

403(b) Plan Product Provider Agreement

This Agreement, by and between **SPRING BRANCH ISD** (the "Plan Sponsor") a public education organization sponsoring a 403(b) program for eligible employees and the undersigned 403(b) Product Provider (the "Product Provider") a vendor that offers qualified 403(b) annuity contracts and/or custodial accounts, sets forth the terms and conditions of the agreement (the "Agreement") between the parties relating to compliance and administrative support of the 403(b) plan sponsored by the Plan Sponsor (the "Plan").

By executing this Agreement, Plan Sponsor certifies it is an employer eligible to sponsor the 403(b) Plan, and has, or intends to adopt, a written 403(b) plan document that reflects its Plan and, pursuant to the Plan and subject to the execution of this Agreement by Product Provider, Product Provider shall be authorized as an approved vendor under the Plan.

By executing this Agreement, Product Provider represents and warrants that it has certified to the Teacher's Retirement System ("TRS") that Product Provider offers a qualified investment product, as defined under Texas law.

By executing this Agreement, Product Provider agrees to adhere to the terms of the written Plan document, a copy of which shall be provided or otherwise made available to Product Provider and to Plan Sponsor's policies and procedures relating to the Plan.

This Agreement will become effective when executed by the parties

- I. **Qualified Investment Products**. Product Provider agrees to:
- a. Offer only tax shelter accounts or annuity contracts that fully qualify under §403(b) of the Internal Revenue Code of 1986 (the "Code"), any regulations issued thereunder and any other applicable state or federal law.
 - b. Update and modify its documentation and procedures as needed to maintain qualification of its investment products offered under the Plan, and take such reasonable action as necessary to correct any deficiencies in its documents and practices.
 - c. Make available to the Plan Sponsor or its designee, master custodial accounts and/or annuity contracts, account and/or annuity contract endorsements or amendments, or other written materials sent or received by Plan participants pertaining to the Plan as requested by Plan Sponsor or its designee.
 - d. To distribute to each participant and beneficiary, at its own expense, all prospectuses, proxy statements, annual reports, tax information and other written materials relating to the products offered under the Plan.
 - e. Represents and warrants to Plan Sponsor that any products offered by Product Provider to participants in the Plan conform to all applicable requirements of Texas law and are properly registered with and conform to all requirement of the Teachers' Retirement System of Texas ("TRS"). Product Provider also represents and warrants to Plan Sponsor that all of Product Provider's products to which current funds are being paid by participants are either on the TRS 403(b) Active Products List (or a successor thereto) or are products eligible to receive current funds under the "grandfather" rules established by TRS. Product Provider agrees to inform Plan Sponsor and Administrator in writing as soon as reasonably practicable if any such product ceases to be on the TRS 403(b) Active Products List (or a successor thereto) or if Product Provider is removed from the TRS list of 403(b) Certified Companies (or a successor thereto).
 - f. Represents and warrants to Plan Sponsor that upon suspension or termination of product registration by withdrawal, revocation, or expiration, Product Provider

shall not receive additional contributions for the qualified investment product, including a product for which a salary reduction agreement was signed when the product registration was in effect. In addition, if a company is not on the TRS List of 403(b) Certified Companies, contracts begun on or after June 1, 2002 may no longer receive salary reduction amounts from employees of Texas public and charter schools. Contracts begun prior to June 1, 2002 remain "grandfathered."

- g. Shall provide to Plan Sponsor and Administrator contract account information, including but not limited to participant's name, employer name, account number, social security number, product name or description, and contract effective date for all accounts that Product Provider receives Salary Reduction Agreements amounts under the TRS "grandfather" rules.
- h. Represents and Warrants that fees charged by Product Provider or any other entity, when aggregated and deducted from contributions paid by salary reduction agreement, shall not exceed the amounts listed under the salary reductions agreement's certified product on the TRS Certified Product List (or a successor thereto) and shall not exceed the amounts established in Title 34, Part 3, Section 53.3 of the Texas Administrative Code.

II. **Product Provider Duties and Responsibilities**. Product Provider agrees to:

- a. Assert a diligent effort to assure that the Plan Sponsor or its designee is informed at all times as to the status of Plan matters and as to the courses of action which are being followed.
- b. Comply with all written solicitation rules of employees of the Plan Sponsor and shall exert its best efforts to cause any agents or financial representatives approved to distribute its products to similarly comply with such directives.
- c. Properly administer all transactions in accordance with the terms and conditions of the Plan.
- d. Properly administer Qualified Domestic Relations Orders for applicable Plan participants
- e. Provide tax reporting and required notices to Plan participants
- f. Permit corrective distributions of excess deferral contributions
- g. Provide notification of Required Minimum Distributions, as applicable to Plan participants
- h. Provide the Plan Sponsor and its designee any information relating to Plan participant accounts and/or annuity contracts in the event of an audit by a taxing or regulatory authority.
- i. Assert a diligent effort, except for casualties beyond the control of the Product Provider, to retain and maintain all major and significant components of the files relative to the Plan and Plan participants for a period of seven (7) years following the conclusion of this relationship, and during such time to afford the Plan Sponsor or its designees reasonable access to the files. For the purposes of this provision, "all major and significant components of the files" shall include the payroll contribution data and transaction data maintained on behalf of Plan participants.
- j. Comply with all applicable federal and state laws, regulations, rules and interpretations applicable to the Plan, and the Products.
- k. Share information on Plan participant 403(b) accounts/contracts under the Plan with Plan Sponsor and /or its representative as necessary for compliance with the Plan and applicable law and regulations. For this purpose, information includes, but it not limited to contributions, distributions, hardship withdrawals, loans, QDRO determinations, required minimum distributions, and other relevant account activities governed by the Plan.

III. **Plan Sponsor Duties and Responsibilities**: Plan Sponsor and any designees appointed to act on its behalf agree to:

- a. Cooperate fully with the Product Provider and provide all information known by or available to the Plan Sponsor or its designee which is necessary for the Product Provider to perform its duties and responsibilities covered by this Agreement.
- b. Provide the Product Provider with contribution information and employment status on all employees and participants who actively contributed to a 403(b) account or annuity contract after December 31, 2004.
- c. Provide the Product Provider with any changes or updates to the employment status of Plan participants as necessary.
- d. Comply with Product Provider's requests for information concerning the Plan, including the plan document, all amendments, plan descriptions, collective bargaining agreements (if applicable), and any other documents that have a bearing on the services covered by this Agreement.

IV. **Third Party Administrator**. The Plan Sponsor, as the party responsible for administration of the Plan, has engaged NATIONAL PLAN ADMINISTRATORS, INC. (the "TPA") as its designee to provide plan administration, record keeping and compliance services (the "Plan Services") on behalf of the Plan. Acknowledging this engagement, Product Provider agrees to:

- a. Cooperate with the Plan Sponsor and TPA to administer custodial accounts and annuity contracts held under the Plan in accordance with §403(b) of the Code, regulations issued thereunder, other applicable IRS guidance, the written Plan document and any policies and procedures established by Plan Sponsor and communicated to Product Provider.
- b. Identify TPA as the administrator of record on all Product Provider participant accounts and/or annuity contracts deemed to be included under the Plan.
- c. Provide TPA with a designated customer service contact person or unit to direct Plan inquiries.
- d. Release all necessary participant custodial account and/or annuity contract information to TPA, whether the inquiry is made orally or in writing, to maintain the Plan's operational compliance.
- e. Accept written instructions, including all Plan forms and other paperwork including but not limited to salary reduction agreements, submitted by TPA concerning the disposition of Plan participant transaction requests that require administrative approval. TPA will review and pre-approve all transaction requests, including but not limited to exchanges, transfers, rollovers, distributions, QDROs, loans, and hardship withdrawals from Product Provider under the plan with the exception of Required Minimum Distribution notices and Required Minimum Distributions under the IRS Code.
- f. Assist TPA, during the Plan set-up process and on an on-going basis, to identify account and/or annuity contract holders who may be participants in the Plan.
- g. Promptly notify and redirect Plan participants to TPA in the event the participant attempts to carry out a transaction that requires administrative approval under the Plan.
- h. Promptly notify TPA of any Plan participant transaction executed by Product Provider that was subject to, but did not receive, prior administrative authorization and to work with TPA to take corrective action to ensure the Plan's operational compliance and the Plan participant's account and/or annuity contract's qualified tax status.
- i. Promptly credit contributions to Plan participant accounts and/or annuity contracts in accordance with the instructions provided by TPA.
- j. Promptly process all Plan transactions

- k. Regularly share information with TPA on transactions affecting Plan participant accounts and/or contracts including: account or policy numbers, account balances, distributions including hardship withdraws exchanges, transfers, rollovers, loans or other transactions that require administrative approval. The timing and method of sharing participant information shall be provided in a manner and format acceptable to TPA and Product Provider.

V. **Confidentiality**: All parties agree:

- a. Plan participant data and all other Plan information, whether oral or written or via computer or electronic media, to which any party is given access or which is made available to the other party is referred to as "Confidential Information."
- b. Except as expressly provided below, or with the relevant party's prior written consent, to hold all Confidential Information of the others in confidence, that they will only use Confidential Information of the other party for the purpose for which it was provided, that they will not disclose, sell or use for solicitation purposes any Confidential Information; that they will not disclose, sell any Confidential Information to any third party, other than to its own directors, officers, employees, affiliates, agents, auditors, attorneys or other representatives (collectively representatives) who have a need to know such information in connection with this Agreement. It is understood and agreed that the obligation to protect Confidential Information shall be satisfied if the party receiving such information utilizes the same degree of control and care as it employs to avoid disclosure of its own Confidential Information.
- c. That any party may disclose Confidential Information pursuant to any statute, attorney general's opinion, requirement of a governmental agency or pursuant to a valid court or administrative subpoena, order or other such legal process or requirement of law; provided that, prior to disclosing such Confidential Information, the other party will be informed of such subpoena or requirement.

VI. **Termination**: The relationship established by the Agreement is subject to termination only as follows:

- a. Plan Sponsor reserves the right to terminate this Agreement for cause if Product Provider fails to meet its obligations under this Agreement. Notification of such termination shall be made in writing to Product Provider ninety (90) days prior to the termination. In the event of such termination, Product Provider agrees to maintain an information sharing arrangement, share any information necessary to ensure compliance with Section 403(b) of the Code and any regulations and guidance issued thereunder, and execute an Information Sharing Agreement with the Plan Sponsor on behalf of those Plan participants that hold accounts and/or annuity contracts with Product Provider.
- b. Product Provider reserves the right to terminate this Agreement for cause if Plan Sponsor fails to meet its obligations under this Agreement. Notification of such termination shall be made in writing to Plan Sponsor ninety (90) days prior to the termination. In the event of such termination, Product Provider agrees to maintain an information sharing arrangement, share any information necessary to ensure compliance with Section 403(b) of the Code and any regulations and guidance issued thereunder, and execute an Information Sharing Agreement with Plan Sponsor on behalf of those Plan participants that hold accounts and/or annuity contracts with Product Provider.
- c. The parties further reserve the right to terminate this Agreement without cause and shall notify the other in writing of any such termination at least one hundred and twenty (120) days prior to the date of the proposed termination, unless the

reason for the termination is due to the Plan Sponsor's removal of Product Provider as an authorized provider under the plan. In the event of any termination without cause, the parties agree that the obligation to share information set forth in this Agreement (see II.k. above) shall continue for so long as Plan assets are held in custodial account or annuity contracts of the Product Provider.

- d. In the event this Agreement is terminated for any reason by any party, and the parties do not execute an Information Sharing Agreement, Plan Sponsor and Product Provider agree to cooperate and work in the best interest of Plan participants to accommodate a smooth transition of vendor services.

VII. **Term of Services:** This Agreement shall remain in force and effect for two (2) years from the effective date of this Agreement unless sooner terminated pursuant to Section VI hereof. This Agreement shall be renewed automatically for successive terms of one (1) year unless terminated by either party by providing ninety (90) days prior written notice to the other.

VIII. **Limitations of Liability:** Neither party shall be held liable for its inability to perform its duties and responsibilities under this Agreement for any cause beyond its control including without limitation, interference by the other party, acts of God, strikes, labor troubles, government preemption, or national emergency, provided that the party who is unable to perform shall exercise reasonable diligence to effect performance as soon as possible.

IX. **Indemnification:** By terms of the Agreement:

- a. Plan Sponsor and TPA are not liable for the consequences of any errors or omissions committed by Product Provider prior to the effective date of this Agreement.
- b. Product Provider is not liable for the consequences of any errors or omissions committed by the Plan Sponsor or any previous administrators or other Product Providers prior to the effective date of this Agreement.
- c. The parties acknowledge that they will be sharing historical Plan participant information in the administration of the Plan. If that historical information provided by Plan Sponsor or Product Provider is later determined to be inaccurate, the party relying on said information shall be not liable for the consequences of any errors or omissions that arise.
- d. Plan Sponsor shall, to the extent allowed by law, indemnify, hold harmless and agree to defend Product Provider from any and all liability, costs and expenses, including reasonable attorney fees with respect to third party claims arising out of (a) Plan Sponsor's or its agents' or employees' negligent acts or omissions; (b) Plan Sponsor's or its agents' or employees' failure to comply with the terms of this Agreement; or (c) Plan Sponsor's or its agents' or employees' failure to comply with any law or regulation with respect to its duties hereunder; (d) any acts or omissions of Product Provider which were directed by Plan Sponsor. Notwithstanding this subsection, Plan Sponsor shall not be required to indemnify or hold harmless Product Provider for any acts or omissions of Product Provider which were specifically and intentionally directed, approved or ratified by Product Provider, or any liability, costs and expenses to the extent resulting from Product Provider or its agents' or employees' own negligent acts or omissions.
- e. Product Provider shall indemnify, hold harmless and agree to defend Plan Sponsor from any and all liability, costs and expenses, including reasonable attorney fees with respect to third party claims arising out of (a) Product Provider's or its agents' or employees' negligent acts or omissions; (b) Product Provider's or its agents' or employees' failure to comply with the terms of this Agreement; (c) Product Provider's or its agents' or employees' failure to comply with any law or regulation with respect to its duties hereunder; or (d) any acts or omissions of Plan Sponsor which were directed, approved or ratified by Product Provider. Notwithstanding this section, Product Provider shall not be required to indemnify or hold harmless Plan

Sponsor for any liability, costs and expenses to the extent resulting from Plan Sponsor's or its agents' or employees' own negligent acts or omissions.

X. **Claim or Controversy:** Any claim or controversy arising out of or relating to this Agreement or the breach of this Agreement shall be settled by arbitration in Austin and Travis County in accordance with the Commercial Arbitration Rules of the American Arbitration Association using one arbitrator, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Otherwise, any claim or controversy shall be resolved pursuant to the laws of Texas.

XI. **Amendments, Unenforceability and Jurisdiction:**

- a. This Agreement can be amended or modified by mutual agreement and written consent by the parties.
- b. If any clause, paragraph, term or provision of this Agreement shall be found unenforceable by any court of competent jurisdiction, such finding shall have no effect on any other clause, paragraph, term or provision of this Agreement and the same shall be in full force and effect.
- c. This Agreement shall be construed in accordance with the Laws of Texas.

XII. **Complete Integration, Binding upon All Parties:**

- a. This Agreement contains the entire agreement between the parties regarding the relationship between the parties supporting the 403(b) Plan.
- b. The persons executing this Agreement on behalf of Plan Sponsor and Product Provider warrant, covenant and represent that they are authorized to execute this Agreement on behalf of such companies and corporations pursuant to their respective bylaws or a resolution of their Board of Directors.
- c. This Agreement shall be binding upon the parties, their respective heirs, executors, legal representatives and successors.
- d. Facsimile signatures, and scanned and e-mailed signatures, on this document shall be deemed to be original signatures, for all purposes.

For Plan Sponsor:

By: _____

Print Name: _____

Title: _____

Dated

For Product Provider:

Product Provider
Legal Name: _____

By: _____

Print Name: _____

Title: _____

Dated