institution of Higher Education shall only be eligible for ORP Contributions to the Plan to the extent provided in Section 4.7 and shall not be eligible for active TRS membership with respect to such employment in the Non-Benefits-Eligible Position.
 - (i) Termination Before Vesting in ORP. If such individual terminates employment in the Non-Benefits-Eligible Position before vesting in any Texas ORP Plan, then the provisions in Section 2.10.2(b)(1) will apply.
 - (ii) Termination After Vesting in ORP. If such individual terminates employment in the Non-Benefits-Eligible Position after vesting in any Texas ORP Plan, then the provisions in Section 2.10.2(b)(2) will apply.

2.11 ORP Eligible Positions

2.11.1 The following positions shall be considered ORP Eligible Positions. Only those Employees who fill ORP Eligible Positions and who meet the eligibility requirements established in this Plan document shall be eligible to elect to participate in the Plan or continue participating in the Plan (under those circumstances in which a Plan Participant's ability to continue in the Plan requires employment or re-employment in an ORP Eligible Position as set forth in this Plan document).

- (a) Faculty Member. A member of the faculty whose duties include teaching and/or research as a Principal Activity, and who holds the title of professor, associate professor, assistant professor, instructor, lecturer, or equivalent faculty title, including “visiting professor” if the position is at least one full semester in duration.
- (b) Faculty Administrator. An administrator responsible for teaching and research faculty whose Principal Activity is planning, organizing, and directing the activities of faculty and who holds the title of dean, associate dean, assistant dean, director, department chair, or head of academic department.
- (c) Executive Administrator. A U.T. System administrator who holds the title of chancellor, executive vice chancellor, vice chancellor, associate vice chancellor, assistant vice chancellor, or the equivalent, and a U.T. System Institution administrator who holds the title of president, executive vice president, provost, vice president, associate vice president, assistant vice president, or the equivalent.
- (d) Other Key Administrator. An administrator other than a Faculty Administrator or an Executive Administrator (i) whose position is considered a key administrative position within the Employer’s organizational structure and (ii) that meets the requirements of this Section (d).

All positions in this category, including positions with the title of director or associate director, shall meet the following criteria:

- (1) serves as director or other administrative head of a Major Department or budget entity, excluding the title of assistant director unless the assistant director position has responsibility for what is considered a Major Department or budget entity that is within a larger department or budget entity.
- (2) is responsible for the preparation and administration of the budget, policies, and programs of the Major Department or budget entity;
- (3) usually reports to the office of a chancellor, president, vice chancellor, vice president, dean, or equivalent; and
- (4) is generally and customarily recruited from the same pool of candidates that other colleges and universities across the nation are recruiting from for this type of position by, for example, advertising in national publications such as the *Chronicle of Higher Education* or in newsletters or websites of national professional associations or at meetings of such associations.

A position shall not be considered an ORP Eligible Position under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not an ORP Eligible Position.

- (e) Librarian. A professional librarian who holds, at a minimum, a master's degree in library science or information science, and whose Principal Activity, is the provision of library services.
- (f) Athletic Coach. An athletic coach, associate athletic coach, or assistant athletic coach whose Principal Activity is coaching, excluding an athletic trainer, and excluding an athletic director or assistant athletic director unless the Principal Activity is coaching rather than administrative.
 - (1) Athletic trainers may be included in the "professional" category if the position requires the trainer to be a physician.
 - (2) Athletic directors whose Principal Activity is not coaching may be included in one of the administrator categories.
- (g) Professional. An Employee whose Principal Activity is performing the duties of a professional career position, including, but not necessarily limited to, physician, attorney, engineer, veterinarian and architect, that meets the following criteria:
 - (1) requires a terminal professional degree in a recognized professional career field that requires occupation-specific knowledge and appropriate professional licensure;
 - (2) is not classified as either an ORP Eligible Position or a non-ORP Eligible Position; and
 - (3) is generally and customarily recruited from the same pool of candidates that other colleges and universities across the nation are recruiting from for this type of position by, for example, advertising in national publications such as the *Chronicle of Higher Education* or in newsletters of national professional associations or at meetings of such associations.

A position shall not be considered an ORP Eligible Position under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not an ORP Eligible Position.

2.11.2 Position-Required Qualifications. An Employee who meets the qualifications of a "Professional" or a "Librarian" shall not be considered eligible to elect to

participate in the Plan as a Professional or Librarian unless the position requires the professional or librarian qualifications, respectively, as a Principal Activity.

2.12 Eligibility of Counselors

The eligibility of counselors to elect to participate in the Plan is a matter of U.T. System Institution policy and shall be determined as follows.

2.12.1 Faculty. If the U.T. System Institution has established policies that consider and treat counselors in the same manner as faculty in such areas as, for example, employment contracts, oversight, and work schedules, then Plan eligibility for a counselor position shall be determined under the same requirements as a faculty position, except that the Principal Activity shall be counseling rather than teaching and/or research, and the title shall be counselor rather than the faculty titles listed in that category.

2.12.2 Staff. If the U.T. System Institution has established policies that consider and treat counselors in the same manner as staff rather than faculty, in such areas as, for example, employment contracts, oversight, and work schedules, then Plan eligibility for a counselor position shall not be determined under the faculty category. Depending on the duties and required qualifications, a counselor who is considered staff rather than faculty may meet the criteria for one of the non-faculty ORP Eligible Positions.

2.13 Review of Positions for ORP Eligibility

2.13.1 Comprehensive Review. Each U.T. System Institution will be responsible for conducting a comprehensive review of all ORP Eligible Positions to ensure that Plan eligibility requirements are being applied fairly and consistently across all departments and divisions. Such review should be conducted on a periodic continuing basis, but is required to be completed at least once every third fiscal year.

2.13.2 New Position. Each U.T. System Institution will be responsible for analyzing newly-created employment positions for Plan eligibility determination and maintaining proper documentation of the analysis and determination for future reference.

2.13.3 Newly classified ORP Eligible Position. Each U.T. System Institution will be responsible for re-classifying a non-ORP Eligible Position as an ORP Eligible Position if changes in the position's responsibilities or the U.T. System Institution's organizational structure result in a position that meets the Plan eligibility criteria set out in this Plan document.

- (a) Option to Elect ORP. The Employer shall provide each Employee who is in a position that is re-classified as an ORP Eligible Position an opportunity to elect to participate in the Plan as if such Employee was newly hired into the position.

- (b) **Initial ORP Eligibility Date.** For an Employee described in Section 2.13.3(a), his or her Initial ORP Eligibility Date shall be the date that the reclassification is effective.

2.14 Administrative Errors

- 2.14.1 **Orientation Procedures.** Each U.T. System Institution shall develop and implement effective orientation and enrollment procedures to ensure appropriate and timely processing of newly eligible employees' retirement plan choices.
- 2.14.2 **Rectification.** In the event an administrative error occurs which prevents the normal processing of an ORP Eligible Employee's election, the U.T. System Institution at which the Employee is employed shall rectify the error as soon as practicable and in a manner that results in a situation that is as close to the originally expected outcome as possible, within applicable federal and state laws and rules.
- 2.14.3 **Documentation and Prevention.** When an administrative error occurs, the U.T. System Institution at which the Employee is employed shall: (A) maintain documentation of the error and the actions taken by such U.T. System Institution to address the problem, with a copy placed in the Employee's personnel file; and (B) develop and implement appropriate administrative procedures to avoid such errors in the future.

3. PLAN CONTRIBUTIONS

3.1 In General

- 3.1.1 **Tax-Deferred.** All ORP Contributions shall be made on a tax-deferred basis.
- 3.1.2 **Employer Contributions.** The Employer shall contribute to the Participant's Account as an Employer Contribution the amounts determined under Section 3.6 below.
- 3.1.3 **Employee Nonelective Contributions.** Each U.T. System Institution shall contribute on behalf of each Employee participating in the Plan as such Employee's Employee Nonelective Contribution the amount determined under Section 3.6 below.

3.2 IRS Limits on Plan Contributions

- 3.2.1 Notwithstanding anything to the contrary contained in this Plan, the total Annual Additions made on behalf of the Participant for any year will not exceed the limits imposed by Code section 415, as they may be adjusted from time to time. If the Annual Additions exceed the limitation under the circumstances described in Regulations § 1.415-6, the excess amounts will be held unallocated in a suspense account and will be applied to reduce further contributions by the Employer to the Plan. Excess Annual Additions attributable to Employee contributions shall be returned to the Employee.

If the Code section 415 limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for the purposes of Code section 415, then upon completion of documentation to the satisfaction of the Plan Administrator that the Code section 415 limits have been exceeded, the Participant shall first receive a return of elective deferrals from U.T. Saver TSA and shall only receive a return of contributions from ORP to the extent thereafter necessary to comply with the applicable Code section 415 limits. If the reduction is under this Plan, the Employer will advise the affected Participant(s) of any additional limitation on their Annual Additions required by this paragraph.

3.2.2 Maximum Annual Additions. Contributions to a Participant's Plan Account shall not exceed the maximum amount allowed under Code section 415(c).

(a) The maximum permissible Annual Additions that may be contributed or allocated to each Participant's Account under the Plan for any Plan Year will not exceed the lesser of

(1) \$50,000, as adjusted for increases in the cost of living under Code section 415(d), (\$61,000 for 2022) or

(2) 100 percent of the Participant's Includible Compensation for the Plan Year.

(b) Amounts Treated as Annual Additions

Non-vested Employer Contributions. Non-vested Employer Nonelective Contributions and non-vested Employer Supplemental Contributions are treated as Annual Additions in the year contributed for purposes of the Code section 415(c) limit.

3.2.3 Controlling Interest. If a Participant has a "controlling interest" in another employer and participates in that employer's qualified Code section 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(1)(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 Plan Year cannot exceed the maximum permissible amount described in Section 3.2.2, taking into account employer contributions that have been allocated to such other plans as described in this subsection. For these purposes, (i) prior to January 1, 2009, any such employer contributions will be included in the calculation of Annual Additions only to the extent that the Participant has provided such information to the Administrator; and (ii) on and after January 1, 2009, the Administrator will request and make good faith efforts to collect such information from the Participants for purposes of the Annual Addition calculations.

3.2.4 Code Section 415(m) Plan. The Employer participates in The University of Texas System Governmental Retirement Arrangement (UTGRA), a governmental excess

benefit plan authorized under Code section 415(m) and Section 830.004 of the Texas Government Code that provides eligible participants of a Texas ORP Plan that portion of a participant's benefits that would otherwise be payable under the terms of the Texas ORP Plan except for the limitations on benefits imposed by Code section 415. For Plan Participants eligible to participate in UTGRA, UTGRA contributions are not taken into account for purposes of calculating the Code section 415(c) limits on retirement contributions.

- 3.2.5 Stopping ORP Contributions. No contributions may be made to the Plan in excess of the contribution limits of Code section 415(c); provided, however, that contributions on behalf of any Plan Participant who participates in UTGRA may be made to UTGRA notwithstanding the limits of Code section 415(c).
- 3.2.6 Special Rule for a Participant Covered by Another Section 403(b) Plan or Other 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.

3.3 Rollovers, Transfers and Grandfathered Providers

- 3.3.1 The only rollovers permitted to a Participant's Account are from another Texas ORP Plan. A Participant who is entitled to receive an eligible rollover distribution from another Texas ORP Plan may request the provider in the other Texas ORP Plan to have all or portion of the eligible rollover distribution paid to ORP. Such rollover contributions shall be made in the form of cash only. The Provider must 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 within the meaning of Code section 402(c)(8)(B). However, for purposes of clarification, the Provider will not accept Roth rollover contributions. Each Provider shall establish and maintain for the Participant a separate account attributable to the rollover contributions to ORP.
- 3.3.2 With regard to a separate Account attributable to rollover contributions to ORP by a Participant, the Participant may at any time elect to receive an in-service distribution of the amounts held in his or her rollover account, but such distribution must consist of the Participant's entire rollover balance. Such in-service distributions are not subject to the events limiting distributions described in Section 5.1.
- 3.3.3 The only transfers permitted to a Participant's Account are from an account for the same person in another Texas ORP Plan. In such a case, the Participant may request

to have all or a portion of the Participant's account in the other Texas ORP Plan transferred to ORP.

- (a) Such a transfer is permitted only if the other Texas ORP Plan provides for the direct transfer of all or any portion of the Participant's interest therein to ORP and the Participant is a current employee of the Employer. Each Provider shall require such documentation from the other Texas ORP Plan as it deems necessary to effectuate the transfer in accordance with Regulations § 1.403(b)-10(b)(3) and to confirm that the other Texas ORP Plan is a plan that satisfies Code section 403(b) and Chapter 830 of the Texas Government Code.
- (b) The amount so transferred shall be credited to the Participant's Account, so that the Participant whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to the Participant immediately before the transfer.
- (c) The amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as contributions to the Participant's Account under ORP except (i) ORP must impose restrictions on distributions to the Participant whose assets are being transferred that are not less stringent than those imposed under the transferor plan; also, to the extent the transferor plan distribution restrictions are more stringent than this Plan, the Provider will put the transferred assets into a separate account; however, if Provider will not maintain such transferred plan assets in a separate account, Provider will not accept such transfer and (ii) the transferred amount shall not be considered an Annual Addition for the purposes of Code section 415.
- (d) If the plan to plan transfer does not constitute a complete transfer of the Participant's interest in the other Texas ORP Plan, ORP shall treat the amount transferred as a continuation of a pro rata portion of the Participant's interest in the other Texas ORP Plan.

3.3.4 The only transfers permitted from a Participant's Account are to an account for the same person in another Texas ORP Plan. In such a case, the Participant may request to have all or any portion of the Participant's Account transferred to the other Texas ORP Plan.

- (a) A transfer is permitted only if the Participant is an employee or former employee of the employer under the receiving other Texas ORP Plan and the other Texas ORP Plan provides for the acceptance of plan to plan transfers with respect to the Participant and for the Participant to have an amount immediately after the transfer at least equal to the amount transferred.

- (b) The other Texas ORP Plan shall impose restrictions on distributions to the Participant whose assets are transferred that are not less stringent than those imposed under ORP. In addition, if the transfer does not constitute a complete transfer of the Participant's interest in ORP, the other Texas ORP Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's interest in ORP.
- (c) Upon the transfer of assets, ORP's liability to pay benefits to the participant under ORP shall be discharged to the extent of the amount transferred for the Participant. ORP or Provider shall provide upon request of the other Texas ORP Plan, and shall require the other Texas ORP Plan or any provider thereunder to provide, such documentation reasonably necessary to comply with Code section 403(b) and Chapter 830 of the Texas Government Code, to assure that the transfer is permitted under the receiving plan or to effectuate the transfer pursuant to Regulations § 1.403(b)-10(b)(3).

3.3.5 Providers Eligible for ORP Contributions. ORP Contributions may only be made to a Currently Authorized Provider or, when eligibility criteria are met, with a Grandfathered Provider of the U.T. System. An Employee who contributes to a Grandfathered Provider and who experiences a Break in Service (other than a routine semester break in service) or who begins participation with a Currently Authorized Provider must thereafter make contributions to and participate with the Currently Authorized Provider only.

3.3.6 Former and Grandfathered Provider Participation. A Plan Participant may retain any active or inactive account with a former Provider or a Grandfathered Provider and is not required to transfer monies from it to a Currently Authorized Provider. A Plan Participant may not contribute to the Plan Account with a former Provider that is not a Currently Authorized Provider or a Grandfathered Provider.

3.4 No Dual Contributions

A contribution to TRS and to a Plan Provider within the same calendar month shall not be permitted, except when a person terminates employment in a position covered by TRS and, prior to the end of the calendar month in which the termination occurs, becomes employed in an ORP Eligible Position with the Employer and elects to participate in the Plan in such manner that the Plan participation start date is prior to the end of that same calendar month.

3.5 Eligible Compensation

3.5.1 For purposes of determining the amount of a Participant's ORP Contributions, Employer shall use Compensation; however, for purposes of calculating Maximum Annual Additions permitted under Section 3.2.2 herein Employer shall use Includible Compensation.

3.5.2 An individual who first participated in a Texas ORP Plan prior to September 1, 1996, regardless of a subsequent Break in Service, shall qualify for the

“grandfathered” special rules for governmental plans relating to annual compensation limits established by Code section 401(a)(17) and the Regulations thereunder.

3.6 Contribution Rates

The amount of each Participant’s Employer Contribution shall be a percentage of the Participant’s Compensation as established by Chapter 830, the Texas General Appropriations Act for each biennium, and the Board of Regents. Each Participant’s ORP Contributions shall include an amount based on the employee rate and an amount based on the employer rates described below.

- 3.6.1 Employee Nonelective Contribution Rate. The Employee Nonelective Contribution rate shall be the contribution rate established in Texas Government Code §830.201, as amended from time to time, for employee contributions. As of January 1, 2022, the Employee Nonelective Contribution rate under such statute and this Plan is 6.65 percent (6.65%) of a Participant’s Compensation.
- 3.6.2 Employer Contribution Rate. The Employer Contribution rate shall consist of (i) the Employer Nonelective Contribution rate, which is a State of Texas base rate (minimum), as established each biennium for Texas ORP Plans in the Texas General Appropriations Act, and (ii) an optional Employer Supplemental Contribution rate, as provided in Section 3.6.3(a) below.
- 3.6.3 Employer Supplemental Contribution Rate. Each U.T. System Institution may provide a supplement, in the form of an Employer Supplemental Contribution, to the Employer Nonelective Contribution base rate under the following conditions:
- (a) Amount of Employer Supplemental Contribution Rate. The Employer Supplemental Contribution rate may be any amount that, when added to Employer Nonelective Contribution base rate (as of January 1, 2022, such base rate being 6.6 percent (6.6%)), does not exceed the maximum employer contribution rate established in Texas Government Code §830.201, as amended from time to time (as of January 1, 2022, such maximum rate being 8.5 percent (8.5%)).
 - (b) U.T. System Institution Policies. Each U.T. System Institution may recommend to the Board of Regents prior to the beginning of each fiscal year an Employer Supplemental Contribution rate between zero percent (0%) and the maximum employer contribution rate in Texas Government Code §830.201 for non-grandfathered Participants (as described in Section 3.6.3(e) below) employed by such U.T. System Institution.
 - (c) Annual Determination. The Board of Regents shall determine the amount of the Employer Supplemental Contribution rate for each U.T. System Institution once per year, to be effective for the entire year.

- (d) Option 1 – All Participants. Each U.T. System Institution may recommend the same Employer Supplemental Contribution rate applicable for all Plan Participants employed by such U.T. System Institution, regardless of the Participant’s first date of participation in any Texas ORP Plan or a Break in Service. If this method is selected and approved by the Board of Regents, each Plan Participant employed by such U.T. System Institution shall receive the same Employer Supplemental Contribution rate as every other Participant employed by such U.T. System Institution.
- (e) Option 2 – Two Groups. Each U.T. System Institution may recommend two different Employer Supplemental Contribution rates applicable for Plan Participants employed by such U.T. System Employer based on a Participant’s first date of participation in any Texas ORP Plan, as follows:
 - (1) Grandfathered. Each Participant whose first date to participate in any Texas ORP Plan at any Texas ORP Employer is prior to September 1, 1995, shall receive the same Employer Supplemental Contribution rate as other Participants in this group, regardless of any Break in Service. This group of participants shall be referred to as the “grandfathered group.”
 - (2) Non-Grandfathered. Each Participant whose first date to participate in any Texas ORP Plan at any Texas ORP Employer is on or after September 1, 1995, shall receive the same Employer Supplemental Contribution rate as other Participants in this group, regardless of any Break in Service. This group of Participants shall be referred to as the “non-grandfathered group.”
- (f) Transfers Between U.T. System Institutions with Different ORP Employer Contribution Rates. In the event that an Employee who is a Plan Participant transfers between U.T. System Institutions with different Employer Supplemental Contribution rates, then effective upon the date of transfer, the transferring Employee shall receive the Employer Supplemental Contribution rate provided to other comparable Participants at the U.T. System Institution to which the Employee transfers.

3.7 Proportionality

- 3.7.1 ORP Employers Other than Community Colleges. The Employer (and other Texas Public Institutions of Higher Education) shall pay their ORP Employer Contributions on a proportionate basis from the same funding source that a Participant’s salary is paid. State of Texas General Revenue funds may only be used for ORP Employer Contributions for the portion of a Participant’s salary that is actually paid with General Revenue.

3.7.2 Not Applicable to Employer Supplemental Contributions. Notwithstanding the foregoing, the proportionality provisions of Section 3.7.1 do not apply to Employer Supplemental Contributions that a U.T. System Institution may make.

3.8 Three-Day Submission Deadline for Contributions

The Employer shall send Plan contributions to the appropriate Plan Provider within three (3) business days of legal availability.

Contributions shall generally be considered legally available on payday. For U.T. System Institutions that normally pay Participants on a twice-monthly basis, the three-day period shall apply to each payday in the month.

3.9 Electronic Funds Transfer (EFT)

Requirement. The Employer shall send all Plan contributions, including contributions based on a supplemental payroll and contributions sent to a previously authorized Plan Provider, to each Plan Provider through the UTRetirement Manager. The UTRetirement Manager shall then transmit all remittances by electronic funds transfer (EFT) to each Plan Provider currently able to receive funds by EFT. Notwithstanding the foregoing, nothing herein will prevent Administrator from sending a paper check if/when determined by Administrator as necessary or convenient.

3.10 Same-Day Credit

U.T. System will require Plan Providers to deposit each Participant's Plan contributions into the Accounts and/or Funding Vehicles designated by the Participant effective on the same day that the contributions are received by the Provider. A Plan Provider that does not comply with such requirement shall not be eligible to be authorized as a Plan Provider.

3.11 Forfeited Plan Employer Contributions

If a Participant forfeits any Employer Contributions under the terms of this Plan, the U.T. System Institution shall return the forfeited contributions to the originating fund in accordance with the following procedures.

3.11.1 93-Day Deadline for Request. Not later than 93 calendar days after the last day of the calendar month in which an unvested Participant has a Severance from Employment and provided that the U.T. System Institution has knowledge that the Participant has not become employed and is not anticipating becoming employed in a position that is eligible for participation in a Texas ORP Plan at the Employer or another Texas ORP Employer within the 93-day period, the applicable U.T. System Institution shall send a request, known as a "Vesting/Termination Status letter", to the Plan Provider or Providers for a return of the Employer Contributions that were sent to the Provider or Providers for that Participant during that period of employment.

- (a) 93 Days is Outside Limit. The applicable U.T. System Institution may send the request for forfeited Employer Contributions immediately upon a Participant's Severance from Employment if the U.T. System Institution has knowledge that the Participant has not become employed and is not anticipating becoming employed in a position that is eligible for participation in a Texas ORP Plan at the Employer or another Texas ORP Employer within the 93-day period.
 - (b) If Deadline is Missed. If the U.T. System Institution fails to request the forfeited amounts within the 93-day deadline, then the U.T. System Institution shall make the request immediately upon discovering the oversight, even if the Participant later resumes participation in a Texas ORP Plan after the 93-day deadline as described in Section 3.11.2 below.
- 3.11.2 If Participant Returns After 93 Days. If an unvested Participant returns to employment that is eligible for participation in any Texas ORP Plan at the Employer or another Texas ORP Employer and resumes active participation in a Texas ORP Plan on a date that is more than 93 calendar days after the last day of the calendar month in which he or she previously had a Severance from Employment, the Participant's unvested Plan Employer Contributions from the prior period of employment shall still be forfeited, even if the Participant subsequently satisfies the Vesting Requirement.
- 3.11.3 Forfeited Amount. The forfeited amount shall be the actual amount of Employer Contributions sent to the Participant's Plan Accounts during his or her current period of employment.
- (a) Excess Amounts Not Included. The forfeited amount shall not include any amounts in the Participant's Plan Account in excess of the actual Employer Contributions that are attributable to net earnings.
 - (b) If Account is Less than Actual Amount. The entire amount of actual Employer Contributions shall be returned even if the Participant's Account Balance is less than the amount of the actual Employer Contributions because of investment loss, transfer, or other occurrence or transaction.
 - (1) Provider Responsibility. U.T. System will require that the Provider shall be responsible for covering any loss of unvested Employer Contributions, so that the entire amount of actual Employer Contributions is returned to the U.T. System Institution at which the applicable Employee was employed upon request.
 - (2) Certification. Before a Provider is eligible to receive Plan contributions from unvested Participants, the Plan Provider must certify that the entire amount of actual unvested Plan Employer Contributions will be returned upon request. The Provider must indicate what method will be used to ensure its ability to return such

amounts (i.e., restriction of unvested funds to money market or similar accounts).

3.11.4 Provider Response Deadline. Within 30 days of receiving a U.T. System Institution request for a return of unvested Employer Contributions, the Provider shall:

- (a) process a reimbursement to the U.T. System Institution; and
- (b) send notification of the transaction to the Participant indicating the reason for the reduction in the Account Balance.

3.11.5 Deposit into Originating Fund. The U.T. System Institution shall deposit the reimbursed Employer Contributions into the originating source of funds for such contributions in accordance with instructions from the Texas Comptroller of Public Accounts and any other applicable policies and procedures.

3.11.6 Resumption of Participation within 93 Days.

- (a) If unvested Employer Contributions are returned to the originating fund when the Participant did, in fact, resume participation in a Texas ORP Plan at the Employer or another Texas ORP Employer within 93 calendar days of the last day of the calendar month in which the Severance from Employment occurred, the U.T. System Institution that requested the reimbursement shall, immediately upon being notified of the Participant's resumption of participation in a Texas ORP Plan, return the reimbursed amount to the Provider for re-deposit into the Participant's Account.
- (b) The Texas ORP Employer with which the Participant resumes participation in a Texas ORP Plan, if not the U.T. System Institution that requested the reimbursement, shall notify the U.T. System Institution that requested the reimbursement of the Participant's status as soon as practicable after the Participant resumes participation in a Texas ORP Plan.
- (c) The entire amount of actual Plan Employer Contributions that were returned to the originating fund under the provisions in this Section 3.11 shall be sent back to the Plan Provider. There shall be no allowance for any earnings or losses on the Employer Contributions that may have accrued during the time that the amounts were not in the Participant's Account.

4. VESTING AND PARTICIPATION

4.1 Vesting

A Participant shall be considered vested in the Plan on the first day of the second year of Active Participation in the Plan or in any other Texas ORP Plan.

4.1.1 Year Defined. For purposes of this Section 4, a year shall mean twelve cumulative, but not necessarily consecutive, months of participation in any Texas ORP Plan.

- 4.1.2 Leave-without-Pay. A full calendar month of leave without pay shall not be included in the calculation of a year for vesting purposes.
- 4.1.3 Summer Credit. Because a year for academic faculty members does not normally include the three summer months, an academic faculty member shall be credited the three summer months toward vesting in the Plan provided the faculty member is participating in the Plan at the end of the spring semester immediately preceding the summer and resumes participation in an ORP Eligible Position at the Employer or in a position that is eligible to participate in another Texas ORP Plan at another Texas Public Institution of Higher Education at the beginning of the fall semester immediately following the same summer.
- 4.1.4 More than One Period of Employment. As provided in Section 4.3 partial vesting credit shall be retained when there is a break in participation prior to satisfying the Vesting Requirement. Therefore, the Vesting Requirement may be satisfied during more than one period of participation in any Texas ORP Plan.
- 4.1.5 Non-Texas ORP Plan. The Vesting Requirement may not be satisfied by prior enrollment, participation or vested status in any plan other than a Texas ORP Plan authorized under Texas Government Code, Chapter 830.
- 4.1.6 Separate Vesting. Because the election of participation in a Texas ORP Plan in lieu of TRS at a Texas Public Institution of Higher Education and the election of participation in an optional retirement plan in lieu of ERS at the THECB shall be considered separate and distinct elections, the Vesting Requirement for a Texas ORP Plan (including this Plan) in lieu of TRS may not be satisfied by previous participation or vested status in an optional retirement plan in lieu of ERS at the THECB. The vesting requirement for an optional retirement plan in lieu of ERS at the THECB may not be satisfied by previous participation or vested status in this Plan or in any other Texas ORP Plan in lieu of TRS at a Texas Public Institution of Higher Education.

4.2 Once Vested, Always Vested

- 4.2.1 Only One Vesting Period. A Participant who satisfies the Vesting Requirement for this Plan or any other Texas ORP Plan shall be considered to be vested in this Plan and shall not be required to satisfy the Vesting Requirement again by any Employer or any other Texas Public Institution of Higher Education.
- 4.2.2 Withdrawal of ORP Funds has No Effect. A re-employed Participant's vested status shall not be affected by any partial or total withdrawals of funds from any Texas ORP Plan made after Severance from Employment and termination of employment in all Texas Public Institutions of Higher Education from a prior period of employment.

4.3 Partial Vesting Credit Retained

Unvested Participants shall retain partial vesting credit in the following circumstances.

- 4.3.1 Severance from Employment. A Participant who has a Severance from Employment and terminates employment in all Texas Public Institutions of Higher Education prior to vesting in this Plan shall, upon returning to employment in an ORP Eligible Position or a position eligible for participation in another Texas ORP Plan with the same or a different Texas Public Institution of Higher Education, and provided that such Participant has not had intervening participation in TRS, retain credit for previous participation in this Plan or any other Texas ORP Plan.
- 4.3.2 Leave-Without-Pay. A Participant who goes on leave without pay for a full calendar month or more prior to satisfying the Vesting Requirement shall, upon resuming Active Participation in this Plan or any other Texas ORP Plan with the Employer or a different Texas Public Institution of Higher Education, retain credit for previous participation in this Plan or any other Texas ORP Plan.
- 4.3.3 Direct Transfers. A Participant who, prior to vesting in this Plan, directly transfers from an ORP Eligible Position to another ORP Eligible Position at the same or another U.T. System Institution or to a position that is eligible for participation in another Texas ORP Plan at another Texas Public Institution of Higher Education, shall retain credit for previous participation in this Plan or any other Texas ORP Plan.
- 4.3.4 Withdrawal of ORP Funds has No Effect. A Participant's partial vesting credit shall not be affected by any partial or total withdrawals of funds attributable to Employee Nonelective Contributions from any Texas ORP Plan made after Severance from Employment and termination of employment with all Texas Public Institutions of Higher Education.

4.4 Benefits of Vested Status

- 4.4.1 Rights to Employer Contributions. After vesting, the Employer Contributions in a Participant's Plan Account become nonforfeitable, meaning that, upon a Severance from Employment and termination of employment with all Texas Public Institutions of Higher Education reaching age 70^{1/2}, he or she may access both the Employee Nonelective Contributions and Employer Contributions (and any net earnings) in his or her Plan Account.
- 4.4.2 Participation while in Non-ORP Eligible Position. A vested Participant will continue to participate in the Plan even if subsequently employed in a position that is not an ORP Eligible Position, so long as such position is a Benefits Eligible Position.

4.5 Unvested Employer Contributions Forfeited

A Participant in the Plan who has a Break in Service prior to vesting shall forfeit all Employer Contributions made during that period of employment. Except as provided in Section 3.11.6, forfeited funds shall not be recoverable, even if the Participant later satisfies the Vesting Requirement in a subsequent period of employment that is eligible for participation in a Texas ORP Plan. Such a Participant shall be considered vested only in Employer Contributions made during the subsequent and any future employment periods.

4.6 Employment in a Non-ORP Eligible Position

A Participant who terminates employment in an ORP Eligible Position with a U.T. System Institution and becomes employed in a position with the same or another U.T. System Institution that is not an ORP Eligible Position, but is eligible for TRS participation, shall remain in the Plan or become a member of TRS in accordance with the following provisions.

4.6.1 Not Vested in the Plan or any Texas ORP Plan. A Participant who has not satisfied the ORP Vesting Requirement, who terminates employment with all U.T. System Institutions, and who subsequently becomes employed with the same or another U.T. System Institution or other Texas Public Institution of Higher Education in a position that is not eligible for participation in a Texas ORP Plan and is not otherwise participating in another Texas ORP Plan, but is eligible for participation in TRS, shall become a participant in TRS for the remainder of his or her employment with any Texas Public Institution of Higher Education. This individual shall never be eligible to participate in this Plan or any other Texas ORP Plan again, even if subsequently employed in an ORP Eligible Position or a position eligible for participation in another Texas ORP Plan at a Texas Public Institution of Higher Education and/or if the individual cancels his or her TRS membership by withdrawal of employee contributions following termination of employment from the TRS-covered position.

4.6.2 Vested in ORP. A Plan Participant who has vested in the Plan, who terminates employment in an ORP Eligible Position, and who subsequently becomes employed with any Texas Public Institution of Higher Education in a position that is not eligible to participate in a Texas ORP Plan, but is eligible for TRS membership, shall continue to participate in the appropriate Texas ORP Plan and shall not be eligible for TRS membership, unless he or she terminates employment with all Texas Public Institutions of Higher Education and becomes employed in a TRS-eligible position with the Texas public school system (*e.g.*, Independent School Districts, regional educational service centers) or any other Texas public educational institution or agency that is covered by TRS but does not offer a Texas ORP Plan, which will require the Participant to become a member of TRS. Such an individual (*i.e.*, one who has had active TRS membership since terminating Plan participation), upon becoming subsequently re-employed with the Employer:

- (a) shall not resume participation in the Plan; and

- (b) shall not thereafter be eligible to participate in the Plan ever again, regardless of the individual's previous Plan vested status, employment in an ORP Eligible Position, or if the individual's TRS membership was canceled by withdrawal of employee contributions following termination of employment from the TRS-covered position.

4.7 Employment in a Non-Benefits-Eligible Position

A Participant who terminates employment in the ORP Eligible Position and becomes exclusively employed with the same or another U.T. System Institution or another Texas Public Institution of Higher Education in a Non-Benefits-Eligible Position shall not be eligible to participate in the Plan (*i.e.*, have Plan contributions sent to the Plan Provider(s)) for the period of time while employed in the Non-Benefits-Eligible Position.

An Employee who is participating in the Plan at one U.T. System Institution and who simultaneously becomes employed at another Texas Public Institution of Higher Education in a Non-Benefits-Eligible Position is not eligible to participate in ORP at the institution in which he or she is employed in a Non-Benefits-Eligible Position.

4.7.1 Definition. For purposes of this Section 4.7, a Non-Benefits-Eligible Position shall be defined as a position that is one or more of the following:

- (a) less than 50 percent effort;
- (b) expected to last less than a full semester of at least 4 months or a period of four and one-half months (*i.e.*, temporary); or
- (c) requires student status as a condition of employment.

4.7.2 Combining of Percent Effort at Different Institutions Not Permitted. When calculating an Employee's percent effort to determine whether a position is benefits-eligible as provided in this subsection, the Employer shall include only the individual's employment in that position, unless the Employee is simultaneously employed with more than one U.T. System Institution. In this case, the Employee's percent effort at each U.T. System Institution may be combined to meet the minimum 50 percent effort requirement.

4.7.3 Regardless of Vested Status. An Employee shall not be eligible to participate in the Plan while employed in a Non-Benefits-Eligible Position with respect to such Employee's Compensation attributable to the Non-Benefits-Eligible Position regardless of his or her vested status in the Plan or any other Texas ORP Plan.

4.7.4 No Effect on ORP Eligibility. Because a Non-Benefits-Eligible Position is not eligible for TRS, employment in a Non-Benefits-Eligible Position shall have no effect on an Employee's Plan eligibility status upon his or her subsequent return to a Benefits-Eligible Position, regardless of vested status.

4.8 TRS Membership after Vesting

A vested ORP Participant shall not be thereafter eligible for TRS membership, unless he or she terminates employment with all Texas Public Institutions of Higher Education and becomes employed in a TRS-eligible position with the Texas public school system (*e.g.*, Independent School Districts, regional educational service centers) or any other Texas public educational institution or agency that is covered by TRS but does not offer an ORP plan, which will require the Participant to become a member of TRS. Such an individual, upon becoming subsequently re-employed with any Texas Public Institution of Higher Education:

- 4.8.1 shall not resume participation in the Plan; and
- 4.8.2 shall not thereafter be eligible to participate in the Plan ever again, regardless of the individual's previous Plan vested status, employment in an ORP Eligible Position, or if the individual's TRS membership was canceled by withdrawal of employee contributions following termination of employment from the TRS-covered position.

4.9 ORP Retirees Not Eligible to Participate

ORP Retirees, who later return to employment with the same or another Texas Public Institution of Higher Education (including the Employer), shall not be eligible to participate in the Plan, with the following exceptions:

- 4.9.1 ORP Retirees who enrolled in retiree group insurance (as defined in Texas Insurance Code Section 1601.102) on or before June 1, 1997;
- 4.9.2 Employees who elected to participate in a Texas optional retirement program plan in lieu of ERS at the THECB and who, after terminating employment with the THECB and enrolling in retiree group insurance through the ERS from the THECB, subsequently become employed in an ORP Eligible Position with the Employer;
- 4.9.3 ORP Retirees who enroll in retiree group insurance as part of a phased retirement program.
 - (a) Definition. For the purposes of this subsection, a phased retirement program shall be a locally designed option that is offered by a U.T. System Institution as a means of transitioning active Employees to retired status through a contractual agreement that requires the Employee to meet certain milestones during the contractual period, which is typically one or two years, such as a reduction in percentage of effort and/or enrollment in retiree group insurance prior to Severance from Employment. At the end of the contractual period, the Employee is considered to be in a retired status for all Plan purposes.
 - (b) Exemption. Plan Participants who are covered by a phased retirement program agreement shall remain eligible for ORP Contributions during the

contractual period as long as they maintain a work status of at least 50 percent effort, even after they are required to enroll in retiree group insurance as an ORP Retiree. Once the contractual period has expired, the Participant shall no longer be exempt from the provisions of this Section 4.9.

- 4.9.4 ORP Retirees who meet the exceptions described in sections 4.9.1 through 4.9.3 shall not be considered eligible to participate in the Plan (or elect to participate in another Texas ORP Plan in lieu of TRS from which they did not retire) unless they meet the same eligibility criteria as Employees who have not established ORP Retiree status.

4.10 Termination of Participation

An Employee shall terminate participation in the Plan (a “Termination of Participation”) only upon death (including death occurring on or after January 1, 2007 while performing “Qualified Military Service” as defined by Code section 414(u)), retirement (other than an ORP Retiree meeting the requirements described in Section 4.9.4), Break in Service or Severance from Employment from the Employer and termination of employment with all other Texas ORP Employers.

4.10.1 Employment Transfer is not a Termination. A Participant’s transfer of employment between U.T. System Institutions or between the Employer and other Texas Public Institutions of Higher Education without a Break in Service is not considered a Severance from Employment or termination of employment for Plan purposes.

4.10.2 Transfer of Funds is not a Termination. A Participant’s transfer of Plan funds between Accounts or Plan Providers shall not be considered a Severance from Employment for Plan purposes.

5. BENEFIT DISTRIBUTIONS

5.1 Distributions Due to Termination or Attainment of Age 70½

Except as permitted in Section 8.3 (relating to termination of the Plan), distributions from a Participant’s Account may not be made earlier than the earlier of (i) Termination of Participation (as described in Section 4.10), (ii) attainment of age 70½ or (iii) to the extent permitted by Section 5.1.2.

5.1.1 Upon Termination of Participation or attainment of age 70½, Participants may:

- (a) elect to receive a distribution of funds from his or her Plan Account;
- (b) retain his or her Plan Account; or
- (c) roll the Account as an eligible rollover distribution directly to an eligible retirement plan as specified by the Participant in a direct rollover (as described in Section 5.2 below).

Rollovers are subject to the approval of the receiving vendor or plan. Income tax will have to be paid on any distributed amount from the Plan Accounts.

5.1.2 Special Rule for Distributions During Military Service.

- (a) Effective January 1, 2009, pursuant to Code section 414(u)(12)(B) and to the extent permitted by TEX GOV'T CODE ANN. § 830, an Employee will be treated as having a Severance from Employment for distribution purposes for amounts permitted to be distributed under Code section 414(u)(12) during any period the employee is performing service in the uniformed services described in Code section 3401(h)(2)(A).
- (b) If a Participant elects to receive a distribution by reason of Section 5.1.2(a) of this Plan, or elects to take a distribution from the UTSaver TSA Plan pursuant to its special rules for distributions during military service pursuant to Code section 414(u)(12) (currently found in UTSaver TSA section 5.1.2), then the Employer on behalf of the Participant may not make any Employee Nonelective Contributions to this Plan during the 6-month period beginning on the date of distribution (from either plan). For purposes of notice, the UTSaver TSA Plan also currently contains provisions to the effect that if an UTSaver TSA participant is also a Participant in this Plan and the Participant elects to receive a distribution under this Plan by reason of Section 5.1.2(a), he or she will also be prohibited under the terms of the UTSaver TSA Plan from making any contributions to the UTSaver TSA Plan or this Plan for a period of 6 months from the date of distribution from this Plan.

5.1.3 Special Rule for Distributions Upon Death Occurring During Military Service. In the case of a Participant who dies while performing service in the uniformed services (as defined in Section 3401(h)(2)(A) of the Code) under Section 414(u) of the Code, the Beneficiaries of the Participant, shall to the extent required by Section 401(a)(37) of the Code, be entitled to any additional benefits (other than benefit accruals relating to the period of service in the uniformed services) that would be provided under the Plan had the Participant resumed then terminated employment on account of death.

5.2 Direct Rollover Distributions

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 Code section 414(p)) who is entitled to an "eligible rollover distribution" may elect to have any portion of an eligible rollover distribution (as defined in Code section 402(c)(4)) from the Plan paid directly to an eligible retirement plan (as defined in Code section 402(c)(8)(B)) specified by the Participant in a direct rollover.

An eligible rollover distribution from an Plan account to a Roth IRA applies only to qualified rollover distributions (as defined in Code section 408A(e)(2)) on or after January

1, 2008. In the case of a distribution on or after January 1, 2008, 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 Code section 408(d)(3)(C)).

Each Plan Provider shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant or Beneficiary of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

5.3 Distribution Restrictions

5.3.1 Restricted Access. (a) No Pre-Termination Access unless Age 70^{1/2}. Plan Participants may not access any of their Plan funds by any means until the earlier of the date that they:

- (1) terminate all employment with all Texas ORP Employers;
- (2) reach age 70^{1/2} years; or
- (3) are permitted to receive distributions under Section 5.1.2.

(b) No Loans or Hardship Withdrawals.

Loans or financial hardship withdrawals are not permitted under the terms of this Plan document.

(c) Previously Contributed Amounts. ORP Contributions made during prior periods of employment with a Texas ORP Employer and ORP Contributions made to previously selected Providers with the Employer shall be under the same statutory distribution restrictions as the contributions in the Participant's current active Account.

(d) Employment Transfer is not a Termination. A Participant's transfer of employment between U.T. System Institutions or between the Employer and other Texas Public Institutions of Higher Education without a Break in Service is not considered a Severance from Employment or a termination of employment for Plan purposes.

(e) Transfer of Funds is not a Termination. A transfer of Plan funds between Plan Accounts or Plan Providers is not considered a Severance from Employment for Plan purposes.

(f) Simultaneous Contributions and Withdrawals. A Plan Participant may not simultaneously make ORP Contributions and withdraw funds from ORP Accounts unless that Participant is at least age 70^{1/2}.

5.3.2 Authorization to Distribute Plan Funds. A Plan Provider will not distribute any Plan funds to a Participant until receipt of Vesting/Termination Status notification from the U.T. System Institution at which the Participant is employed that a Break in Service has occurred (or such Participant is permitted to receive distributions under Section 5.1.2), except when the Participant has reached age 70^{1/2}, in which case, the Plan Provider may distribute funds upon verification that the Participant has reached age 70^{1/2}.

- (a) Unvested Participants. If a Participant has a Severance from Employment prior to meeting the Plan's Vesting Requirement, the U.T. System Institution's notification shall include a request for the return of the Participant's forfeited Plan Employer Contributions.
- (b) Vested Participants. If a Participant has a Severance from Employment after meeting the Plan's Vesting Requirement, all Plan funds shall be available in accordance with applicable federal law and Provider's Funding Vehicle contractual provisions, but non-ORP Plan-related early withdrawal penalties, such as additional federal income taxes or Provider contractual surrender fees, may apply depending on factors such as the Participant's product selection and age at termination.

5.3.3 Prohibited Distribution by Plan Provider. If a Plan Provider provides a Participant with any access to Plan funds prior to a time when distributions to the Participant are authorized by this Plan, the Provider shall bear the responsibility for making a prohibited distribution and the following provisions will apply.

- (a) Redeposit. The U.T. System Institution at which the Participant is employed shall require the Provider to:
 - (1) redeposit funds to the Employee's Plan Account as if no withdrawal had been made; and
 - (2) provide written verification to the U.T. System Institution that the Plan Account has been fully restored with no adverse impact to the Employee.
- (b) Provider Suspension. U.T. System may suspend a Provider from doing further business with U.T. System if the Provider fails to comply with the Redeposit provisions above.
- (c) Separate Transaction Not Related to ORP. Any unauthorized distribution made by a Provider, such as a loan that is not authorized under this Plan or Chapter 830, will be deemed to be a payment that is not related to Plan and shall be treated as a separate transaction between the Provider and the Participant (for example, as an unsecured loan).

5.3.4 Qualified Domestic Relations Orders (QDROs). Each Plan Provider is solely responsible for determining whether a domestic relations order is qualified and

payable in accordance with Texas Government Code, Chapter 804 (a “QDRO”). All Plan Participants and alternate payees must contact the respective Plan Providers directly to file the necessary forms to process any QDROs.

Notwithstanding Sections 5.1 and the other provisions of Section 5.3, 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 determined to be a QDRO, 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 QDRO. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Provider will establish reasonable procedures for handling who will determine the status of any such decree or order and for effectuating distribution pursuant to the QDRO.

5.4 Benefit Commencement

5.4.1 Benefit Commencement Date.

- (a) In no event shall any distribution to a Participant begin later than the later of (i) April 1 of the year following the calendar year in which the Participant attains age 72 (effective for distributions made after December 31, 2019 for Participants who reach age 70½ beginning and after January 1, 2020) or (ii) April 1 of the year following the year in which the Participant retires (includes an ORP Retiree) (“Required Beginning Date”) or otherwise has a Severance from Employment.
- (b) In the case of a benefit payable to a Beneficiary, (1) if payable to an Eligible Designated Beneficiary (as defined in Section 5.5.3(d)(1)), December 31 of the calendar year immediately following the calendar year of the Participant’s date of death, (2) if not payable to a Designated Beneficiary, December 31 of the calendar year that contains the fifth anniversary of the Participant’s date of death, (3) if payable to a Designated Beneficiary who is not an Eligible Designated Beneficiary, December 31 of the calendar year that contains the tenth anniversary of the Participant’s date of death or (iv) if payable to the Participant’s spouse, the later of (A) December 31 of the calendar year immediately following the calendar year of the Participant’s date of death or (B) December 31 of the calendar year in which such Participant would have attained the age of seventy-two (or the calendar year in which the Participant would have attained age 70½ in the case of a Participant born before July 1, 1949) unless such surviving spouse dies before the payment is made, in which case this paragraph shall be applied as if the surviving spouse were the Participant.

- 5.4.2 Election of Benefit Commencement Date. A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by a notice filed in accordance with the terms of the Individual

Agreements. However, in no event may distribution of benefits commence later than the date described in Section 5.4.1.

5.4.3 Forms of Distribution. Distributions shall be in such form as permitted by the Individual Agreement for the Participant and the Code. If the Individual Agreement does not provide details on distributions, then distributions shall be in any form permitted by the Code, the Regulations and the Provider, including without limitation as lump sum, annuity contracts and installment payments.

5.5 Required Minimum Distributions

The following shall override any other Plan provision in conflict therewith. Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code, described in more detail below, and the Regulations thereunder in both form and operation. 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 Regulations, except as provided in Section 1.403(b)-6(e) of the Regulations.

5.5.1 Time and Manner of Distribution

- (a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72 (or the calendar year in which the Participant would have attained age 70½ in the case of a Participant born before July 1, 1949), if later.
 - (2) If the Participant's Designated Beneficiary is an Eligible Designated Beneficiary, then distributions to the Eligible Designated Beneficiary must begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If the Participant's Designated Beneficiary is not an Eligible Designated Beneficiary, then the Participant's entire interest must be distributed by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

- (4) If the Participant does not have a Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (5) If the Participant's surviving spouse is the Participant's sole Eligible Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 5.5.1(b), other than Section 5.5.1(b)(1), will apply as if the surviving spouse were the Participant.
- (c) Commencement of Distributions. For purposes of this Section 5.5.1 and Section 5.5.3(a), unless Section 5.5.1(b)(5) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 5.5.1(b)(5) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 5.5.1(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 5.5.1(b)(1)), the date distributions are considered to begin is the date distributions actually commence.
- (d) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 5.5.2 and 5.5.3 of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Regulations.
- (e) Special Rules. If a Participant has more than one Designated Beneficiary and at least one of those beneficiaries is not an Eligible Designated Beneficiary, then the Participant is treated as not having an Eligible Designated Beneficiary; provided, however, that (1) if the Participant's Designated Beneficiary is an Eligible Designated Beneficiary because the Designated Beneficiary is a minor child of the Participant, then the Participant is treated as having an Eligible Designated Beneficiary, even if the Participant has other Designated Beneficiaries who are not Eligible Designated Beneficiaries; (2) if the Participant's Designated Beneficiary is a Type II Applicable Multi-Beneficiary Trust, then the beneficiaries of the trust are treated as Eligible Designated Beneficiaries without regard to whether any of the other trust beneficiaries are not Eligible Designated Beneficiaries; and (3) if the Participant's Designated Beneficiary is a Type I Applicable Multi-Beneficiary Trust, section 401(a)(9) of the Code may be

applied separately with respect to the separate interests of the beneficiaries reflected in the separate trust of each beneficiary provided that the separate accounting rules of section 1.401(a)(9)-8(a)(2) of the proposed Regulations are satisfied.

5.5.2 Required Minimum Distributions During Participant's Lifetime

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
 - (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
 - (2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse who is more than ten years younger than the Participant, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 5.5.2 beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

5.5.3 Required Minimum Distributions After Participant's Death

- (a) Death On or After Date Distributions Begin.
 - (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the greater of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary using the Single Life Table set forth in section 1.401(a)(9)-9 of the Regulations, determined as follows:
 - (i) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is recalculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the Spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
 - (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) Death Before Date Distributions Begin.
 - (1) Participant Survived by Eligible Designated Beneficiary. If the Participant dies before the date distributions begin and there is an Eligible Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Eligible Designated Beneficiary as described in Section 5.5.3(a)(1).
 - (2) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 5.5.1(b), this Section 5.5.3(b) will apply as if the surviving spouse were the Participant.

(c) Special Rules.

(1) Determination of Applicable Denominator.

- (i) Except as provided in (ii), if the Participant has more than one Designated Beneficiary, then the applicable denominator for purposes of this Section 5.5.3 is determined using the Participant's oldest Designated Beneficiary.
- (ii) If the Participant's Designated Beneficiary is a Type II Applicable Multi-Beneficiary Trust, then only the trust beneficiaries described in section 1.401(a)(9)-4(g)(3)(i)(A) of the proposed Regulations are taken into account in determining the Participant's oldest Designated Beneficiary.

(2) Distribution of Participant's Entire Interest Required.

- (i) If a Participant's Designated Beneficiary is not an Eligible Designated Beneficiary, then the Participant's entire interest must be distributed by December 31 of the tenth calendar year following the calendar year of the Participant's death.
- (ii) If there is no Designated Beneficiary under Section 5.5.3(a)(2), then the Participant's entire interest must be distributed by December 31 of the fifth calendar year following the calendar year of the Participant's death.
- (iii) If an Eligible Designated Beneficiary dies before the Participant's entire interest is distributed to such Eligible Designated Beneficiary, then any remaining amounts payable with respect to such Eligible Designated Beneficiary must be distributed to such beneficiary by December 31 of the tenth calendar year following the calendar year of such Eligible Designated Beneficiary's death.
- (iv) If an Eligible Designated Beneficiary is a minor child who reaches the age of majority before the Participant's entire interest is distributed to such Eligible Designated Beneficiary, then any remaining amounts payable to Eligible Designated Beneficiary must be distributed by December 31 of the tenth calendar year following the calendar year in which such Eligible Designated Beneficiary reaches the age of majority.
- (v) If a Designated Beneficiary is an Eligible Designated Beneficiary and the applicable denominator is determined under Section 5.5.3(a)(1)(i), then the Participant's entire interest must be distributed to such Eligible Designated

Beneficiary by December 31 of the calendar year in which the applicable denominator would have been less than or equal to one if it was determined under Section 5.5.3(a)(1)(ii) or (iii).

- (vi) Except as provided in Section 5.5.3(c)(2)(viii) and Section 5.5.3(c)(2)(ix) and with respect to Type I Applicable Multi-Beneficiary Trust that satisfies the separate accounting rules of section 1.401(a)(9)-8(a)(2) of the proposed Regulations, if the Participant has more than one Designated Beneficiary, then Section 5.5.3(c)(2)(i), (iii), (iv) and (v) above shall be applied using the Participant's oldest Designated Beneficiary.
- (vii) If any of the Participant's Designated Beneficiaries is an Eligible Designated Beneficiary who is a minor child, then Section 5.5.3(c)(2)(iii) and (iv) are applied using the oldest of the Participant's Eligible Designated Beneficiaries who is a minor child, and Section 5.5.3(c)(2)(i) and (v) do not apply.
- (viii) If a Participant's Designated Beneficiary is a Type II Applicable Multi-Beneficiary Trust, then only the trust beneficiaries described in section 1.401(a)(9)-4(g)(3)(i)(A) of the proposed Regulations are taken into account in determining the Participant's oldest Designated Beneficiary.
- (ix) If a Participant's Designated Beneficiary is a Type II Applicable Multi-Beneficiary Trust, then Section 5.5.3(c)(2)(iii) applies as if the death of the Participant's Eligible Designated Beneficiary does not occur until the death of the last trust beneficiary who is described in section 1.401(a)(9)-4(g)(3)(i)(A) of the proposed Regulations, and Section 5.5.3(c)(2)(v) does not apply.
- (x) In the event the Participant dies before the Required Beginning Date and the Participant's entire interest must be distributed by December 31 of either the fifth or the tenth calendar year following the calendar year of the Participant's death in accordance with subsection (c)(2)(i) or (ii) above, distributions may be delayed until the end of the applicable period.

(d) Definitions

- (1) Designated Beneficiary. The individual who is designated as the beneficiary under Section 5.7 of the Plan and is the Designated

Beneficiary under section 401(a)(9)(E) of the Code and section 1.401(a)(9)-4(a) of the proposed Regulations.

- (2) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 5.5.1(b). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.
- (3) **Eligible Designated Beneficiary.** A Designated Beneficiary who is a surviving spouse or minor child of the Participant, a disabled or chronically ill individual or any other individual not more than ten years younger than the Participant at the time of the Participant's death pursuant under section 401(a)(9)(E) of the Code and section 1.401(a)(9)-4(e) of the proposed Regulations.
- (4) **Life Expectancy.** Life expectancy as computed by use of the applicable table in section 1.401(a)(9)-9 of the Regulations.
- (5) **Participant's Account Balance.** The account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.
- (6) **Required Beginning Date.** The date specified in Section 5.4.1 of the Plan.
- (7) **Type I Applicable Multi-Beneficiary Trust.** A trust described in section 1.401(a)(9)-4(g)(2) of the proposed Regulations.

- (8) Type II Applicable Multi-Beneficiary Trust. A trust described in section 1.401(a)(9)-4(g)(3)(i) of the proposed Regulations.

5.5.4 Waiver of Required Minimum Distributions

- (a) Notwithstanding Section 5.5 of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions in 2009 but for the enactment of section 401(a)(9)(H) of the Code shall receive or waive such distributions subject to any direct rollover provisions as specified in the terms of each Individual Agreement.
- (b) Notwithstanding Section 5.5 of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions in 2020 but for the enactment of section 401(a)(9)(I) of the Code shall receive or waive such distributions subject to any direct rollover provisions as specified in the terms of each Individual Agreement.

5.6 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 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).

5.7 Beneficiary Information

5.7.1 Beneficiary Designation.

A Participant shall have the right to designate a Beneficiary and amend or revoke such designation at any time prior to commencement of benefits, in writing, in a form approved by the Provider. Such designation, amendment or revocation shall be effective upon satisfactory receipt by the Provider.

5.7.2 Failure to Designate a Beneficiary.

Benefits shall be paid to the Participant's estate if, prior to the date a Participant commences to receive payment of benefits under the Plan, the Participant has not designated a Beneficiary or no Beneficiary survives the Participant and the benefits are payable following the Participant's death.

6. INVESTMENT OF CONTRIBUTIONS

6.1 Manner of Investment

All amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights

shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants 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.

6.2 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 the Individual Agreements and permitted under applicable Regulations and the terms of this Plan.

6.3 Current and Former Providers

U.T. System shall maintain a list of all Providers under the Plan. Such list is hereby incorporated as part of the Plan. Each Provider and the Administrator 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 former Provider, the Employer shall keep the former Provider informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy Code section 403(b) or other requirements of applicable law.

6.4 Provider Contracts

U.T. System will require that its contracts with Providers and the Providers' Individual Agreements with Participants will contain provisions providing that (i) the rights of the Participant under the Individual Agreements are nonforfeitable (subject to the Vesting Requirements of the Plan); (ii) that Annuity Contracts are non-transferable; (iii) that the Individual Agreement will satisfy the minimum distribution requirements of Code section 401(a)(9), the incidental benefit requirements of Code section 401(a)(9), and the rollover distribution rules of Code section 402(c); and (iv) the Provider shall at all times separately account for all non-vested Employer Contributions consistent with the requirements of Code section 403(b) and the Regulations thereunder.

7. COORDINATION OF ADMINISTRATION OF PLAN AND OTHER TEXAS ORP PLANS

7.1 Contract and Custodial Account Exchanges within the Plan

7.1.1 A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Providers under the Plan, subject to the terms of the Individual Agreements; provided, however, that the investment of an existing Account Balance may only be changed or transferred to an investment with a then Currently Authorized Provider under the Plan. An investment change that includes an investment with a Provider that is a former Provider or a Grandfathered Provider is not permitted unless the conditions in Sections 7.1.2 through 7.1.4 are satisfied.

- 7.1.2 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).
- 7.1.3 The Individual Agreement with the receiving Provider has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.
- 7.1.4 U.T. System enters into an agreement with the receiving Provider for the other contract or custodial account under which the Employer and the Provider will from time to time in the future provide each other with the following information:
 - (a) 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 Code Section 403(b), including the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Provider when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5), and
 - (b) 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.
- 7.1.5 If any Provider ceases to be eligible to receive ORP Contributions under the Plan, the Employer will enter into an Information Sharing Agreement as described in Section 7.1.4 to the extent the Employer's contract with the Provider does not provide for the exchange of information described in Section 7.1.4.

7.2 Investment Advisory Fees

Participants may pay certain investment advisory fees with tax-deferred funds in their Plan Account in accordance with the following conditions.

- (1) Investment advisory fees may only be paid with amounts in a Participant's Plan Account in accordance with the following provisions.
 - (a) The investment advisory fees for each fiscal year shall not exceed two percent of the annual value of the Participant's Account as of the last day of that fiscal year.
 - (b) The fees shall be paid directly to a registered investment advisor that provides advice to the Participant.

- (c) The investment advisor to whom the fees are paid shall be registered with the Securities and Exchange Commission and any other applicable federal or state agencies, and shall be engaged full-time in the business of providing investment advice.
 - (d) The Participant and the investment advisor shall enter into a contract for a term of no more than one year. A contract that automatically renews each year shall be considered acceptable as long as both parties have the right to sever the relationship, with reasonable notification, at any time.
- (2) The Employer shall not prohibit Participants from utilizing this right and shall not restrict the payment percentage to less than two percent. The Employer personnel shall not sign a form that actually authorizes the payments because that is a relationship between the advisor, the Participant and the Plan Provider.
 - (3) Investment Advisory Agreement Between Participant and Investment Advisor. An investment advisory contract is deemed to be between the Participant and the investment advisor. The Employer representative will not participate in or sign any agreement, authorization, or other document pertaining to the investment advisory agreements. The Employer representative will not provide investment advice to Participants nor make recommendations with regard to investment advisory agreements or advisors. A decision on investment advisory services is strictly the responsibility of the Participant.

8. 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 Board of Regents of the U.T. System 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, 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 plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Regulations.

9. MISCELLANEOUS

9.1 Non-Assignability

Except as provided in Section 5.3.4 (relating to QDROs) and 9.2, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

9.2 IRS Levy

Notwithstanding Section 9.1, the Provider may pay from a Participant's or Beneficiary's Account Balance the amount that the Provider 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.

9.3 Tax Withholding

Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Employee Nonelective Contributions, which constitute wages under Code section 3121). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including Code section 3401 and the Regulations thereunder). A payee shall provide such information as the U.T. System Institution at which the Participant is employed may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

9.4 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.

9.5 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 U.T. System Institution at which the Participant is employed, 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, to such U.T. System Institution.

9.6 Procedure When Distributee Cannot Be Located

The 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 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 Provider 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.

9.7 Coordination With Other Plans

A Participant's participation in TRS, ERS, any other Texas ORP Plan or any optional retirement plan maintained by THECB (collectively, the "Other Plans") is governed by the terms and conditions of such Other Plan(s) and any inconsistencies with respect to a Participant's participation or rights in such Other Plan(s) shall be resolved in favor of and in accordance with the terms and conditions of such Other Plan(s).

9.8 Coordination With Individual Agreements

The Plan, together with the Individual Agreements, is intended to satisfy the requirements of Code section 403(b) and the 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 Code section 403(b).

9.9 Adoption of Other Policies and Procedures

U.T. System shall have the authority to adopt, amend and terminate all policies and procedures necessary or convenient, as determined by U.T. System, to implement and operate the Plan, provided that all such policies and procedures shall be consistent with the requirements of Code section 403(b).

9.10 Governing Law

The Plan will be construed, administered and enforced according to the Code and the applicable laws of the State of Texas.

9.11 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.

9.12 Gender

Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

9.13 Plan Administration

The Employer reserves the authority to establish policies, rules and regulations as it deems necessary or proper for the administration of the Plan or to comply with applicable law. The Administrator will also have the authority to establish policies, rules and regulations for the Plan as set forth below. The Administrator will have full discretionary power to administer the Plan in all of its details. For this purpose the Administrator's discretionary power will include, but will not be limited to, the following authority:

- (a) to make and enforce such policies, rules and regulations as it deems necessary or proper for the efficient administration of the Plan or required to comply with applicable law;
- (b) to interpret the Plan;
- (c) to keep such records and submit such filings, elections, applications, returns or other documents or forms as may be required under the Code and applicable Regulations, or under other federal, state or local law and regulations; and
- (d) to allocate and delegate its ministerial duties and responsibilities to providers or to other persons or entities and to appoint such agents, counsel, accountants and consultants as may be required or desired to assist in administering the Plan.

***[The remainder of this page is intentionally left blank.
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IN WITNESS WHEREOF, the Employer has caused this Plan to be executed effective as of January 1, 2022.

DocuSigned by:
Jonathan Pruitt
8697D842708140B...
Employer: _____
By: Jonathan Pruitt
Title: UT System
Date signed: 12-27-2022
Effective Date of the Plan: January 1, 2022

EXHIBIT 1.4**Plan Provisions Section****1. Employer Information**

Employer name: The University of Texas System
 Employer address: 210 West 7th Street, Austin, TX. 78701
 Person at Employer to contact: Faye Godwin
 Contact's telephone number: (512) 499-4616

2. Plan name: The University of Texas Optional Retirement Program**3. Plan Effective/Restatement date: January 1, 2022****4. State where Employer is located: Texas****5. The Administrator (see Section 1.4) shall mean the following person(s) or organization and shall perform the following administrative service functions for the Plan:**

<i>Plan Section</i>	<i>Name</i>	<i>Administrative Services Performed</i>
1.27	U.T. System	Maintain and update list of Individual Agreements
2.1	U.T. System Institutions	Identify eligible employees
2.2	U.T. System Institutions	Maintain and provide enrollment
2.2	Provider	Maintain investment elections and other plan participation forms
3.2	U.T. System Institutions	Monitor maximum §415 annual additions (on an aggregated basis)
3.2.1	Provider	Establish and maintain suspense accounts for excess contributions
3.2.3	U.T. System Institutions	Request and collect "controlling interest" information from Participants (for annual addition purposes)
3.3.1	Provider	Maintain separate accounts for rollover contributions into Plan
3.3.3	Provider	For rollover contributions, Provider must require documents necessary from distributing plan to ensure rollover compliance with §402
3.3.3(a)	Provider	For plan to plan transfers into ORP, require documents from transferor plan as necessary to have transfer comply with Reg. §1.403(b)-10(b)(3) and confirm that transferor plan is a plan that satisfies §403(b)
3.3.4(b)	Provider	For plan to plan transfers into ORP, Provider must allow only transfers from other Texas ORP Plans and must impose appropriate restrictions on distributions to Participants or Beneficiaries whose assets are being transferred that are not less stringent than those imposed under the transferor plan

Plan Section	Name	Administrative Services Performed
3.3.4(c)	Provider	For plan to plan transfers out of ORP, Provider must only allow transfers to other Texas ORP Plans and require necessary documentation from the receiving plan to comply with Plan Section 3.3.4 or to effectuate the transfer in compliance with §403(b) Regulations
3.3.5	Provider	Ensure exchanges within the Plan are only to Currently Authorized Providers and exchanges comply with Code Section 403(b), including information sharing requirements
3.10	Provider	Deposit contributions on the same day received
3.11.3(b)(1)	Provider	Responsible for any losses associated with unvested employer contributions
3.11.3(b)(1)	Provider	Certify that the entire amount of unvested employer contributions will be returned upon request
3.11.4	Provider	Must refund unvested employer contributions within 30 days of receipt of notice
5.2	Provider	Responsible for sending required direct rollover notices
5.3.2	Provider	Will not distribute any Plan funds to a Participant until receipt of Vesting/Termination Status notification from the appropriate U.T. System Institution
5.3.3	Provider	Redeposit prohibited distributions and provide notice to UT System employer that participant's account has been restored
5.3.4	Provider	Determine whether QDRO is qualified as defined in Plan
5.4	Provider	Individual Agreements must comply with the MRD requirements
5.4.4	Provider	Calculate MRD amounts for Participants based on information provided by U.T. System and on Participants' Accounts maintained with Provider; notify Participant and U.T. System of MRD amount, and make any required distributions
6.3	U.T. System	Maintain list of Current Authorized Providers, Grandfathered Providers, and Former Providers
6.4	Provider	Contracts must contain non-forfeitable and non-transferable provisions; provisions to satisfy the MRD requirements, the incidental benefit rules and the rollover distribution rules and that provider will separately account for non-vested employer contributions.
7.1	Provider	Ensure exchanges within the Plan are only to Currently Authorized Providers and exchanges comply with Code Section 403(b)
7.2	Provider	Ensure fees charged do not exceed the maximum for investment advisory services and the investment advisor is properly registered and engaged full-time in providing investment advice
9.3	Provider	Responsible for compliance with tax withholding and reporting requirements
9.6	Provider	Make reasonable attempts to locate Participants and Beneficiaries

* "Provider" shall mean each Provider for the Plan, who will be responsible for performing the described administrative service functions for all Accounts maintained by the Provider for any Participants or Beneficiaries under the Plan

6. Valuation Date (see Section 1.54) shall mean:

- Each business day
- The last business day of each month

7. List of Funding Vehicles (see Section 1.24) that are authorized to receive Employer Contributions and Employee Nonelective Contributions under the Plan, including Annuity Contracts and Custodial Accounts offered by (check all that apply):

- AIG Valic
- Fidelity Investments
- ING
- Lincoln Financial
- TIAA-CREF

IN WITNESS WHEREOF, the undersigned individual, as authorized by the Employer, has caused this Plan to be executed this 22 day of December, 2022.

Employer: The University of Texas System

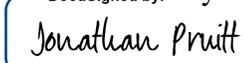
By: 
Title: UT System

EXHIBIT 1.13

PROVIDERS

The Providers for Plan are subject to change from time to time. The Administrator will maintain an updated list of the currently authorized, grandfathered and former Providers for the Plan.

1. Currently Authorized Providers

As of January 1, 2022, the Currently Authorized Providers for the Plan are:

- 1.1. AIG (VALIC) Retirement Services
- 1.2. Fidelity Investments
- 1.3. Voya Financial
- 1.4. Lincoln Financial Group
- 1.5. TIAA-CREF

2. Former Providers

The term “former Providers” refers to Providers who are not currently authorized Providers or grandfathered Providers and are no longer permitted to continue to receive any contributions for Participants under the Plan, as determined by U.T. System. U.T. System maintains a list of documents from former Providers to the extent it has such documents.

EXHIBIT 1.52

U.T. SYSTEM INSTITUTIONS

As of January 1, 2022, the component or constituent institutions of The University of Texas System are:

Universities

1. The University of Texas at Arlington
2. The University of Texas at Austin
3. The University of Texas at Dallas
4. The University of Texas at El Paso
5. The University of Texas of the Permian Basin
6. The University of Texas Rio Grande Valley
7. The University of Texas at San Antonio
8. The University of Texas at Tyler

Health Institutions

9. The University of Texas Southwestern Medical Center at Dallas
10. The University of Texas Medical Branch at Galveston
11. The University of Texas Health Science Center at Houston
12. The University of Texas Health Science Center at San Antonio
13. The University of Texas M. D. Anderson Cancer Center