

**Oregon Public Universities  
Optional Retirement Plan**

**Amended and Restated  
Effective January 1, 2023**

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## PREAMBLE

THIS RETIREMENT PLAN (hereinafter referred to as the “Plan” known as the Oregon Public Universities Optional Retirement Plan) is amended and restated effective as of January 1, 2022, by the University of Oregon (hereinafter “Employer”) for administrative and academic employees of the Employer and the Participating Employers who adopt the Plan.

WHEREAS, the Plan is a money purchase pension plan and the Oregon State Board of Higher Education (hereafter “OSBHE”) established this Plan effective May 17, 1996, to attract and retain Eligible Employees by providing them with an opportunity to save for their retirement; and

WHEREAS, the Plan was formerly called the Oregon State System of Higher Education Optional Retirement Plan and later the Oregon University System Optional Retirement Plan; and

WHEREAS, the Plan was restated effective July 1, 2014 (the “2014 Restatement”), and amended in Amendment No. 1 executed on December 30, 2014 and again restated effective January 1, 2015 (the “2015 Restatement”) and amended in Amendment No. 1 executed on June 21, 2017 and again restated effective January 1, 2018 and amended in Amendment No. 1 and Amendment No. 2, executed September 7, 2021; and

WHEREAS, the Employer assumed sponsorship and fiduciary authority for the Plan, effective as of July 1, 2014; and

WHEREAS, other members and former members of the Oregon University System adopted the Plan as Participating Employers, effective July 1, 2014; and

WHEREAS, the Employer desires to amend and restate the Plan to clarify the operation and administration of the Plan and to incorporate legally-required updates; and

WHEREAS, the Plan shall be maintained for the exclusive benefit of covered Employees, and is intended to comply with the Internal Revenue Code of 1986, as amended, ORS 243.800, and other applicable law; and

WHEREAS, the Plan is exempt from the Employee Retirement Income Security Act of 1974, as amended, and certain provisions of the Internal Revenue Code of 1986, because it is a “governmental plan” as defined therein;

NOW, THEREFORE, except as otherwise specified herein, the Employer does hereby amend and restate the Plan as set forth in the following pages effective January 1, 2022, except that any change required by federal law, including without limitation amendments to the Internal Revenue Code, the Age Discrimination in Employment Act, and regulations or rulings issued pursuant thereto shall be effective on the latest date on which such change may become effective and comply with such laws except as otherwise specified herein. Generally, the rights and benefits of a Participant who terminates employment with the Employer and the Participating Employers will be determined by the Plan provisions that are in effect on the date of termination of employment, particularly with respect to vesting and contributions, to the extent permitted by applicable law.

## **SECTION 1 DEFINITIONS**

The following terms when used herein shall have the following meanings, unless a different meaning is plainly required by the context. Capitalized terms are used throughout the Plan text for terms defined by this and other sections.

### **1.1 Administrator**

“Administrator” means the Employer (the University of Oregon), its Board, and its delegates, including, but not limited to, any Plan committee, Plan trustee, and other delegate of the Employer as applicable.

### **1.2 Annuity Starting Date**

“Annuity Starting Date” means the first day of the first period for which a Plan benefit is payable as an annuity, or any other form.

### **1.3 Beneficiary**

“Beneficiary” means the individual or entity designated, in accordance with Section 5.7, to receive benefits under the Plan in the event of the Participant’s death.

### **1.4 Board**

“Board” means the Board of Trustees of the University of Oregon.

### **1.5 Code**

“Code” means the Internal Revenue Code of 1986, as amended and including all regulations promulgated pursuant thereto.

### **1.6 Commissioned Police Officer**

“Commissioned Police Officer” means an Employee who is a police officer commissioned by a university under ORS 352.383 and who is employed by the university on or after June 23, 2011. However, an Active Participant will not be treated as a Commissioned Police Officer for any part of a calendar month if on any day of the month the Active Participant is both an Active Participant and not a Commissioned Police Officer.

### **1.7 Compensation**

“Compensation” has different meanings, depending on a Participant’s Employer Contribution Tier:

Tier One & Tier Two:

“Compensation” means a Participant’s earned income from the Employer or a Participating Employer, earned while a Participant, including bonuses, overtime and incentive pay, prior to (1) deductions such as voluntary deferred payment arrangements, adjustments for tax sheltered annuities, flexible benefits reimbursement accounts and

other salary reduction agreement amounts, and (2) adjustments for housing, vehicle, moving and representational allowances, and taxable life insurance or other benefits. “Compensation” excludes sick leave, taxable cash elections under a Code Section 125 plan, death benefit payoffs, early retirement bonuses and awards, contract termination settlements and awards, severance pay and other similar post-termination compensation.

Tier Three:

“Compensation” means a Participant’s earned income from the Employer or a Participating Employer, earned while a Participant, including bonuses, overtime and incentive pay, prior to (1) deductions such as voluntary deferred payment arrangements, adjustments for tax sheltered annuities, flexible benefits reimbursement accounts and other salary reduction agreement amounts, and (2) adjustments for housing, vehicle, moving and representational allowances, and taxable life insurance or other benefits. “Compensation” excludes comp pay, compensatory time, and vacation, sick leave, taxable cash elections under a Code Section 125 plan, death benefit payoffs, early retirement bonuses and awards, contract termination settlements and awards, severance pay and other similar post-termination compensation.

Tier Four

“Compensation Means” a Participant’s earned income from the Employer or a Participating Employer, earned while a Participant, including bonuses, overtime and incentive pay, prior to (1) deductions such as voluntary deferred payment arrangements, adjustments for tax sheltered annuities, flexible benefits reimbursement accounts and other salary reduction agreement amounts, and (2) adjustments for housing, vehicle, moving and representational allowances, and taxable life insurance or other benefits. “Compensation” excludes sick leave, taxable cash elections under a Code Section 125 plan, death benefit payoffs, early retirement bonuses and awards, contract termination settlements and awards, severance pay and other similar post-termination compensation. “Compensation” includes payments received for instructional overload, vacation payouts, and paid compensatory time. For purposes of achieving the matched contribution required under ORS 243.800(10)(b), “Compensation” in this Section and for purposes of Tier Four employees, shall be construed to be consistent with the definition of “Compensation” as set forth in Section 1.9 of the Oregon Public Universities Tax-Deferred Investment 403(b) Plan, as amended and restated from time to time.

Notwithstanding the foregoing, annual Compensation in excess of any dollar limitation permitted by the Secretary of the Treasury in accordance with Code Section 401(a)(17)(B) shall be disregarded.

**1.8 Deemed Cash-Out**

Forfeiture of non-vested funds in a Participant’s Employer Contribution Account is a “deemed cash-out.”

### **1.9 Disabled**

“Disabled” and similar terms such as “Disability” means a physical or mental condition of an Employee which results from a bodily injury or disease or mental disorder which entitles the employee to payments under a long-term disability policy or Social Security.

### **1.10 Effective Date**

“Effective Date” means May 17, 1996, the date of adoption of the Plan by the Oregon State Board of Higher Education. The Effective Date of this amended and restated Plan is January 1, 2022, except as otherwise specified herein, and except that any change required by federal law, regulations or rulings issued pursuant thereto shall be effective on the latest date on which such change may become effective and comply with such laws except as otherwise specified herein.

### **1.11 Eligible Employee**

(a) “Eligible Employee” means an administrative or academic Employee working in a Qualifying Position who has not otherwise bargained participation in a retirement plan other than the Plan.

(b) Exclusions

Despite the above provisions of this Section 1.11, “Eligible Employee” excludes without limitation:

- (i) Eligible Employees who do not elect to participate in this Plan, pursuant to the terms and conditions of Section 2.1.
- (iii) Foreign nationals permanently stationed outside of the United States;
- (iv) Persons employed by the Employer or a Participating Employer and defined by such employer as a student employee;
- (v) Aliens on training or educational (F-1) visas and visiting scholar (J-1) visas who are working for the Employer or any Participating Employer; and
- (vii) Employees participating in or eligible to participate in the Federal Thrift Savings Plan with respect to any of their employment with the Employer or a Participating Employer.
- (viii) Employees excluded by virtue of their participation in an Early Retirement Incentive Program.

### **1.12 Employee**

“Employee” means any person employed by the Employer or a Participating Employer in an academic or administrative role. The term “Employee” shall not include a Leased Employee. The term “Leased Employee” means any person (other than a common law employee of the Employer or a Participating Employer) who, pursuant to an agreement between the Employer or a Participating Employer and any other person (“leasing organization”), has performed services for the Employer, a Participating Employer, and/or related persons determined in accordance with Code Section 414(n)(6) on a substantially full-time basis for a period of at least one year, and such services are



performed under the primary direction or control of the Employer or a Participating Employer.

**1.13 Employer**

“Employer” means the University of Oregon.

**1.14 Employer Contribution Account**

“Employer Contribution Account” means an account established and maintained by the Administrator to receive a Participant’s share of Employer Contributions to the Plan other than matching Employer Contributions provided in Section 3.2(b)(ii)(B) (matching Employer Contributions provided in Section 3.2(b)(ii)(B) are credited to the Participant’s ORP Employer Match Account).

**1.15 Employer Contributions**

“Employer Contributions” means the Employer’s or a Participating Employer’s contributions on behalf of Active Participants as provided in Section 3.2.

**1.16 Employer Contribution Tier**

“Employer Contribution Tier” means:

- (a) For Tier One, Tier Two, and Tier Three Active Participants, the Employer Contribution rate applicable to OPERS pension programs that provide discrete groups of employees with different benefits. For example, Tier One employees are generally those hired before January 1, 1996; Tier Two employees are described in ORS 238.430 and are generally those hired on or between January 1, 1996 and August 28, 2003; and Tier Three employees are described in ORS 238A.025 and are generally those hired between August 29, 2003 and June 30, 2014.
- (b) For Tier Four Active Participants, the Employer Contribution rates provided in Section 3.2(b)(ii). A Tier Four Participant is a Participant who was last hired on or after July 1, 2014, by the Employer or a Participating Employer and who when last hired by the Employer or a Participating Employer was:
  - (i) Not a Participant;
  - (ii) A Retired Participant; or
  - (iii) A Tier Four Participant.

A Tier Four Participant will not be treated as a Tier One, Tier Two, or Tier Three Active Participant.
- (c) An Eligible Employee with an Employment Date or Reemployment Date before July 1, 2014, who has previously established and has not lost OPERS membership is assigned an Employer Contribution Tier that is equivalent to the applicable OPERS or OPSRP tier that would be assigned if the employee had not elected to enroll in the Plan. An Eligible Employee with an Employment Date or Reemployment Date on or after July 1, 2014, who has established OPERS membership prior to their Employment Date or Reemployment Date and has not lost OPERS membership as of

their Employment Date or Reemployment Date, is assigned to an Employer Contribution Tier that is equivalent to the applicable OPERS or OPSRP tier that would be assigned if the employee had not elected to enroll in the Plan. Any other Eligible Employee with an Employment Date or Reemployment Date on or after July 1, 2014, will be a Tier Four Participant.

(d) Post-Doctoral Scholars shall participate in a separate tier from other Active Participants as set out in Section 1.29 below.

**1.17 Employment Date or Reemployment Date**

“Employment Date” or “Reemployment Date” means the effective date of the appointment for a faculty member. For all other Employees, the Employment Date or Reemployment Date is the first day on which an Employee first completes an hour of service for the Employer or a Participating Employer as an Eligible Employee, during the current period of employment.

**1.18 Forfeiture Account**

“Forfeiture Account” means the ORP Forfeiture Account held in trust by the Administrator, including account balances returned to the Plan through “Deemed Cash-Out” or other forfeiture events.

**1.19 Fund Sponsor**

“Fund Sponsor” means one or more companies or other entities which provide authorized Funding Vehicles for investment and recordkeeping of Participants’ Accounts.

**1.20 Funding Vehicles**

“Funding Vehicles” mean deferred annuities or participation units in an investment option provided by a Fund Sponsor for the purpose of funding benefits under the Plan. As of the Effective Date, authorized Funding Vehicles include all Funding Vehicles which the Fund Sponsor makes available for investment by qualified retirement plans. The Administrator reserves the right to add or delete authorized Funding Vehicles from time to time subject to the approval of the Administrator.

**1.21 Normal Retirement Age**

“Normal Retirement Age” means the first day of the month coinciding with or immediately preceding the Participant’s fifty-fifth (55th) birthday.

**1.22 ORP Employer Match Account**

“ORP Employer Match Account” means an account established and maintained by the Administrator to receive a Participant’s share of matching Employer Contributions provided in Section 3.2(b)(ii)(B).

**1.23 Participant**

“Participant” means any individual whose election under Section 2.1 to participate in the Plan has become effective and who’s account balance has not been fully distributed. A Participant’s status may be:

- (a) **Active.** A Participant’s status is “Active” if the Participant is currently an Eligible Employee.
- (b) **Inactive.** A Participant’s status is “Inactive” if the Participant is (i) not currently an Eligible Employee, and (ii) the Participant has not received a full disbursement of vested benefits.
- (c) **Retired.** A Participant’s status is “Retired” if the Participant has (1) terminated employment with the Employer and all Participating Employers, (2) reached the Normal Retirement Age, and (3) requested a disbursement of vested benefits. OPERS retirement does not confer retiree status on a Plan Participant.

For purposes of this Section 1.23, a Participant shall be deemed terminated as an Eligible Employee if the participant is participating in a Qualifying Retirement Incentive Program.

**1.24 Participant Contribution Account**

“Participant Contribution Account” means an account established and maintained by the Administrator to receive Participant Contributions to the Plan.

**1.25 Participant Contributions**

“Participant Contributions” means the Employer’s or a Participating Employer’s contributions on behalf of Active Participants as provided in Section 3.2.

**1.26 Participating Employer**

“Participating Employer” means any public university in the State of Oregon that formally adopts the Plan as provided in Section 11. The Participating Employers are:

- 1. Oregon State University;
- 2. Portland State University;
- 3. Eastern Oregon University;
- 4. Western Oregon University;
- 5. Southern Oregon University; and
- 6. Oregon Institute of Technology.

**1.27 Plan**

“Plan” means the Oregon Public Universities Optional Retirement Plan, either in its present form or as amended from time to time.

**1.28 Plan Year**

“Plan Year” means the calendar year.

**1.29 Post-Doctoral Scholar**

“Post-Doctoral Scholar” means a person employed in a Qualifying Position designated by the Employer or a Participating Employer as a post-doctoral scholar position, which requires a doctoral or equivalent degree, provides a temporary and defined period of employment with the Employer or Participating Employer, and provides clinical or academic research training under formal mentorship. For this purpose, “formal

mentorship” means a training and mentoring program that is set forth in writing, is directed by a faculty member of the Employer or Participating Employer, and teaches professional research skills needed to pursue the Post-Doctoral Scholar’s anticipated career path in accordance with the requirements necessary for funding of sponsored research projects, including for Post-Doctoral Scholars.

Post-Doctoral Scholars are academic employees under the Plan and shall be an Eligible Employee on the latest of the following dates:

- (a) January 1, 2018; or
- (b) The first day of the month following the date of the Employee’s enrollment in the Oregon Public Universities Tax-Deferred Investment 403(b) Plan, as amended and restated from time to time; or
- (c) The first day of the month following the Employee’s completion of six hundred (600) hours of service and six (6) months of employment that is not interrupted by more than thirty (30) consecutive working days.

### **1.30 Qualifying Retirement Incentive Program**

“Qualifying Retirement Incentive Program” means an early retirement incentive or tenure relinquishment/reduction programs, which states that they are eligible for distributions and/or cannot receive contributions under the Plan, so long as there has been a bona fide severance from employment from the Employer and all Participating Employers.

### **1.31 Qualifying Position**

“Qualifying Position” means one or more jobs with the Employer or a Participating Employer in which the Employee performs six hundred (600) or more hours of service in a calendar year, or the equivalent of such as set forth below and 6 months of employment that is not interrupted by a more than 30 consecutive working days, except as set forth below. However, for purposes of determining:

- (a) The initial eligibility for participation under Section 2.1 of an Employee whose election under Section 2.1 became effective on or after November 1, 2013; and
- (b) The period under Section 2.3(c)(i) during which an Employee reemployed by the Employer or a Participating Employer on or after May 16, 2013, will be ineligible for contributions under Sections 3.1 and 3.2,

An Employee is expected to perform six hundred (600) or more hours of service in a calendar year if at all times during each of the six (6) full calendar months described in Section 2.1 or 2.3(c)(i) the Employee is employed in one or more of the following positions:

- (a) In a twelve (12) month fixed-term appointment of at least 0.3 full-time equivalent (FTE);
- (b) In a nine (9) month fixed-term appointment of at least 0.4 FTE; or

- (c) In a more than nine (9) month and less than twelve (12) month fixed-term appointment, or in a non-fixed-term appointment, in which the Employee performs 50 or more hours of service during each of such six (6) full calendar months.

In the event an Employee who is not appointed to a 9-month 0.4 FTE or 12-month 0.3 FTE does not work a full 50 hours due to an Employer's or a Participating Employer's temporary closure, the hours that the Eligible Employee would have worked but for the closure are counted as time served.

In the event an Employee's first six (6) calendar months of employment are interrupted by a summer break and the Employee is expected to be working at least fifty (50) hours per month during the fall term, the Employee's hours of service during the month preceding the summer break and the month following the summer break shall be combined as if those two months were a single month for purposes of the fifty (50) hour threshold and the six-month waiting period, the summer break shall not be considered a break in service for purposes of initial eligibility, and the Employee may commence participation on the first of the month after satisfying both the six-month waiting period and the requirement above to work at least fifty (50) hours per month in six months.

### **1.32 Rollover Account and Post-Tax Transfer Account**

"Rollover Account" means an account established by the Administrator and maintained by the Fund Sponsor at the direction of the Administrator to receive Participant pre-tax rollovers to the Plan and pre-tax funds transferred from OPERS to the Plan, pursuant to Section 3.3.

"Post-Tax Transfer Account" means an account established and maintained by the Fund Sponsor at the direction of the Administrator to receive after-tax funds transferred from OPERS to the Plan pursuant to Section 3.3.

### **1.33 Valuation Date**

"Valuation Date" means the last business day in December and any other day which the Administrator may designate from time to time.

### **1.34 Year of Service**

"Year of Service" for a Participant means (i) each Plan Year for which Employer Contributions are made to the Plan for such Participant, and (ii) each year in which the Employee was a member of OPERS while employed by the Employer or a Participating Employer and during which contributions were made to the Employee's OPERS account.

## SECTION 2

### PARTICIPATION

#### 2.1 Initial Eligibility for Participation

Each Eligible Employee hired after the May 17, 1996, may irrevocably elect, on an election form timely provided by the Employer or a Participating Employer, to participate in the Plan, in lieu of active membership in the OPERS, within the first six (6) months after their Employment Date as an Employee.

- (a) An election under this Section 2.1 shall be effective on the first day of the month following the completion of six (6) full calendar months of employment with the Employer or a Participating Employer as an Eligible Employee. Where the Employer or a Participating Employer does not provide timely notice of an Eligible Employee's option to elect the Plan, this clerical error will be corrected by allowing retroactive enrollment in the Plan, to the date of initial eligibility, as soon as administratively practical following the Eligible Employee's completion of an election form.
- (b) The required six-month waiting period is six full calendar months of service with the Employer or Participating Employer of the Plan. In the event an Employee's first six (6) calendar months of employment are interrupted by a summer break or an official, approved leave of absence, and the Employee is expected to be working at least 50 hours per month during the fall term, the Employee's hours of service during the month preceding the summer break and the month following the summer break shall be combined as if those two months were a single month for purposes of the 50-hour threshold and the six-month waiting period, the summer break shall not be considered a break in service for purposes of initial eligibility, and the Employee may commence participation on the first of the month after satisfying both the six-month waiting period and the requirement above to work at least 50 hours per month in six months.
- (c) An Eligible Employee's election to participate in this Plan is irrevocable upon receipt by the Employer or any Participating Employer. An Eligible Employee's irrevocable election to participate in the Plan applies to all subsequent employment so long as the Participant is employed an Eligible Employee of by the Employer or any Participating Employer. Unless the Eligible Employee did not timely receive an election form from the Employer or an Eligible Employer, an Eligible Employee's failure to elect participation in this Plan shall be deemed an irrevocable election to become or remain a member of OPERS.
- (d) Upon becoming a Participant in the Plan, a Participant's benefits under the Plan and participation in the Plan are by the terms and conditions of the Plan, regardless of participation or status in or the terms and conditions of any other qualified retirement plan, including OPERS.

## 2.2 Sabbatical and Special Leave

Temporary appointment to sabbatical or special leave does not disqualify an otherwise Eligible Employee or terminate participation in the Plan or eligibility for contributions based on Compensation for the period of leave.

## 2.3 Reemployment after Termination

In the event an Employee terminates eligible employment with the Employer and all Participating Employers, or becomes Retired, and is subsequently reemployed, as an Eligible Employee, by the Employer or any Participating Employer:

- (a) Such Employee's original election, whether to participate in this Plan or to be a member of OPERS, shall remain in effect.
- (b) Such Employee, if otherwise eligible, will be eligible for contributions under Sections 3.1 and 3.2 immediately after the Reemployment Date, but only if no vested benefit was distributed for the Employee (other than to or for an alternate payee under a Qualified Domestic Relations Order as defined in Section 7.1) before the Reemployment Date and the Employee:
  - (i) Is an Inactive Participant immediately before the Reemployment Date; and
  - (ii) Is not and has not been a Retired Participant who participated in a retirement incentive program of the Employer or a Participating Employer as described in Section 1.23(c).
- (c) If such Employee does not satisfy the requirements in subparagraph (b) above:
  - (i) Such Employee will be ineligible for contributions under Sections 3.1 and 3.2 for the period beginning with the Reemployment Date and ending with the completion of the first period of six (6) full calendar months of reemployment in a Qualifying Position during which reemployment is not interrupted by more than thirty (30) consecutive working days.
  - (ii) If such Employee is or has been a Retired Participant who participated in a Qualifying Retirement Incentive Program of the Employer or a Participating Employer as described in Section 1.30:
    - (A) The Employee will also be ineligible for contributions under Sections 3.1 and 3.2 for the period beginning with the date recorded in the records of the Employer or a Participating Employer as the date the Employee terminated employment under the retirement incentive program and continuing during the Employee's participation in the retirement incentive program; and
    - (B) The Employee's Reemployment Date will not begin before the end of the period of the Employee's participation in a Qualifying Retirement Incentive Program and, for purposes of Section 1.16, the Employee will be treated as last hired by the Employer no earlier than when the Employee's reemployment begins for purposes of Sections 2.3(c) and 2.3(e).

- (d) Any contributions under Sections 3.1 and 3.2 on behalf of an Employee who is an Inactive but not a Retired Participant immediately before reemployment will, during the reemployment, be at the Employee's Employer Contribution Tier when the Employee was last an Active Participant before the reemployment.
- (e) Any contributions under Sections 3.1 and 3.2 on behalf of a Retired Participant, or on behalf of an Employee who was not a Participant immediately before the reemployment because the Employee's participation had ceased under Section 2.4, will, during the reemployment, be at the Employer Contribution Tier for an Active Participant who is first employed with the Employer or a Participating Employer at the time of the Employee's reemployment.
- (f) If the Employee has not previously made an election regarding participation in this Plan, the Employee shall be eligible to elect participation upon meeting the requirements of Section 2.1.

## **2.4 Qualified Military Service**

Notwithstanding any provision of the Plan to the contrary:

### **(a) General Rule**

Contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

### **(b) No Benefit Accrual By Reason of Death or Disability**

The Plan will not apply Code Section 414(u)(9) (about treatment in the case of death or disability resulting from active military service) as added by section 104(b) of Public Law No. 110-245, the Heroes Earnings Assistance and Relief Tax Act of 2008; and therefore, for benefit accrual purposes, the Plan will not treat an individual who dies or becomes disabled while performing qualified military service with respect to the Employer or a Participating Employer as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.

### **(c) Benefits By Reason of Death, Other Than Benefit Accrual**

In the case of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed and then terminated employment on account of death.

### **(d) Differential Wage Payments**

Only to the extent required by Code Section 414(u)(12)(A) an individual receiving a differential wage payment will be treated as an Employee of the Employer (or the Participating Employer) making the payment, and the differential wage payment will be treated as compensation. A differential wage payment is any payment that:



- (i) Is made by the Employer (or the Participating Employer) to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days; and
- (ii) Represents all or a portion of the wages the individual would have received from the Employer or Participating Employer if the individual were performing service for the Employer or Participating Employer.

This Section does not entitle any individual to a differential wage payment.

## SECTION 3

### PLAN CONTRIBUTIONS

#### 3.1 Participant Contributions (Tier One, Tier Two, and Tier Three)

The Employer or Participating Employer shall make a monthly Participant Contribution on behalf of each Tier One, Tier Two, and Tier Three Active Participant in an amount equal to the percentage of the Employee's Compensation that the Employee would have contributed as an employee contribution to the OPERS if the employee had not elected to participate in this Plan. Such Participant Contribution shall be made either on a nonelective salary reduction basis or as an additional Employer-funded or Participating Employer-funded contribution.

- (a) Consistent with Internal Revenue Service revenue rulings under Code Section 414(h)(2), all Participant Contributions may be picked up by the Employer or a Participating Employer as described in Code Section 414(h)(2).

#### 3.2 Employer Contributions (Tier One, Tier Two, Tier Three, and Tier Four)

The Employer or a Participating Employer shall make a monthly Employer Contribution on behalf of each Active Participant in an amount determined below.

- (a) For Tier One, Tier Two and Tier Three Active Participants, the Employer contribution rate shall be equal to the percentage of the Employee's Compensation that the Employer or a Participating Employer would have contributed as an Employer Contribution on behalf of the Employee to the OPERS, before any offset under ORS 228.229(2), if the employee had not elected to participate in the Plan.
- (i) This Plan's Employer Contribution rates for Tier One and Tier Two Active Participants are the sum of the percentages of salary for the following components of the OPERS employer contribution rate:
- (1) Pension normal cost rate.
  - (2) Pension Tier One/Tier Two unfunded actuarial liability rate.
  - (3) Pension pre-State and Local Government Rate Pool pooled liability rate.
  - (4) Pension transition liability/(surplus) rate.
  - (5) Retiree healthcare normal cost rate.
  - (6) Retiree healthcare unfunded actuarial liability rate.

Excluding pension unfunded actuarial liability costs for liability pools associated with PERS tiers other than the Participant's PERS tier.

- (ii) This Plan's Employer Contribution rates for Tier Three Active Participants are the sum of the percentages of salary for the following components of the OPERS employer contribution rate:
  - (1) Pension normal cost rate.
  - (2) Pension OPSRP unfunded actuarial liability rate.
- (b) The Employer or a Participating Employer shall make an Employer contribution on behalf of each Tier Four Active Participant at the rates provided below.
  - (ii) The Plan's Employer Contribution rates for Tier Four Active Participants in this Plan are the following percentages of the Participant's Compensation:
    - (A) Eight percent (8%), credited to the Participant's Employer Contribution Account; plus
    - (B) A matching percentage of Compensation contributed by the Participant to the Oregon Public Universities Tax-Deferred Investment 403(b) Plan under ORS 243.820, up to four percent (4%) of the Participant's Compensation in each pay period (i.e., the percentage match under this Section will be determined separately with respect to each pay period, not by aggregating pay periods), credited to the Participant's ORP Employer Match Account.
  - (c) The Plan's Employer Contribution rate for Post-Doctoral Scholars in this Plan shall be the percentage of the Participant's Compensation contributed by the Participant to the Oregon Public Universities Tax-Deferred Investment 403(b) Plan under ORS 243.820, up to four percent (4%) of the Participant's Compensation in each pay period (i.e., the percentage match under this Section 3.2(c) will be determined separately with respect to each pay period, not by aggregating pay periods).

### **3.3 Participant Rollovers and OPERS Transfers**

A Participant may request in writing on forms provided by a Fund Sponsor that the Fund Sponsor accept a rollover as provided in this Section. The Fund Sponsor shall accept the rollover amount subject to the following terms and conditions:

- (a) The amount must be a direct rollover or must be deposited with the Fund Sponsor within sixty (60) days after the Participant's receipt of the distribution from another qualified plan or IRA;
- (b) A rollover of any type of property other than cash will not be accepted;
- (c) Prior to accepting a direct rollover from a qualified plan or other rollover, the Employee shall provide the Fund Sponsor with any information necessary to determine whether the Plan can accept the proposed rollover amount.

The Fund Sponsor shall accept direct rollovers, or deposits within sixty (60) days after the Participant's receipt of a distribution, from a qualified plan, excluding after-tax employee contributions; an annuity contract described in Code Section 403(b), excluding

after-tax employee contributions; an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or an Individual Retirement Arrangement Annuity (IRA) described in Code Section 408(a) or (b), excluding after-tax Employee contributions.

A rollover amount shall be allocated to a Participant's Rollover Account. The Rollover Account shall be a fully vested account subject to the same terms of the Plan as other amounts in the Participant's Participant Contribution Account.

Notwithstanding Section 2, if an Eligible Employee rolls over an amount into this Plan but never satisfies the participation requirements of Section 2, the Eligible Employee shall be considered a Participant only with respect to the Rollover Account, and such amount shall be distributed in accordance with Section 5.4 upon termination of employment.

A Fund Sponsor, as selected by the Participant, or as designated by the Administrator if the Participant has not selected a Fund Sponsor approved for receipt of the transferred funds, shall accept funds transferred from OPERS on behalf of a Participant who is a former OPERS member, pursuant to ORS 243.815(6) and (7). All transferred pre-tax amounts shall be allocated to the Participant's Rollover Account; after-tax monies received by a Fund Sponsor shall be allocated to a separate Post-Tax Transfer Account.

### **3.4 Payment**

The Administrator shall remit Plan contributions to the Fund Sponsor selected by a Participant, or to the default Fund Sponsor designated by the Administrator if the Participant has not selected a valid Fund Sponsor.

Any determination as to the amount of Plan contributions by the Employer or a Participating Employer which is evidenced by a remittance and statement delivered to the Fund Sponsor is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contributions payment.

### **3.5 No Reversion**

Except for circumstances involving the proper application of forfeitures, under no circumstances or conditions will any Plan contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the Employer or any Participating Employer; except, in the event that erroneous Plan contributions are made by the Employer or a Participating Employer by mistake of fact. Erroneous Plan contributions made due to mistake of fact may be returned to the Employer or such Participating Employer within one year of the date that such Plan contributions were made. The amount of the erroneous contribution returned shall be limited to

- (a) the amount of erroneous excess contributions, meaning,
- (b) the amount actually contributed,
- (c) less the amount, if any, which should have been properly contributed, and

- (d) less the amount, if any, of losses attributable to such erroneous excess contributions.

Under no circumstances will any earnings attributable to amounts erroneously contributed be included in the amount of erroneous contributions returned to the Employer or a Participating Employer.

### **3.6 Maximum Contribution**

(a) General

Notwithstanding any Plan provision to the contrary, the total Annual Additions made on behalf of any Participant for any calendar year will not exceed the lesser of the dollar limit in Code Section 415€(1)(A), as adjusted in accordance with Code Section 415(d), or 100% of the Participant’s 415 Compensation for the year.

(e) Aggregated Defined Contribution Plans

In the case of any Participant in more than one defined contribution plan of the Employer or a Participating Employer (within the meaning of Code Section 414(b), (c), (m), and (o), after applying Code Section 415(h)), all such plans will be treated as one plan, and the maximum Annual Addition to the Participant’s accounts under this Plan as provided above will be reduced, to the extent required to comply with Code Section 415, by the aggregate of the amount of the Annual Additions to the Participant’s accounts under such other plans.

(f) €Incorporation by Reference

The limitations in this Section will be applied according to adjustments described in and the provisions of Code Sections 415 and 419A(d) and Treasury Regulations and guidance by the Internal Revenue Service under Code Sections 415 and 419A(d) (including the effective dates of such adjustments and provisions), which are incorporated into this Plan by this reference, including without limitation the adjustments described in and the provisions of Code Sections 415€ (about limitations for defined contribution plans) and 415(d) (about COLAs). As provided in Treas. Reg. Section 1.415(a)-1(d)(3)(ii), this Plan will be applied according to the default rules under Code Section 415 except where this Plan specifies a permitted optional manner in which Code Section 415 is to be applied in variance from the default rule.

(g) “415 Compensation” Defined

This Section defines “415 Compensation” only for purposes of the limit on Annual Additions in this Section. “415 Compensation” is not relevant to defining “Compensation” for purposes of contributions under Sections 3.1 and 3.2.

- (h) “415 Compensation” means those items specified in Treas. Reg. Section 1.415€-2(b)(1).
- (ii) However, “415 Compensation” excludes all those items listed in Treas. Reg. Section 1.415€-2€.

- (iii) The amounts included in a Participant's 415 Compensation will be based on such amounts from the employer (within the meaning of Code Section 414(b), (c), (m), and (o), after applying Code Section 415(h)).
- (iv) 415 Compensation for any calendar year is the 415 Compensation (as defined in the above provisions of this Section) actually paid or made available to the Participant (or, if earlier, includible in the gross income of the Participant) during such year. For this purpose:
  - (A) Compensation is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Code Section 125(a), 132(f)(4), 402€(3), 402(h)(1)(B), 402(k), or 457(b).
  - (B) Except as provided in Section 3.6(d)(v), 415 Compensation includes only those amounts described in the above provisions of this Section that are:
    - (1) Paid or treated as paid to the Participant (in accordance with the above provisions of this Section) before the Participant's severance from employment (as defined in Treasury Regulation Section 1.415(a)-1(f)(5)) with the employer; or
    - (2) Paid after such severance and by the later of 2½ months after such severance or the end of the calendar year that includes the date of such severance and which:
      - (I) Are regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
      - (II) Would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the employer.

Thus 415 Compensation does not include severance pay if paid after the Participant's severance from employment with the Employer and all Participating Employers.
- (v) 415 Compensation also includes amounts described in Treas. Reg. Section 1.415€-2€(3)(iii) (about leave cash outs and deferred compensation) that satisfy the requirements in Treas. Reg. Section 1.415€-2€(3)(i)(A) and (B). 415 Compensation includes amounts described in Treas. Reg. Section 1.415(c)-2€(4) (about salary continuation payments for military service and disabled participants). The rule of Treas. Reg. Section 1.415(c)-2(g)(4) (treating certain amounts as 415 Compensation for a disabled participant) applies with respect to any Participant who is not a highly compensated employee (as defined in Code Section 414(q)) immediately before becoming disabled.

(vi) Annual 415 Compensation in excess of any dollar limitation permitted by the Secretary of the Treasury in accordance with Code Section 401(a)(17)(B) shall be disregarded.

(i) Annual Addition

For purposes of this Section 3.6, “Annual Addition” means the sum, credited to a Participant’s account for any Limitation Year, of:

- i. Employer Contributions made by the Employer and all Participating Employers;
- ii. employee contributions;
- iii. forfeitures; and
- iv. any other amounts required by Treasury regulations to be treated as Annual Additions under Code Section 415(c).

## **SECTION 4**

### **ACCOUNT ADMINISTRATION**

#### **4.1 Types of Participant Accounts**

All contributions shall be made to a Fund Sponsor which shall maintain the following types of accounts (herein called “Accounts” or collectively “Account”) for each Participant:

- (a) Participant Contribution Account
- (b) Employer Contribution Account
- (c) ORP Employer Match Account
- (d) Rollover Account
- (e) Post-Tax Transfer Account

#### **4.2 Forfeiture Account**

Assets in the Employer Contribution Accounts of non-vested Participants are forfeited upon termination of the Participants’ employment with the Employer and all Participating Employers. Forfeited amounts are temporarily maintained in segregated accounts by the Fund Sponsors until transferred to an ORP Forfeiture Account held in trust by the Administrator.

#### **4.3 Selection of Fund Sponsor and Funding Vehicles**

Subject to any limitations or designations pursuant to this Plan, Participants shall select a Fund Sponsor to invest their Participant Accounts in one or more Funding Vehicles in the manner required by the Fund Sponsor and Administrator.

- (a) The Administrator may select a Fund Sponsor to receive all amounts credited to Participants’ Accounts until otherwise designated by the Participant, if permitted by the Administrator. If a Participant has not selected a Fund Sponsor, the Participant’s Accounts shall be invested with the Fund Sponsor designated from time to time by the Administrator as the default Fund Sponsor. For the purposes of the Plan other than this paragraph, the Fund Sponsor in which the Participant’s Accounts are invested shall be deemed to be the Fund Sponsor selected by the Participant.
- (b) If a Participant has not notified the Fund Sponsor, in a manner designated by the Fund Sponsor, of their Funding Vehicle selection for any amount of the Participant’s Accounts held by the Fund Sponsor, the Fund Sponsor shall invest, at the direction of the Plan, that amount in the one or more of the Fund Sponsor’s Funding Vehicles designated from time to time by the Administrator for this purpose. For the purposes of the Plan other than this paragraph, those one or more Funding Vehicles in which an amount of the Participant’s Accounts is invested shall be deemed to be Funding Vehicles selected by the Participant.



#### **4.4 Changing Fund Sponsor or Funding Vehicle for Future Contributions**

A Participant's investment selection with respect to a Fund Sponsor and Funding Vehicle shall remain effective with regard to all subsequent amounts credited to the Participant's Accounts until changed by the Participant at the dates and times permitted by the Fund Sponsor and the Administrator.

#### **4.5 Transfer of Existing Balances Between Fund Sponsors**

Subject to the rules and procedures established by a Fund Sponsor, the Administrator, and the Code, if any, a Participant may transfer all or part of the balance in the Participant's Accounts to another approved Fund Sponsor at the dates, times, and in the manner specified by the Fund Sponsor. The Administrator may limit, restrict, or require such transfers when, in the opinion of the Administrator, such action is in the best interest of the Plan or the Participants considered as a whole.

Subject to the rules and procedures established by a Fund Sponsor, the Administrator, and the Code, the Administrator may cause all or part of the balance in the Participant's Accounts to be transferred to another approved Fund Sponsor, and may designate which Fund Sponsor will receive the transfer and subsequent amounts credited to the Participant's Accounts, when, in the opinion of the Administrator, such action is in the best interest of the Plan or the Participants considered as a whole.

#### **4.6 Transfer of Existing Balances Between Funding Vehicles of a Fund Sponsor**

Subject to the rules and procedures established by a Fund Sponsor, the Administrator, and the Code, a Participant may transfer all or part of the balance in their Accounts to another authorized Funding Vehicle of the same Fund Sponsor at the dates, times, and in the manner specified by the Fund Sponsor.

Subject to the rules and procedures established by a Fund Sponsor, the Administrator, and the Code, the Administrator may cause all or part of the balance in the Participant's Accounts to be transferred to an authorized Funding Vehicle of the same Fund Sponsor, and may designate which Funding Vehicle will receive the transfer and subsequent amounts credited to the Participant's Accounts, when, in the opinion of the Administrator, such action is in the best interest of the Plan or the Participants considered as a whole.

#### **4.7 Transfers from Restricted or Discontinued Funding Vehicles**

In the absence of an election by a Participant and subject to the terms of any agreement between the Fund Sponsor and the Participant, the Administrator or its delegate, may authorize or require the transfer of Account balances from restricted or discontinued Funding Vehicles to other authorized Funding Vehicles. The Employer, the Participating Employers, the Administrator, and any applicable third party will not be liable for the selection, designation, or investment results of any Fund Sponsor or Funding Vehicle.

#### **4.8 Selection or Designation of a Fund Sponsor**

To the greatest extent permissible by law, the Employer, the Participating Employers, the Administrator, and any applicable third party will not be liable for the Participant's or

their authorized investment manager's selection or designation of a Fund Sponsor, Funding Vehicle, and the investment results therefrom, including a deemed selection of a Fund Sponsor or Funding Vehicle.

**4.9 Valuation of the Trust Fund**

The fair market value of the Trust Fund shall be determined as of each Valuation Date and at any time specifically requested by the Administrator. Any portion of the Trust Fund held under an insurance contract or bank investment contract in which asset values are maintained only on a book value basis shall have that portion of the Trust Fund valued at book value rather than market value.

**4.10 Allocation of Forfeitures**

Amounts forfeited from an Employer Contribution Account pursuant to Section 6, if any, by any Participant shall be applied in the following order: to reinstate forfeitures pursuant to Section 6.2; to pay Plan expenses; and to reduce the next Employer Contributions.

**4.11 Account Statements**

Each Participant shall be provided with a statement of their Accounts under the Plan showing the Account values as of each Valuation Date. If within thirty (30) days after the statement is mailed or posted to the Participant's online account the Participant makes no objection to the statement, it shall become binding and conclusive on the Participant and any Beneficiary.

## SECTION 5

### BENEFITS AND TYPES OF DISTRIBUTION

#### 5.1 Eligibility for Benefits

A Participant shall be eligible to receive a distribution of their vested Accounts upon:

- (a) Disability,
- (b) Retirement,
- (c) Termination of status as an Employee, or
- (d) Plan termination.

A Participant's Beneficiary shall be eligible to receive a distribution of the remaining balance of the Participant's vested Accounts upon the death of the Participant.

#### 5.2 Benefit Commencement

(a) Participant Receipt of Benefits

A Participant who is eligible to receive a distribution may request benefit commencement at any time after becoming eligible for benefits. However, in no event will benefit payments be delayed beyond the Required Beginning Date. The Administrator has delegated the task of receiving and processing Distributee distribution elections and providing any Distributee notices to the Fund Sponsor(s).

(b) Beneficiary Receipt of Benefits

Payment of death benefits to a Beneficiary shall commence as provided in Section 5.7.

(c) Application for Benefits

A Participant or Beneficiary who is eligible to receive a distribution must contact the Fund Sponsor directly to initiate a benefit distribution. A Participant or Beneficiary may request a complete distribution from a Fund Sponsor, or a partial distribution if permitted by the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits, required supporting documents, and confirmation from the Administrator that the Participant or Beneficiary is eligible for benefits.

#### 5.3 Amount of Payment

The amount distributed shall be based on the Participant's vested interest in the current value of the Participant's Accounts, through the most recent Valuation Date for the Participant's selected Funding Vehicles. The actual amount distributed from an Account shall be determined in accordance with the types of distribution offered by each Fund Sponsor and the amount and type of distribution elected by the Participant or Beneficiary or directed by the Plan.

## 5.4 Type of Distribution

### (a) General

A Participant eligible to receive a distribution may elect from among the following types of distribution from their Accounts, subject to any permissible Fund Sponsor limitations:

- (i) Full withdrawal: A single payment of the full balance of the Participant's Accounts.
- (ii) Partial withdrawal: A single payment or multiple payments of an amount specified by the Participant.
- (iii) Systematic withdrawal: Monthly, quarterly, or yearly installment payments.
- (iv) Annuity: Any form of annuity offered by the Fund Sponsor and previously selected by the Participant.

Types of distributions offered by the Plan and each Fund Sponsor may change from time to time. A Fund Sponsor shall provide a written explanation of the currently available types of distributions upon a Participant's or Beneficiary's request. If a Participant does not otherwise request a distribution and elect a type of distribution, benefits will commence as required by Section 5.2 and 5.6.

### (b) Limitation on Types of Distributions

A Participant who is eligible to receive a distribution may elect a joint annuitant other than their spouse only if the percentage of benefits payable to the joint annuitant does not exceed the allowable percentage determined by the Fund Sponsor in accordance with applicable regulations. Treas. Reg. § 1.401(a)(9)-6 limits the percentage of benefits payable to a non-spouse joint annuitant. A Participant must elect a types of distribution under which payments will be completed within the Participant's and Beneficiary's lifetimes or over a period certain not longer than their life expectancies.

## 5.5 Payment of Benefits

Payment of benefits to a Participant or Beneficiary is the responsibility of the Fund Sponsor(s) holding the Participant's Accounts. Payment of benefits shall not be the responsibility of the Board, the Employer, the Participating Employers, the Administrator, or the Trustee.

## 5.6 Minimum Required Distribution

The minimum required distributions shall commence no later than the Required Beginning Date and shall consist of annual payments in amounts which constitute the minimum required distribution under Code Section 401(a)(9)(A)(ii). The minimum required distribution shall be determined by dividing the Participant's remaining account balance by the Participant's applicable distribution period provided in Treas. Reg. § 1.401(a)(9)-5. More generally, distributions from the Plan will be made in accordance with the requirements of the regulations under Code Section 401(a)(9), including the

incidental death benefit requirement of Code Section 401(a)(9)(G), notwithstanding any provision of the Plan to the contrary.

A Participant's Required Beginning Date is April 1 of the calendar year following the latter of the calendar year in which

1. the Participant attains age 73 if the Participant attained age 73 after December 31, 2022 and before January 1, 2033 (age 72 for a Participant whose 72<sup>nd</sup> birthday was after June 30, 2019 but before December 31, 2022; age 70½ for Participants whose 70<sup>th</sup> birthday was on or before June 30, 2019; and age 75 for a Participant who attains age 74 after December 31, 2032) or
2. the Participant retires from employment with the Employer and all Participating Employers (hereinafter the "Required Beginning Date"), the Participant shall be deemed to have requested that benefits equal to the minimum required distribution (as provided for in Section 5.6 of the Plan) amount commence on the Required Beginning Date.

Any amount remaining in the Accounts upon the death of the Participant shall be paid to the Participant's Beneficiary in accordance with Section 5.7.

## **5.7 Death Benefits**

Upon the death of the Participant, the Beneficiary shall receive a distribution of the Participant's Accounts at the time and in the form described below:

### **(a) Beneficiary Designation**

A Participant may choose a Beneficiary of their Accounts at any time and in any form prescribed by the Plan and Fund Sponsor. A Beneficiary designation may be changed at any time prior to the earlier of (i) the complete distribution of the Participant's Accounts, (ii) or the Participant's date of death.

If a Participant fails to designate a Beneficiary or no Beneficiary survives the Participant or exists, the Participant shall be deemed to have designated the following person or persons who survive the Participant as their Beneficiary in the following order of preference: the Participant's

- (i) current spouse who survives the Participant for 30 days;
- (ii) same-sex domestic partner who survives the Participant for 30 days;
- (iii) children, including adopted children, who survive the Participant for 30 days, to share payments equally;
- (iv) parents who survive the Participant for 30 days, to share payments equally; or
- (v) estate.

For this purpose, a Participant's same-sex domestic partner is the individual, if any, who the Oregon Family Fairness Act (ORS 106.340) requires be treated the same as the Participant's surviving spouse.

Notwithstanding the foregoing, the Participant's estate may not, under any circumstance, be treated as their Beneficiary as defined in Code Section 401(a)(9) and Treas. Reg. § 1.401(a)(9)-4 for any purpose affecting the calculation of distributions under this Plan.

(b) Types of Distributions

A Beneficiary entitled to distributions may elect from among the following types of distribution from the Participant's Accounts, subject to any permissible Fund Sponsor limitations:

- (i) Full withdrawal: A single payment of the full balance of the Participant's Accounts.
- (ii) Partial withdrawal: A single payment or multiple payments of an amount specified by the Beneficiary.
- (iii) Systematic withdrawal: Monthly, quarterly, or yearly installment payments.
- (iv) Annuity: Any form of annuity offered by the Fund Sponsor and previously selected by the Participant or the Beneficiary.

Types of distributions offered by the Plan and each Fund Sponsor may change from time to time. A Fund Sponsor shall provide a written explanation of the currently available forms of payment upon a Beneficiary's request.

If a Participant does not otherwise request a distribution and elect a type of distribution, benefits will commence as required by Sections 5.2 and 5.7(c).

(c) Benefit Commencement

The election described in this Section must be made no later than the earlier of (A) the end of the calendar year immediately following the calendar year in which the Participant died, or, if the sole Beneficiary is the Participant's spouse, the end of the calendar year in which the Participant would have attained age 72 (age 70½ for Participants whose 70<sup>th</sup> birthday is on or before June 30, 2019), if later, or (B) the end of the calendar year which contains the fifth (5<sup>th</sup>) anniversary of the date of the Participant's death. The election must be irrevocable with respect to the Beneficiary and all subsequent Beneficiaries and must apply to all subsequent calendar years.

(i) Death after Benefit Commencement

If the Participant dies after a partial distribution of their Account has begun, and the Participant has a Beneficiary as defined in the Treas. Reg. § 1.401(a)(9)-4, the remaining portion of the Account will be paid over a period that does not exceed the longer of (a) the remaining life expectancy of the Participant as if they were not deceased, or (b) the remaining life expectancy of the designated Beneficiary. If the Participant does not have a designated Beneficiary as of the date determined under Treas. Reg. § 1.401(a)(9)-4, the remaining portion of the Account will be paid over a period that does not exceed the life expectancy of the Participant, as if the Participant was not deceased,

using the age of the Participant as of the Participant's birthday in the calendar year of the Participant's death.

(ii) Death before Benefit Commencement

The Participant (or Beneficiary) may elect whether the five-year rule under Code Section 401(a)(9)(B)(ii) or the life expectancy rule under Code Section 401(a)(9)(B)(iii) applies if the Participant dies prior to commencing distribution of their Account, or after receiving a partial distribution (but before commencing distribution of the remaining Account balance), and the Participant has a Beneficiary, as defined in Treas. Reg. § 1.401(a)(9)4. Under the five-year rule, the remaining Account balance will be distributed to the Beneficiary within five (5) years of the Participant's death. Under the life expectancy rule, the remaining Account balance will be distributed to the Beneficiary over a period that does not exceed the remaining life expectancy of the Beneficiary.

If neither the Participant nor the Beneficiary makes the election, then distribution of the remaining Account balance will be made as follows:

- (A) If the Participant has a Beneficiary as of the last day of the calendar year following the calendar year of the Participant's death, the remaining Account balance will be paid over a period that does not exceed the life expectancy of the Beneficiary.
- (B) If the Participant has no Beneficiary as of the last day of the calendar year following the calendar year of the Participant's death, the remaining Account balance will be distributed within five (5) years of the Participant's death.

(d) Application for Benefits

A Beneficiary entitled to benefits under subparagraph (a)(i) or (ii) must apply for benefits pursuant to Section 5.2(c) and make the election described in Section 5.2(c).

If a Beneficiary fails to request benefit commencement, they shall be deemed to have requested the commencement of any benefits required to be paid under Section 5.7.

(e) Amount of Payment

The amount distributed to a Beneficiary entitled to benefits under subparagraph (a)(i) or (ii) shall be determined in accordance with Section 5.3.

## 5.8 Direct Rollovers

(a) General Rule

Notwithstanding any provision of the Plan to the contrary, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of any Eligible Rollover Distribution paid as a Direct Rollover.

(b) Direct Rollover

A Direct Rollover is a (i) direct payment by the Plan to an Eligible Retirement Plan specified by the Distributee, with no portion of such payment made directly to the Distributee.

(c) Distributee

A Distributee includes any individual eligible for a distribution of benefits under Section 5.1 of the Plan.

(e) Eligible Retirement Plan

(i) Except as provided in Sections 5.8(e)(ii) and 5.8(e)(iii), an Eligible Retirement Plan is any plan defined as an eligible retirement plan in Code Section 408(d) and 402(c).

(ii) In the case of a Direct Rollover on behalf of a Beneficiary, an Eligible Retirement Plan is an individual retirement plan described in Code Section 7701(a)(37) (other than an endowment contract), including a Roth IRA described in Code Section 408A, that:

- (A) Is specified by the Beneficiary;
- (B) Accepts the Direct Rollover;
- (C) Is established for the purpose of receiving the distribution on behalf of the Beneficiary; and
- (D) Will be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code Section 408(d)(3)(C)) pursuant to Code Section 402(c)(11).

(iii) In the case of a Direct Rollover that is not on behalf of a Beneficiary and includes an amount that is not includable in gross income, an Eligible Retirement Plan is any of the following that is specified by the Distributee and accepts the Direct Rollover:

- (A) A qualified trust described in Code Section 401(a) or an annuity contract described in Code Section 403(b) which trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable; or
- (B) An individual retirement plan as described in Section 5.8(e)(i)(A).

(f) Eligible Rollover Distribution

An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include any of the following:



- (i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Beneficiary (within the meaning of Code Section 402(c)(4)(A)(i)), or for a specified period of ten years or more.
- (ii) Any distribution to the extent such distribution is required under Code Section 401(a)(9). The determination of any distribution required under Code Section 401(a)(9) for a Beneficiary will be made in accordance with Q&A-17 and -18 of Internal Revenue Service Notice 2007-7, 2007-5 I.R.B. 395, or later guidance by the Internal Revenue Service or in Treasury regulations.
- (iii) Unless the Administrator affirmatively elects to the contrary, any minimum amount permitted by Code Section 401(a)(31) and regulations issued thereunder that is permitted to be excluded from the definition of Eligible Rollover Distribution.
- (iv) Any distribution made upon the hardship (within the meaning of Code Section 402(c)(4)(C)) of the Distributee.
- (v) Any other distribution designated in Treasury regulations, or by the Commissioner of Internal Revenue Service pursuant to Treasury regulations, as not an eligible rollover distribution within the meaning of Code Section 402(c)(4).

## 5.9 Loans

### (a) General

After August 31, 2018, no new loans from this Plan are permitted.

With respect to any loans previously provided from this Plan, the requirements applicable to the Plan under Code Section 401(a) which such loans must satisfy include without limitation the exclusive benefit requirement and the restrictions in Treas. Reg. Section 1.401(a)-1(b) on payment of benefits by a pension plan before termination of employment.

A Fund Sponsor will follow its appropriate procedures, limitations, and requirements for such loans if not inconsistent with this Section 5.9. The Administrator and the Trustee may periodically review the Fund Sponsors' loan procedures and the status of outstanding loans for such matters as the Administrator or Trustee deems appropriate.

All repayments and administration of such loans shall be through the Fund Sponsor offering the loan, not through the Administrator, the Trustee, the Employer, or the Participating Employers. Any loan fees charged by the Fund Sponsor shall be paid by the Participant or deducted from the loan proceeds or the part of the Participant's Accounts held by the Fund Sponsor.

(b) Default

If a loan is in default, the Plan may foreclose upon the Participant's Account balance to the extent of the unpaid balance of the loan as of the earliest date on which the Participant is eligible for a distribution.

The Administrator may from time to time review the payment status of all outstanding loans and take all appropriate action to foreclose upon defaulted loans.

## SECTION 6

### VESTING

#### 6.1 Vesting

(a) Participant Contribution Account, ORP Employer Match Account, Rollover Account, and Post-Tax Transfer Account

Each Participant shall, at all times, have a one hundred percent (100%) vested, nonforfeitable right to their Participant Contribution Account, ORP Employer Match Account, Rollover Account, and Post-Tax Transfer Account.

(b) Employer Contribution Account

Each Participant shall earn a vested, non-forfeitable right to their Employer Contribution Account upon the occurrence of any of the following events:

- (i) The Participant has five (5) or more Years of Service. This can be applied in accordance with the following table:

<u>Years of Service</u>	<u>Percent Vested</u>
Less than 5	0%
5 or more	100%

- (ii) The Participant's death while an Employee. This includes the Participant's death while on an Employer-approved or Participating Employer-approved leave of absence.
- (iii) The Participant's becoming Disabled while an Employee.
- (iv) The Participant's attainment of age fifty (50) while an Employee.
- (v) The Participant's becoming an Employee after already attaining age fifty (50).
- (vi) The Participant's death within one hundred twenty (120) days of the Participant's last day as an Employee.

#### 6.2 Forfeitures

(a) General

If a Participant terminates employment with the Employer and all Participating Employers prior to becoming one hundred percent (100%) vested in their Employer Contribution Account, the amount of the Account shall be forfeited effective the date the Participant terminates employment with the Employer and all Participating Employers. However, such amounts are temporarily maintained in segregated accounts by the Fund Sponsor as required by law and until transferred into an ORP Forfeiture Account.

(b) Assets to restore amounts forfeited shall be taken first from the segregated Forfeiture Account and then from the ORP Forfeiture Account.

- (i) Except as provided in Section 6.2(b)(ii) of this Plan, if a terminated Participant returns to service with the Employer or a Participating Employer before five (5) years have lapsed since the Employee's date of termination, the amount forfeited shall be restored to the Participant's Employer Contribution Account as of the month following the date in which the Participant:
- (A) Returns to a Qualifying Position before November 1, 2013; or
  - (B) Is or becomes an Active Participant on or after November 1, 2013, and after returning to service with the Employer or a Participating Employer.

If a terminated Participant is reemployed by the Employer or a Participating Employer more than five (5) years after the Employee's prior termination date, the amount forfeited shall not be restored.

- (ii) Where a terminated Participant takes a full distribution of their Participant Accounts and then later returns to service with the Employer or a Participating Employer before five (5) years have lapsed since the Employee's date of termination, the amount forfeited shall only be restored if the Participant fully repays to the Plan the amount distributed from their Participant Accounts through a rollover contribution otherwise permitted under Plan Section 3.3.

(c) Deemed Cash-out

If a Participant terminates employment with the Employer or a Participating Employer prior to fully vesting in the Employer Contribution Account, the Participant shall be deemed to have received a distribution of such non-vested Employer Contribution Account balance upon termination of employment for purposes of Section 9.5. Such balances shall be deemed repaid upon the Participant's return to service with an Employer or a Participant Employer.

### **6.3 Vesting on Reemployment**

If an Inactive Participant returns to service with the Employer or any Participating Employer before five (5) years have lapsed since the Employee's date of termination, all Years of Service before and after the period of termination shall be taken into account in determining the Participant's vested interest in the Employer Contribution Account.

If an Inactive Participant returns to service with the Employer or any Participating Employer more than five (5) years after termination, only Years of Service after the period of termination shall be taken into account in determining the Participant's vested interest in the Employer Contribution Account accrued prior to the break in service.

### **6.4 Employer or Participating Employer Contributions Due to Inadequate Forfeitures**

In the event that balances held in the Forfeiture Account or the ORP Forfeiture Account are inadequate to fully reinstate the Employer Contribution Account of the reinstated Employee, the Employer or Participating Employer of the reinstated Employee shall

make a contribution in addition to the contributions required under Section 3 equal to the balance necessary to fully reinstate the Employer Contribution Account.

## SECTION 7

### DOMESTIC RELATIONS ORDERS

#### 7.1 Requirements for Qualification

Notwithstanding any Plan provisions to the contrary, vested benefits under the Plan may be paid to someone other than the Participant or Beneficiary, pursuant to a Qualified Domestic Relations Order. A “Qualified Domestic Relations Order” is a judgment, decree, or order (“Order”) (including approval of a property settlement agreement) that:

- (a) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant;
- (b) is made pursuant to a state domestic relations law (including a community property law); and
- (c) creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable to a Participant under the Plan.

The Plan will recognize a Qualified Domestic Relations Order only if it meets the following additional requirements:

- (i) The Order must identify the Plan benefits that are being awarded to the alternate payee with sufficient clarity that the Administrator, in its sole judgment, is able to interpret and administer the order.
- (ii) The Order must not require the payment of any benefits that are not provided for under the Plan or the applicable Funding Vehicle.
- (iii) The Order must not require the Administrator, Trustee, or any Fund Sponsor to take any action that would be inconsistent with the terms of the Plan or any applicable Funding Vehicle.
- (iv) The Order must not conflict with any prior Qualified Domestic Relations Order relating to the Participant’s Account.

#### 7.2 Commencement of Payment

All vested benefits awarded to an alternate payee shall be distributed to the alternate payee in accordance with the Order as soon as administratively feasible after the Order has been determined to be a Qualified Domestic Relations Order, unless otherwise required by the terms of the Order. Payments may be made to an alternate payee in accordance with the terms of a Qualified Domestic Relations Order even if the Participant is not eligible for a distribution.

#### 7.3 Determination of Status of Order

The Administrator shall determine whether an order meets the requirements of this Section within a reasonable period after receiving an order. An order shall be considered

received by the Plan when it is received and recorded by the Administrator. The Participant and any alternate payee shall be notified that an order has been received and of the procedures for determining the qualified status of domestic relations orders.

#### **7.4 Rights of Alternate Payees**

No alternate payee shall have any right in or to any asset of the Plan, or any part thereof, except as, and only to the extent, expressly provided for in this Section relating to domestic relations orders. However, while the qualified status of an order is being determined, an alternate payee shall receive information concerning the Plan which is provided to Participants.

Subsequent to determination as a Qualified Domestic Relations Order, and subject to the terms of the Qualified Domestic Relations Order, and any agreement between the Participant and the Fund Sponsor, an alternate payee may select authorized Funding Vehicles and name a Beneficiary with respect to their benefit in the same manner as a Participant.

#### **7.5 Same-Sex Domestic Partners**

This Section 7 applies to a Participant and the Participant's same-sex domestic partner or former same-sex domestic partner in the same manner as this Section 7 applies to a Participant and the Participant's spouse or former spouse, except that this Section 7 does not allow the Plan to distribute a benefit to a Participant's same-sex domestic partner or former same-sex domestic partner (or other person with respect to whom the distribution does not satisfy the requirements of Code Section 414(p)(11)) if the Participant has not attained the Normal Retirement Age or separated from employment with the employer (within the meaning of Code Section 414(b), (c), (m), and (o)) at the time of the distribution. For this purpose, a Participant's same-sex domestic partner is the individual, if any, whom the Oregon Family Fairness Act (codified at ORS 106.340) requires be treated the same as the Participant's spouse.

## SECTION 8

### ADMINISTRATION OF THE PLAN

#### 8.1 Administrator

The Administrator shall be the trustee and fiduciary responsible for administration of the Plan. The Administrator holds all powers and authority related to the administration of the Plan other than those powers delegated pursuant to a Charter allocating fiduciary and administrative authority. The Administrator has discretionary authority in exercising, or deciding not to exercise, each of its functions under the Plan. Without limiting the foregoing, the Administrator has discretionary authority to construe and interpret the Plan and to determine all questions that arise under the Plan, including questions of fact. Any interpretation of or action by the Administrator with respect to the Plan and its administration shall be conclusive and binding upon any and all parties and persons affected thereby, subject to the appeal procedure set forth in Section 8.2 herein and any authority given to the Trustee.

#### 8.2 Determination and Appeal Procedure

(a) Requests for Determination

Any time a request for determination of eligibility for participation or benefits distribution, or an interpretation of Plan provisions is disputed, or a Participant or Beneficiary is adversely affected by action of a Fund Sponsor, the Employer, a Participating Employer, the Administrator, or the Administrator's delegate, the individual (hereinafter "Claimant") may submit a claim for determination to the Administrator or the Administrator's delegate. The Claimant shall be notified of the Administrator's or delegate's determination within ninety (90) days after receipt of the claim, unless special circumstances require an extension of time for processing. Such notice will indicate the basis for the determination or interpretation and an explanation of the procedure for requesting an appeal as set forth herein.

(b) Appeal Procedure

Any Claimant who has received an adverse determination shall have the right to appeal the determination to the Administrator. Such appeal must be in writing and must be made within sixty (60) days after such person is advised of the adverse action. If a written request for appeal is not made within such sixty (60)-day period, the Claimant shall forfeit their right to an appeal. The Claimant or a duly authorized representative of the Claimant may review all pertinent documents and submit issues and comments to the Administrator.

(c) Consideration of Appeal

The Administrator or the Administrator's delegate shall consider appeals received under Section 8.2(b) herein. It may hold a hearing if it deems it necessary and shall issue a written decision affirming, modifying, or setting aside the former action



within one hundred twenty (120) days after receipt of the written request for appeal, unless special circumstances require an extension of time for processing. A copy of the decision shall be furnished to the Claimant. The decision shall set forth its reasons and pertinent Plan provisions on which it is based. The decision shall be final and binding upon the Claimant, the Employer, the Participating Employers, and all other persons involved to the maximum extent permitted by law.

(d) Final Decision

The determination of the Administrator or its delegate shall constitute the final decision of the Plan and the Employer and shall be binding upon the Claimant, the Employer, the Participating Employers, and all other persons. Any person seeking judicial review of the decision must file a timely complaint with the Oregon District or Circuit Court of Lane County in Eugene, Oregon. The Administrator or delegate will inform a Claimant of the right to appeal to the Oregon District or Circuit Court of Lane County in Eugene, Oregon.

### **8.3 Trust Fund**

The Employer shall maintain a separate “Trust Fund,” as defined in the Oregon Public Universities Optional Retirement Plan Trust Agreement, for the Plan to hold and account for the assets of the Plan. The Employer, or any person designated in writing from time to time by the Employer, has the power and duty to appoint the Trustee and it shall have the power to remove the Trustee and appoint successors at any time in accordance with the Oregon Public Universities Optional Retirement Plan Trust Agreement. The Trustee shall serve pursuant to and in accordance with the Oregon Public Universities Optional Retirement Plan Trust Agreement. Unless another Trustee is currently serving as a co-trustee with the Trustee that is being removed, as a condition to exercising its power to remove any Trustee hereunder, the Employer must first enter into an agreement with a successor Trustee. The Trustee shall have responsibility for and control over the investment of Trust Fund assets not deposited with a Fund Sponsor, if any. The Trustee shall have the authority to review, monitor, and keep alert to the continued ability of Fund Sponsors to fulfill obligations to Participants, Beneficiaries, and alternate payees.

### **8.4 Miscellaneous**

(a) Expenses and Assistance

All reasonable expenses in excess of any forfeitures, as provided in Section 4.10, which are necessary to operate and administer the Plan may be deducted from the Plan’s Trust Fund or investment earnings or, at the election of the Employer, paid directly by the Employer or the Participating Employers.

(b) Limitations on Assignments

Unless explicitly permitted under the Plan, benefits under the Plan may not be assigned, sold, transferred, or encumbered, and any attempt to do so shall be void. The interest of a Participant, Beneficiary, or alternate payee in benefits under the Plan shall not be subject to debts or liabilities of any kind and shall not be subject to

attachment, garnishment or other legal process, except as provided in this Plan or as otherwise required or permitted by state or federal law.

The foregoing paragraph shall not apply to an offset of the interest hereunder of a Participant or Beneficiary against an amount the Participant or Beneficiary is ordered or required to pay to the Plan pursuant to a judgment or settlement, as described in Code Section 401(a)(13)(C) or (D).

(c) Genders, Singular, and Plural

Whenever used herein, any gendered pronouns shall include all genders, and singular or plural nouns shall include all intended subjects of such nouns, whenever the context shall plainly so require.

(d) No Additional Rights

No person shall have any right in or to a Participant's Account or any part thereof or any right under the Plan, except as and only to the extent expressly provided for in the Plan. Neither the establishment of the Plan, the granting of a retirement benefit, nor any action of the Employer, the Participating Employers, the Board, the Trustee, the Administrator, or any other person or entity shall be held or construed to confer upon any person any right to be continued as an employee, or, upon dismissal, any right or interest other than as herein provided. Nothing in this Plan shall be construed to expand any Employee's rights beyond those provided in the policies and regulations of the Employer or the Participating Employers.

(e) Governing Law

This Plan shall be construed in accordance with applicable federal law and the laws of the State of Oregon. Jurisdiction for any litigation arising out of this Plan shall be solely in the Oregon District or Circuit Court of Lane County in Eugene, Oregon, depending upon the amount of the claim.

(f) Disclosure to Participants

Each Participant shall be advised of the general provisions of the Plan upon written request addressed to the Administrator and shall be furnished any information requested regarding the Participant's status, rights, and privileges under the Plan as may be required by law.

(g) Income Tax Withholding Requirements

Any benefit payment made under the Plan shall be subject to any applicable income tax withholding requirements. For this purpose, the Employer shall provide the Fund Sponsor with any information in its custody needed to satisfy such withholding obligations and with any other information that may be required by regulations promulgated under the Code.

(h) Severability

If any provision of a Plan shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Plan which shall be construed as if said illegal or invalid provision had never been included.

(i) Correction of Errors

In the event an incorrect amount is credited to a Participant's Account or paid on behalf of a Participant, Beneficiary or alternate payee, the Participant's Account or any remaining payments may be adjusted to correct the error. Adjustments resulting from clerical errors or other causes which are determined by the Administrator to be *de minimis* in amount may be waived at the discretion of the Administrator, in accordance with Internal Revenue Service guidance.

(j) Spouse's Consent

In the event a spouse's or same-sex domestic partner's consent is required for any Plan purpose, such consent shall acknowledge a full understanding of the effect of the consent, shall be in writing, and shall be witnessed by a notary public; provided, written consent will not be required if the Participant establishes to the satisfaction of the Administrator and the Fund Sponsor that no spouse or same-sex domestic partner exists, or that the spouse or same-sex domestic partner cannot be located. For this purpose, a Participant's same-sex domestic partner is the individual, if any, who the Oregon Family Fairness Act (which is codified at ORS 106.340) requires be treated the same as the Participant's spouse.

(k) Benefit Funding

All benefits under the Plan are funded exclusively through contributions to Accounts and any earnings upon such contributions and are provided solely through the Funding Vehicles selected by the Participant; therefore, benefits are not subject to nor covered by federal plan termination insurance.

(l) No Representation

The Plan, the Employer, the Participating Employers, the Board, the Trustee, the Administrator, and all other persons do not represent or guarantee that any particular federal or state income, payroll, personal property, Social Security, or other tax consequences will result from participation in the Plan. A Participant should consult with professional tax advisors to determine the tax consequences of their participation.

(m) Facility of Payment

In the event any benefit under this Plan shall be payable to a person who is under legal disability or is in any way incapacitated so as to be unable to manage their financial affairs, the Administrator may direct payment of such benefit to a duly appointed guardian or other legal representative of such person or in the absence of a guardian or legal representative, to a custodian for such person under a Uniform Gift to Minors Act or to any relative of such person by blood or marriage, for such

person's benefit. Any payment made in good faith pursuant to this provision shall fully discharge the Employer, the Participating Employers, the Trustee, the Administrator, and all other persons and entities, and the Plan of any liability to the extent of such payment.

(n) Missing Persons

In the event a distribution is required to commence under Section 5.2 and the Participant or Beneficiary cannot be located, the Participant's Account shall be forfeited on the last day of the Plan Year following the Plan Year in which distribution was supposed to commence.

If the affected Participant or Beneficiary later contacts the Administrator, their Account shall be reinstated and distributed as soon as practical. The Administrator shall reinstate the amount forfeited, with no adjustment for interest, from current forfeitures. If current year forfeitures are inadequate to fully reinstate the Account, the Employer or Participating Employer shall make a special Employer Contribution or Participating Employer Contributions equal to such amount and allocate it to the affected Participant's or Beneficiary's Account. Such reinstatement shall not be considered an Annual Addition for purposes of the limitations on contributions pursuant to Code Section 415.

Prior to forfeiting any Account, the Administrator shall attempt to contact the Participant or Beneficiary by return receipt mail at their last known address according to the Employer's and Participating Employer's or such other means as the Administrator deems appropriate.

Notwithstanding the above, to the extent the provisions of this Section 8.4(n) conflict with the provisions of a Funding Vehicle and its related contract, the provisions of the Funding Vehicle shall control.

## SECTION 9

### AMENDMENT AND TERMINATION

#### 9.1 Amendment

Subject to any advance notice or other requirements of law, the Board or its delegate is authorized to amend the Plan at any time, including amendments designating authorized Fund Sponsors and Funding Vehicles, except that any amendment which establishes or changes the Employer contribution rates, Employee contribution rates, or results in full or partial Plan termination, Plan merger or consolidation must be consistent with Oregon law.

Proposed amendments shall be prepared at the direction of the Administrator and submitted to the Board or the Board's delegate for approval.

#### 9.2 Limitation

Notwithstanding the provisions of Section 9.1 herein, the following conditions and limitations apply:

- (a) No amendment will be made which will operate to recapture for the Employer or a Participating Employer any Plan contributions previously made under the Plan. However, Plan contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Employer or Participating Employer that made the contributions, to the extent feasible, if the Internal Revenue Service fails to approve the Plan as qualified under Code Section 401(a). In addition, Plan contributions may be returned as described in Section 3.5.
- (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as any Plan contributions are concerned.

#### 9.3 Plan Qualification

Any modification or amendment of the Plan may be made retroactive, as necessary or appropriate, to establish and maintain a "qualified plan" pursuant to Code Section 401 and regulations thereunder, and exempt status of the fund or trust under Code Section 501.

Notwithstanding anything herein to the contrary, the Plan shall be contingent upon a favorable Internal Revenue Service ruling that the Plan is qualified under Code Section 401(a), as amended, and exempt from income taxation under Code Section 501(a). In the event the Plan is not initially recognized as a "qualified plan," or the assets of the Plan are not initially exempt under Code Section 501, and the Plan is not amended retroactively for any reason to correct the defaults, then that Plan shall be void *ab initio* and all amounts contributed to the Plan, plus investment earnings, less expenses paid, shall be returned to the Employer or the Participating Employer that made the contribution within one year from the date of the adverse ruling. Any determination by the Internal Revenue

Service that the Plan is not qualified will apply equally to the Employer and all Participating Employers.

#### **9.4 Termination of the Plan**

The Employer shall have the right to fully or partially terminate the Plan or merge or consolidate the Plan with another plan at any time, subject to any requirements of applicable law.

The termination of the Plan shall not cause or permit any part of the assets of the Plan to be diverted to purposes other than for the exclusive benefit of the Participants, Beneficiaries, and alternate payees, or cause or permit any portion of the Plan assets to revert to, or become the property of, the Employer or any Participating Employer at any time prior to the satisfaction of all liabilities with respect to the Participants, Beneficiaries, and alternate payees.

Upon termination of the Plan, the Administrator shall continue to act for the purpose of complying with the prior paragraph and shall have all power necessary or convenient to the winding up and dissolution of the Plan as herein provided. While so acting, they shall be in the same status and position with respect to other persons as if the Plan remained in existence.

#### **9.5 Vested Accounts on Plan Termination**

As provided in, and only to the extent required by, Code Section 401(a)(7) as in effect on September 1, 1974 and Treasury Regulation Section 1.401-6, upon the termination of the Plan or upon the complete discontinuance of contributions under the Plan, the rights of each employee to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the rights of each employee to the amounts credited to the employee's account at such time, are nonforfeitable.

## **SECTION 10**

### **FIDUCIARIES**

#### **10.1 Limitation of Liability of the Employer and Others**

All benefits shall be payable solely from the Participant's Accounts. No Participant shall have any claim against the Employer, a Participating Employer, the Board, or the Employer's, Participating Employer's, or Board's officers, employees, agents or representatives, or against the Administrator, or the Trustee for any benefits under the Plan. Nor shall the Employer, a Participating Employer, the Board, or the Employer's, Participating Employer's or Board's officers, employees, agents or representatives, the Administrator, or the Trustee incur any liability to any person for any action taken or suffered or omitted to be taken by them under the Plan in good faith.

#### **10.2 Indemnification of Fiduciaries**

In order to facilitate the recruitment of competent fiduciaries, the Employer agrees to provide the indemnification as described herein. This provision shall apply to the Administrator and its delegates, the Board, the Employer, or any other individuals who are determined to be Plan fiduciaries. Notwithstanding the preceding, this provision shall not apply and indemnification will not be provided for any Fund Sponsor, paid consultant, or agent appointed as provided in this Plan.

#### **10.3 Scope of Indemnification**

The Employer agrees to indemnify the fiduciaries as described above for all acts taken in carrying out their responsibilities under the terms of the Plan. This indemnification for all acts is intentionally broad but shall not provide indemnification for gross negligence, willful misconduct, embezzlement, or diversion of Plan funds for the benefit of the fiduciary. The Employer agrees to indemnify the fiduciaries described herein for all expenses of defending an action, including all legal fees for counsel selected with the Employer's consent and other costs of such defense. The Board shall also indemnify the fiduciary for any monetary recovery in any court or arbitration proceeding. In addition, if the claim is settled out of court with the concurrence of the Employer, the Employer shall indemnify the fiduciary for any monetary liability under said settlement. The Board shall have the right, but not the obligation, to conduct the defense of such persons in any proceeding to which this Section applies. The Employer may satisfy its obligation under this Section in whole or in part through the purchase of a policy or policies of insurance providing equivalent protection.

Notwithstanding the foregoing, the indemnification provided for herein shall be subject to any applicable limitations under Article XI, Section 7, of the Oregon Constitution, or the Oregon Tort Claims Act, ORS 30.260 to 30.300.

## **SECTION 11**

### **PARTICIPATING EMPLOYERS**

#### **11.1 Adoption of Plan**

With the consent of the Employer, any Oregon public university may adopt this Plan and all of the provisions hereof and participate herein and be known as a Participating Employer, by a properly executed document evidencing such intent of the Board of Trustees of said Oregon public university.

#### **11.2 Rights and Duties**

Notwithstanding anything herein to the contrary, for each Participating Employer hereunder, the following shall apply:

- (a) Each Participating Employer shall be required to use the same Trustee as provided in this Plan.
- (b) The Trustee may commingle, hold and invest as one (1) fund all contributions made by the Employer, Participating Employers and Employees, as well as increments thereon. All of the Plan assets shall be available to pay benefits to Participants and their Beneficiaries.
- (c) The transfer of any Participant from Participating Employer to another Participating Employer shall not affect such Participant's rights under the Plan, and all amounts credited to such Participant's Account as well as accumulated service time with the transferor or predecessor, and length of participation in the Plan, shall continue to the Participant's credit.
- (d) Any forfeitures arising under the Plan shall be allocated to the ORP Forfeiture Account.
- (e) Any expenses of the Plan or Trust which are to be paid by the Employer or borne by the Trust fund shall be paid by each Participating Employer in such manner as agreed to in writing by the Employer and the Participating Employers.

#### **11.3 Designation of Agent**

Each Participating Employer shall be deemed to be a part of this Plan; provided, however, that with respect to all of its relations with the Trustee, Fund Sponsors, and service providers for the purpose of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent.

#### **11.4 Contributions**

All contributions made by a Participating Employer will be remitted promptly to the Employer, or its designee, in such manner as agreed to in writing by the Employer and the Participating Employer.



### **11.5 Revocation of Participation**

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan in accordance with the procedures set forth in that certain Participation Agreement between Employer and the Participating Employer. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Employer and the Trustee. Upon approval of the Employer, the Trustee shall thereafter transfer, deliver and assign Trust fund assets allocable to the Participants of such Participating Employer to such new trustee as shall have been designated by such Participating Employer, in the event that it has established a separate qualified plan for its employees. If no successor is designated, the Trustee shall retain such assets for the employees of said Participating Employer and shall make distributions pursuant to the provisions of Section 5 hereof, with no further involvement or responsibility on the part of the Employer.

### **11.6 Authority**

The Employer shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Section.

## SIGNATURE PAGE

The Oregon Public Universities Optional Retirement Plan, as amended and restated herein, is adopted by the Employer.

IN WITNESS WHEREOF, the Employer has caused this document to be duly executed on this \_\_\_\_\_ day of 2/3/2023 | 5:26 PM PST, 2023.

FOR THE UNIVERSITY OF OREGON

DocuSigned by:  
  
588B9D43B94E4EF  
\_\_\_\_\_  
Jamie H. Moffitt, Vice President for Finance & Administration / CFO