

Sample Draft

Investment Provider Service Agreement

This Agreement, effective as of the date hereof, by and between _____ (the "Employer") and _____ ("Service Provider") sets forth the terms and conditions of the agreement between the Employer and Service Provider relating to services provided by Service Provider to the Employer in support of their 403(b) Retirement Plan (the "Plan"). The parties intend that Service Provider will provide certain services to the Employer, as needed, to support the Employer's Plan. In furtherance of this intention, the parties agree as follows:

DUTIES AND RESPONSIBILITIES OF SERVICE PROVIDER.

Service Provider shall:

- 1) Qualified 403(b) Accounts. Offer only investment products ("Accounts") that meet the requirements of Section 403(b) of the Internal Revenue Code of 1986, as amended from time to time, any regulations issued thereunder and any other applicable state or federal law.
- 2) Communications. Assist in communicating the Plan to employees, including but not limited to, presenting information about the Plan and available investment options at group meetings, responding to individual inquiries from employees, and providing the Employer with informational material describing the Plan.
- 3) Informational Materials. Prepare written notice of eligibility/availability for distribution to employees, prepare and distribute materials that describe the Plan, including contribution limits, possible tax advantages and disadvantages, investment options, enrollment procedures, and other information necessary for participating in the Plan.
- 4) Forms. Prepare forms for Employer's consideration to facilitate enrollment and investment selection for Plan Accounts, including salary reduction agreements, Account applications issued by Service Provider, and beneficiary designation forms.
- 5) Individual Meetings. Provide individual meetings with employees, upon request, to explain the Plan, respond to questions or concerns about the Plan, discuss the impact of Plan participation on the employee and assist with the completion of necessary forms and related documentation.
- 6) On-Line Participant Access. Provide employees on-line access to their Plan Accounts 24 hours a day, seven days a week, unless there is a routine update or an unanticipated event beyond the control of Service Provider.
- 7) Participant Statements. Send statements to participant's address of record no later than 15 business days after the end of each calendar quarter. Participant may also obtain statements via the secure Service Provider web site.
- 8) Employer Plan Reports. Prepare Plan reports based on participant records processed through Service Provider upon Employer's request, including information on the number of participants in each investment option, the total amount of assets and the beginning Plan balance, previously unreported contributions, and ending balance.
- 9) Disburse Contributions to Account Investments. Allocate all amounts received in good order from the Employer to Accounts selected by participants. Such allocation received in good order by Service Provider shall occur within one (1) business day of receipt from the Employer or the

Employer's designee unless circumstances beyond the control of Service Provider justify a later transmittal. In no event shall allocations received in good order by Service Provider occur later than 72 hours of Service Provider's receipt of proceeds from Employer.

- 10) Plan Exchanges. Provide that when receiving assets in an exchange or transfer under the Plan, distribution restrictions are not less stringent than those imposed under the transferor contract and that the accumulated benefit (as defined in applicable income tax regulations governing 403(b) plans) under the receiving contract immediately after the exchange or transfer is at least equal to the accumulated benefit under the transferor contract immediately prior to the exchange or transfer.
- 11) Confidentiality. Service Provider agrees to maintain the confidentiality and/or privacy of all information about participants and employees provided by Employer and to provide Employer with documentation of Service Provider's relevant privacy policies. All information relating to providing services hereunder shall only be communicated to Service Provider representatives, Employer, or its designated representative.
- 12) Solicitation. Service Provider and its representatives shall comply with all pertinent written directives regarding the solicitation of employees of Employer.
- 13) 403(b) Provisions. Service Provider agrees to do the following:
 - a) Advise employees of the annual deferral limits under Section 402(g) of the Code and, if the Plan accepts Employer contributions, of the annual limitations applicable under Section 415(c) of the Code and to provide calculations to determine eligible contribution limits upon request of any employee. Any such calculations will be based upon applicable federal and state rules and regulations. Service Provider shall certify the accuracy of any such calculations, subject to the accuracy of information provided by the employee.
 - b) If permitted under the Plan, properly calculate the Maximum Allowable Contribution for employees who are utilizing the "catch-up" provisions of 402(g)(7) and/or 414(v) in accordance with the information provided to Service Provider by Employer and the employee.
 - c) If permitted under the Plan, properly administer loans in accordance with applicable federal and state rules and regulations.
 - d) Provide tax reporting and required notices to participants requesting distributions.
 - e) Permit and process corrective distributions of excess deferral contributions and properly track and report and/or distribute excess 415(c) contributions in accordance with applicable IRS regulations where such excess deferrals or excess contributions have been identified by Service Provider or by Employer or Employer's designated representative.
 - f) Withhold and report any federal and state taxes on any distributions made directly to any employee and/or his/her beneficiaries as appropriate.
 - g) Provide notification to participants who are age 70 1/2 that they may be required to take Required Minimum Distributions and calculate and distribute such amounts as may be required under the Plan and the Code.
 - h) If permitted under the Plan, administer hardship distributions including (if applicable) notifying Employer of the hardship distribution with instructions for Employer to suspend all elective deferrals by participant to all plans sponsored by Employer for 6 months.
 - i) Administer distributions and enforce distribution restrictions under Code Section 403(b).
 - j) Administer transfers and exchanges to the extent permitted under the Plan subject to Employer designation of authorized providers and products.
 - k) Provide information to Employer relating to 403(b) accounts held by Service Provider for participants in the event of an income tax audit subject to written authorization by Employer and/or participant (as applicable). For example:

- i) Annual listing of total contributions, by investment provider, for each year under audit;
- ii) Annual listing of all participant distributions for each year under audit;
- iii) Annual listing of outstanding participant loans for each year under audit;
- iv) Annual listing of any participant defaulted loans for each year under audit;
- v) Annual listing of exchanges and transfers processed for each year under audit;
- vi) Copies of IRS tax reporting information (Forms 1099-R) for all distributions and defaulted loans for each year under audit.

Such information shall be provided electronically, in hard copy, or in a manner otherwise mutually agreed upon by Employer and Service Provider.

DUTIES AND RESPONSIBILITIES OF EMPLOYER.

Employer shall:

1. Determine Eligible Employees. Determine which employees of Employer are eligible to participate in the Plan and certify that the 403(b) program will be made available to all eligible employees as required under the terms of Code section 403(b)(12)(A)(ii).
2. Primary Contact Person. Appoint a primary contact person for purposes of implementing, administering, and coordinating any issues that may arise with respect to the Plan.
3. Transmit Contributions. Transmit all contributions to Service Provider in a time and manner acceptable to both parties and consistent with applicable income tax regulations.
4. Identify Investment Providers. Make available to all employees and Service Provider a current list of authorized investment providers and investment products (annuity contracts, custodial accounts, grandfathered life insurance contracts) available under the Plan.
5. Provide Information. Agree to furnish Service Provider, as soon as practicable, any and all information which Service Provider may require in order to fulfill its duties under this Agreement, including but not limited to information on employment status, any exchanges and transfers authorized by Employer or its representative, and information on any participant hardship withdrawals from other Accounts under the Plan .
6. Eligible Employer. Certify that it qualifies under Section 403(b) of the Internal Revenue Code of 1986, as amended, as an organization eligible to offer this 403(b) plan to its employees and accept all liability for this determination. Employer agrees to notify Service Provider if it becomes an ineligible organization.
7. Plan Document. Certify that it now maintains or will maintain a written plan in accordance with applicable IRS regulations and that among other provisions, the Plan provides or will provide for exchanges between authorized product providers or investment options.
8. Plan Exchanges. Agree that Service Provider may accept an exchange of assets from another 403(b) account under the Plan.
9. Third Party Administrator. Agree to notify Service Provider if Employer has allocated certain specified administrative responsibilities to a third party and, by so notifying Service Provider, authorize Service Provider to share necessary Plan information with the third party administrator in a manner which is consistent with applicable privacy requirements under this Agreement and under applicable law.
10. Employer Contributions. If Employer makes nonelective contributions into the Plan, provide a listing of participants that are receiving such contributions and the amounts allocated to each participant with each remittance.

BOTH PARTIES AGREE that the following terms and conditions are included as part of this Agreement:

1. Information Sharing. Each party agrees to provide information necessary to comply with the regulations under Section 403(b) of the Code and the Plan, including information concerning the participant's employment status and information that takes into account other Code section 403(b) contracts/custodial accounts and any other information deemed necessary to ensure compliance including but not limited to information required for distributions from the Plan, Plan loans, rollovers into the Plan, Plan-to-Plan transfers, and Plan exchanges. Such information shall be provided in a form and manner, and within time periods, as shall be agreed from time to time between Employer and Service Provider.
2. Indemnification. Each party agrees, to the extent permitted by applicable law, to indemnify and hold harmless the other party, including any individual member of the governing boards, and their employees from every claim, demand, or suit which may arise out of, be connected with, or be made by reason of the other party's failure to meet the requirements of this Agreement. Notwithstanding the preceding sentence, this indemnification shall not cover any claim, demand, or suit based on the willful misconduct or fraud of either party or its employees. Either party shall, at its own expense and risk, defend, or at its option settle, any court proceeding that may be brought against it, members of the governing board, and employees on any claim, demand, or suits covered by this indemnification, and shall satisfy any judgment that may be rendered against any of them with respect to any such claim or demand, provided that such party notifies the other party, in writing, within twenty (20) business days of receipt of such claim or demand. Each party's liability hereunder shall be limited to actual damages, including, where applicable, income tax penalties (but not the taxes themselves) and out-of-pocket legal fees and expenses only.
3. Exclusive Services. Except as otherwise provided in this paragraph 3, this Agreement and the underlying contracts or accounts are the exclusive arrangement between the parties for services under the Plan and the terms of this Agreement do not extend beyond such program. Neither party shall have any other obligations or liabilities not specified herein unless both parties agree to such additional obligations or liabilities in writing.
4. Not Legal Advice. The parties agree that no service provided by the terms of this Agreement or under the Plan is to be construed as individual legal or tax advice to participants, nor to either party.
5. Term of the Agreement. This Agreement shall continue from year to year unless terminated by either party, in writing, by no less than sixty (60) days written notice.
6. Applicable Law. This Agreement shall be construed under the laws of the state where Employer's principle office resides, unless pre-empted by federal law. Any litigation with respect to the terms or conditions of the Agreement will be conducted under such state's jurisdiction and the parties agree that venue lies therein.
7. Severability. Each party agrees that it will perform its obligations hereunder in accordance will all applicable laws, rules, and regulations now or hereafter in effect. If any term or provision of this Agreement shall be found to be illegal or unenforceable then, notwithstanding, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

By executing this Agreement, dated _____ each party acknowledges that it has read this Agreement and agrees to its terms.

AGREED TO:

Employer:
Address:

Service Provider:
Address:

By: _____
Authorized Representative

By: _____
Authorized Representative

Title: _____

Title: _____

Disclaimer

This sample draft agreement was created to provide accurate and reliable information on the subjects covered. It is not intended to provide specific legal, tax or other professional advice. The services of an appropriate professional should be sought regarding your situation.

This document was co-created by members of the Association of School Business Officials (ASBO) International and Pennsylvania Association of School Business Officials (PASBO). For a complete list of the members of the ASBO International 403(b) Retirement Plan Council visit www.asbointl.org. For a complete list of the members of the PASBO IRS 403(b) Regulation Task Force visit www.pasbo.org.

ACKNOWLEDGEMENT

This document was co-created by members of the Association of School Business Officials (ASBO) International and Pennsylvania Association of School Business Officials (PASBO). Additional information and resources about the IRS 403(b) regulations can be found on the ASBO International Web site, www.asbointl.org, and the PASBO Web site www.pasbo.org.

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Additional information can be obtained from the PA Association of School Business Officials at www.pasbo.org and (717) 540-9551.

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