

# 457 DEFERRED COMPENSATION PROGRAM ADMINISTRATIVE SERVICES AGREEMENT



## Local Government Entity

This Agreement for administrative services is by and between \_\_\_\_\_(the "Employer"), with its principal place of business at \_\_\_\_\_, the State of Oregon, acting by and through its Public Employees' Retirement System ("PERS"), and ING Institutional Plan Services, LLC. ("ING"), a Delaware limited liability company with its principal place of business Braintree, Massachusetts, the Third Party Administrator ("TPA"). This Agreement shall be effective on the date it has been fully executed by every party.

WHEREAS, the Oregon Investment Council ("OIC") has established a deferred compensation investment program pursuant to ORS 243.421 (the "Program") and known as the Oregon Savings Growth Plan ("OSGP"), consisting of a "State Deferred Compensation Plan" available to eligible state employees and "Local Government Deferred Compensation Plans" available to eligible employees of local governments;

WHEREAS, PERS administers the Program in accordance with policies adopted by the Public Employees Retirement Board ("PERB") pursuant to ORS 243.435.

WHEREAS, PERS and TPA are parties to State of Oregon Personal/Professional Services Contract #PSK11015, effective October 8, 2010, and entered pursuant to Request for Proposal #1014-10 issued March 2010, under which Contract TPA provides third party recordkeeping and plan administration services for the OSGP;

WHEREAS, Employer has established a Deferred Compensation Plan (the "Plan") pursuant to Internal Revenue Code Section 457, 26 USC 457 ("IRC 457");

WHEREAS, Employer desires to invest the Plan's assets through the Program;

WHEREAS, ORS 243.474 authorizes PERS to permit Employer to invest the Plan's assets through the Program upon satisfaction of certain conditions;

WHEREAS, as a condition precedent to Employer's investment of the Plan's assets through the Program and in accordance with ORS 243.474(2) and ORS 243.478, Employer is required to enter into an Administrative Services Agreement with PERS pursuant to which Employer will receive administrative services in connection with the investment of the Plan's assets through the Program;

WHEREAS, PERS has requested TPA to provide certain administrative services directly to Employer in connection with Employer's investment of the Plan's assets through the Program;

WHEREAS, TPA has agreed to provide such services to Employer and PERS upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I – SCOPE OF AGREEMENT

- 1.1 This Agreement sets forth the terms and conditions pursuant to which PERS and TPA agree to provide, and Employer agrees to purchase, administrative services for the Plan. TPA shall provide directly to Employer the administrative services set forth on Schedule A attached hereto and incorporated herein by this reference (the “TPA Services”). PERS shall provide directly to Employer the administrative services set forth on Schedule B attached hereto and incorporated herein by this reference (the “PERS Services”). TPA shall render the TPA Services and PERS shall render the PERS Services in accordance with data, documents, policies, interpretations, directives, rules, practices and procedures of the Program and in accordance with the terms and conditions of this Agreement.
- 1.2 TPA and Employer each acknowledge and agree that PERS may, in its sole and absolute discretion and with or without cause, terminate the services of TPA hereunder and select another person or entity to become party to this Agreement as the TPA hereunder. Any such termination shall be in accordance with the provisions of Articles XII and XIII.

## ARTICLE II – RESPONSIBILITIES OF EMPLOYER

- 2.1 Prior to the commencement of the TPA Services specified in Schedule A and the PERS Services set forth on Schedule B, Employer shall furnish or cause to be furnished to the TPA, in a timely manner and in accordance with the specifications in Schedule A, all necessary information and data (“Employer Data”) for the Plan as established in Schedule A. Employer data includes, but is not limited to, copies of the Plan and any amendments thereto and any demographic, payroll or other participant data necessary for the performances of TPA Services under this Agreement. Employer shall provide to TPA such additional policies, interpretations, practices, procedures and directions (collectively “Directions”) as TPA may reasonably request to enable it to perform the TPA Services in accordance with Schedule A. Directions shall include any participant directions given in accordance with the terms of the Plan or related documentation.
- 2.2 Notwithstanding any other provision to the contrary, PERS and the TPA are not obligated to provide PERS Services and TPA Services, respectively, unless and until Employer provides timely, accurate and complete Employer Data to the TPA. Employer shall furnish or cause to be furnished to TPA all Employer Data specified in Schedule A in a timely manner and in accordance with the specifications of Schedule A. PERS’ and the TPA’s agreement to provide Services as contemplated in Schedule A and Schedule B is contingent upon the timely receipt of accurate and complete Employer Data from the Employer.
- 2.3 Employer shall be solely responsible for the accuracy and completeness of any Employer Data provided to the TPA. Upon request of the TPA, Employer shall promptly furnish or cause to be furnished accurate and complete Employer Data to correct any inaccuracies or incompleteness with respect to Employer Data previously provided to the TPA.
- 2.4 Employer shall review the Employer Data processed by the TPA and shall verify any such data and shall promptly notify the TPA and PERS in writing of any claimed error with respect to any processed Employer Data or report.
- 2.5 The Employer agrees to cause appropriate deductions to be made from the pay of participants in the Plan and to send by check or wire transfer the amount of the total deductions to the TPA or to such other facility or in such other manner as may be mutually agreed to between the Employer and PERS.
- 2.6 The Employer shall provide to the TPA, in such form as agreed upon by PERS and the Employer, a deferral listing with respect to each Plan participant’s account to include, but not be limited to, name, address, Social Security number, and annual salary. This process is set out in more detail in Schedule A.
- 2.7 The Employer represents and warrants that it is an eligible public employer under IRC 457 and ORS 243.401 (11) and that its employees are persons in the employ of a public employer. The Employer acknowledges that it is utilizing the services and investments offered by the Program.
- 2.8 The Employer shall require its employees participating in the Plan to use enrollment forms and other documents required by PERS including, but not limited to, the Plan and Agreement, *Acknowledgment Form* and *Designation of Investment Options*, and *Designation of Beneficiary*, as they may be amended.

- 2.9** The Employer agrees to enforce limitations on any employee's individual transfers to or from any investment option that are imposed by PERS as described in Schedule A, section B.7 and Schedule B.
- 2.10** Notwithstanding any other provision of this Agreement, the Employer shall remain the responsible administrator of its Plan in accordance with ORS 243.478(2).
- 2.11** PERS may require the Employer to provide proof that its Plan complies with IRC 457, and may require an opinion of counsel or other assurances satisfactory to PERS that participation by Employer does not cause the State of Oregon to violate any federal or state laws or regulations related to investments and securities.

### ARTICLE III – TPA'S OBLIGATION

- 3.1** TPA shall provide the TPA Services directly to Employer in accordance with the terms and conditions of this Agreement. TPA is directly liable to Employer for its failure to provide the TPA Services in accordance with the terms and conditions of this Agreement and for its breach of any other duty or obligation owed to Employer hereunder. Employer alone or with PERS may initiate legal action directly against TPA to enforce this Agreement against TPA.
- 3.2** TPA shall establish an account for each participant in the Plan and shall credit the amounts sent by the Employer on behalf of such participants to the investment options selected by such participants.
- 3.3** TPA shall withhold from distributions approved federal and state income taxes, according to instructions set forth on form W-4P completed by the participant. TPA shall remit such withholding to proper taxing authorities, and issue net funds to participant(s) or beneficiary(ies) in accordance with the withdrawal instructions in the *Benefit Application Packet* supplied by the participant. TPA shall issue a Form 1099R to those participants and beneficiaries who receive distribution(s) during the preceding year and retain a copy of such information on file for the period required by law.
- 3.4** TPA represents and warrants to Employer and PERS that:
- (a) The TPA Services will conform to the description set forth in Schedule A as such schedule may be amended from time to time.
  - (b) TPA will use due care in providing the TPA Services.
  - (c) TPA shall render the TPA Services (and maintain its automated systems to render the TPA Services) in a manner that complies with all applicable federal and state laws and regulations.
- 3.5** A breach of TPA's duty of due care in the performance of TPA Services hereunder includes, but is not limited to, the following:
- (a) Any processing error that results from a malfunction of TPA's automated systems or from errors or omissions of TPA or TPA's officers, employees, agents or contractors; or
  - (b) Any direct monetary loss suffered by the Plan as a result of a malfunction of TPA's automated systems or from errors or omissions of TPA or TPA's officers, employees, agents or contractors.
- 3.6** In the event of any breach of the duty of due care described in section 3.5, TPA shall, at TPA's sole expense, promptly correct any processing errors described in section 3.5(a) and reimburse to any impacted participant any direct monetary loss.
- 3.7** TPA will attempt to correct processing errors resulting from Employer's error, error by Employer's staff, or otherwise caused by the negligent acts of Employer's officers, employees and agents. TPA will bear reasonable costs of correcting TPA's records and correcting erroneous payments resulting from Employer's error provided that Employer promptly notifies TPA of such error and furnishes all data to TPA reasonably necessary to make such changes.

## ARTICLE IV - PERS' RESPONSIBILITIES AND LIMITATION OF LIABILITY

- 4.1** PERS shall provide the PERS Services directly to Employer in accordance with the terms and conditions of this Agreement.
- 4.2** PERS shall notify Employer and Plan participants of all investment options included in the Program. The investment options available as of the date of this agreement are outlined in Schedule B. The investment options offered by the OSGP may be changed by the OIC at any time.
- 4.3** Pursuant to ORS 243.421, the OIC has exclusive authority for the design and implementation of the Program and PERS has exclusive authority for the administration of the Program in accordance with ORS 243.435.
- 4.4** All assets of the Plan invested by Employer through the Program will be held in the Deferred Compensation Fund created by ORS 243.411.
- 4.5** The State of Oregon, the State Treasurer, the OIC, PERS and its officers and employees shall not be liable by reason of:
- (a) Any loss resulting from or caused by events or circumstances beyond PERS' reasonable control such as nationalization, expropriation, currency restrictions, acts of war or terrorism, riot, revolution, acts of God or other similar events or acts; and
  - (b) Acts or omissions of a Securities System, or (2) acts or omissions of, or related to, a Securities System. A Securities System shall mean securities that are held in the Federal Reserve book-entry system, in a clearing agency that acts as a securities depository or in another book-entry system for the central handling of securities.
- 4.6** A civil action for damages may not be brought against the State of Oregon, the State Treasurer, the OIC, PERB, or the officers or employees of the board by reason of any of the actions set forth in ORS 243.482.

## ARTICLE V - FEES AND EXPENSES

- 5.1** In consideration of the PERS Services and TPA Services furnished hereunder, PERS may charge an annual Administrative Fee of up to two (2) percent of the assets of the Plan invested in the Program. The Administrative Fee will be assessed against the account of each Plan participant and the amount of the fee will depend on the investment options selected by the Plan participant. The Administrative Fee includes fees for record keeping, communications, counseling, customer services and custodial services. The current fee schedule is attached hereto as Schedule C. Employer understands and agrees that the fee schedule may be modified, periodically, to reflect any adjustments such as reduction/increase of mutual funds fees. Any new fee schedule shall become effective immediately upon written notice from PERS to Employer.
- 5.2** PERS may charge an additional fee assessed to a Plan participant's account when processing Plan-to-Plan Transfers-Out (from the Plan to another state, city, county, etc. in or out of the State of Oregon) and when processing Domestic Relations Orders or Loans.
- 5.3** If, in the performance of Services or Additional Services hereunder, TPA holds uninvested cash pending investment or distribution, TPA shall incur no liability for the payment of interest thereon to any other party, notwithstanding TPA's receipt of "float" from such uninvested cash. Such float shall constitute a part of TPA's overall compensation for Services and Additional Services hereunder.
- 5.4** The Administrative Fee includes a fee for TPA Services (custodial services and record keeping services). A portion of the Administrative Fee will be paid to TPA for the TPA Services. The amount of the fee for TPA Services is set in a separate agreement between PERS and TPA. PERS, Employer and TPA agree the amount of the fee set in the PERS – TPA agreement shall apply to the TPA services provided in this agreement.

## ARTICLE VI - PLAN AMENDMENTS

- 6.1** PERS shall be under no obligation to process Plan amendments proposed by the Employer. Employer shall provide PERS with such amendments ninety (90) calendar days prior to the effective date of such amendment for PERS to review and accept or reject such amendments. If PERS accepts any amendments that materially affect any Plan record keeping or data processing requirements, which are also accepted by the TPA, PERS and Employer shall mutually agree upon appropriate adjustments to the administrative fee within the limits stated in Article V, 5.1.
- 6.2** Approvals of Plan amendments by PERS shall constitute PERS' acquiescence to the use of the documents involved and not its approval of their contents or their effect. The Employer shall assume full responsibility to PERS and to all interested persons for such contents and such effect.
- 6.3** The Employer shall be responsible for preparation and submission of any Plan(s) and Plan amendments for Internal Revenue Service determination. The Employer shall take all measures required under current federal law and applicable provisions of the Internal Revenue Code and Regulations, to assure the Plan(s) qualify as tax deferred retirement plan(s). PERS and the TPA shall be under no duty to question the measures taken by the Employer pursuant to Section 6.2 here of, and this Section 6.3.

## ARTICLE VII - CONFIDENTIALITY

- 7.1** PERS, Employer and TPA agree that all confidential information communicated to each other during the term of this Agreement shall be received in strict confidence, shall be used only for the purposes of this Agreement, and no such information shall be disclosed to third parties by the recipient party, its officers, employees, consultants, or agents without the prior written consent of the other parties. Each party agrees to take all reasonable precautions to prevent the disclosure to third parties of such information, including without limitation, the provisions of this Agreement and any incorporated Schedules, except as may be necessary by reason of legal, accounting or regulatory requirements as the case may be. The obligation to treat information and data as confidential shall not apply to information which:
- (a) Is in the public domain, other than by any breach of this Agreement,
  - (b) Is in the possession of a party to this Agreement on the effective date hereof, and if it shall not have been obtained from the other party,
  - (c) Shall be developed by a party outside the scope of any agreement with the other party,
  - (d) Shall be obtained rightfully from third parties.
- 7.2** The provisions of this Article VII shall survive the expiration or termination of this Agreement and continue for so long as either party is in possession of data or information protected hereunder.
- 7.3** No party shall be bound under this Article to the extent that it acts under compulsion of law (such as the Oregon Public Records Law) or in accordance with the requirements of any national or local government or government instrumentality or any other body with whose requirements the parties may be required by law or practice to conform.
- 7.4** TPA shall use the information communicated by PERS or Employer to TPA pursuant to this agreement solely for purposes of performing this agreement.

## ARTICLE VIII - COMPUTERIZED REPORTING SERVICES

- 8.1** The Employer agrees to use the equipment, computer programs and other information supplied by the TPA solely for its own internal use and benefit and not for resale or other transfer or disposition to, or use by or for the benefit of, any other person or organization without prior written approval of PERS and the TPA.

The Employer acknowledges that the databases, computer programs, screen formats, screen designs, report formats, interactive design techniques, and other information furnished to the Employer by the TPA may constitute copyrighted trade secrets or proprietary information of substantial value to the TPA. Such databases, programs and other information are collectively referred to below as "Proprietary Information" provided "Proprietary Information" does not include Employer data supplied by Employer or PERS, data and information TPA is required to provide Employer or PERS pursuant to the terms of this agreement, formats, screen designs, report formats, and other information Employer or PERS utilized prior to TPA being retained to provide its services. Also "Proprietary Information" does not include information listed in section 7.1 (a)-(d). Subject to the Oregon Public Records Law, the Employer agrees that it shall treat all Proprietary Information as proprietary to the TPA and that it shall not divulge any Proprietary Information to any person or organization except as expressly permitted hereunder. Without limiting the foregoing, the Employer agrees for itself and its employees and agents:

- (a) To use such programs and databases (i) solely on equipment at Employer's locations agreed to between the Employer and PERS and (ii) solely in accordance with the TPA's applicable user documentation;
  - (b) To refrain from obtaining unauthorized access to any programs, data or other information owned by the TPA, and if such access is accidentally obtained, to respect and safeguard the same as Proprietary Information;
  - (c) To refrain from causing or allowing information transmitted from the TPA's computer to the Employer's terminals to be retransmitted to another computer, terminal or other device except to the extent such information was originally provided by Employer or is information Employer or PERS is paying TPA to provide pursuant to this agreement;
  - (d) That the Employer shall have access to only those authorized transactions as agreed to between the Employer and PERS;
  - (e) To honor reasonable written requests made by TPA to protect at TPA's expense the rights of TPA in Proprietary Information at common law, under the federal copyright statutes and under other federal and state statutes.
- 8.2** Notwithstanding the provisions of Articles VII and VIII, in the event the contract with the present TPA is not renewed or is otherwise terminated, TPA agrees in accordance with Articles XII and XIII to cooperate with Employer, PERS, and the newly selected TPA in transferring data and information to the newly selected TPA. Such data shall be in a format reasonably requested by PERS.
- 8.3** The Employer hereby acknowledges that the TPA data and information available to Employer may include unaudited information.

## ARTICLE IX - OWNERSHIP OF WORK PRODUCT

- 9.1** All work product that results from this agreement (the "Work Product") is the exclusive property of PERS. PERS and TPA intend that such Work Product be deemed "work made for hire" of which PERS shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," TPA hereby irrevocably assigns to PERS all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. TPA shall execute such further documents and instruments as PERS may reasonably request in order to fully vest such rights in PERS. TPA forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modification.



## ARTICLE X - SECURITY CODES

- 10.1** If the TPA has issued to the Employer, or to any agent appointed by the Employer, security codes or passwords in order that the TPA may verify that certain transmissions of information, including directions or instructions, have been originated by the Employer or its agent, as the case may be, Employer shall indemnify and hold harmless PERS and the TPA, to the extent and in the manner provided in Section 11.2 hereof, for any actions or omissions by PERS or the TPA made in reliance upon receipt by PERS or TPA of transmissions of information with the proper security code or password, including communication purporting to be directions or instructions, which PERS or TPA reasonably believes to be from the Employer or its agents.

## ARTICLE XI - INDEMNIFICATION

- 11.1** (a) GENERAL INDEMNITY. The Employer, to the extent permitted by the Oregon Constitution, any Oregon Statute and the Employer's Charter and ordinances, and TPA shall defend, save, hold harmless, and indemnify the State of Oregon and PERS and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of Employer or TPA, as the case may be, or their officers, employees, subcontractors, or agents under this Agreement.
- (b) INDEMNITY FOR INFRINGEMENT CLAIMS. Without limiting the generality of section 11.1(a), Employer and TPA expressly agree to defend, indemnify, and hold PERS, the State of Oregon and their agencies, subdivisions, officers, directors, agents, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the work, the work product or any other tangible or intangible items delivered to PERS by Employer or TPA that may be the subject of protection under any state or federal intellectual property law or doctrine, or PERS' use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that state shall provide Employer or TPA, as the case may be, with prompt written notice of any infringement claim.
- (c) CONTROL OF DEFENSE AND SETTLEMENT. Employer or TPA, as the case may be, shall have control of the defense and settlement of any claim that is subject to sections 11.1(a) or 11.1(b); however, neither Employer, TPA, nor any attorney engaged by Employer or TPA shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Employer or TPA, as the case may be, is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.
- 11.2** To the extent permitted by the Oregon Constitution, any Oregon Statute and The Employer's Charter and ordinances, the Employer shall indemnify and hold the TPA harmless from any and all liability claims, damages, costs or expenses (including reasonable attorney's fees) arising from or claimed to have arisen from; (i) actions the TPA performs upon any direction, instruction, request or representation of the Employer (including any direction, instructions, request or representation of the Employer to the TPA to perform TPA Services other than as provided in this agreement); (ii) claims arising from any action or omission of a prior TPA, trustee or investment manager; (iii) a breach of any duty by PERS in administering or investing of funds in the Deferred Compensation Fund, a breach of any duty by PERS in administering or investing of the funds for participating local governments; (iv) any losses suffered by a local plan participant because of participant's choice of an investment option available through the deferred compensation investment program established under ORS 243.421; (v) any claim PERS, its officers, employees or agents violated federal or state security laws. This right to indemnification does not cover any liability, claims, damages, costs or expenses arising from the TPA's negligence or bad faith, or failure to perform its obligations under this agreement.

## ARTICLE XII - TERMINATION

- 12.1** Employer or PERS may terminate this Agreement upon 30 days advance written notice to all other parties to this Agreement. Any termination by Employer or PERS pursuant to this section 12.1 shall terminate this Agreement in its entirety except for those obligations that expressly survive termination provided in Article XX.
- 12.2** TPA may terminate TPA's rights and obligations under this Agreement upon 180 days advance written notice to all other parties to this Agreement. Any termination pursuant to this section 12.2 shall terminate only the rights and obligations of TPA under this Agreement, other than the obligations of TPA that expressly survive termination. Termination of TPA's rights and obligations under this Agreement pursuant to this Section 12.2 shall not terminate this Agreement as between PERS and Employer and this Agreement shall remain in full force and effect between PERS and Employer until terminated in accordance with Section 12.1. TPA shall not, without the consent of PERS, terminate its rights under this agreement without also terminating its rights under its agreement with PERS with respect to the State Deferred Compensation Plan.
- 12.3** PERS may terminate TPA's rights and obligations under this Agreement upon 30 days advance written notice to all other parties to this Agreement. Any termination pursuant to this Section 12.3 shall terminate only the rights and obligations of TPA under this Agreement, other than the obligations of TPA that expressly survive termination. Termination of TPA's rights and obligations under this Agreement pursuant to this Section 12.3 shall not terminate this Agreement and this Agreement shall remain in full force and effect between PERS and Employer until terminated in accordance with Section 12.1.

## ARTICLE XIII - EFFECT OF TERMINATION

- 13.1** Following notice of termination of this Agreement pursuant to Section 12.1 or notice of termination of TPA's rights and obligations under this Agreement pursuant to Sections 12.2 or 12.3, TPA shall:
- (a) Prepare and deliver stored Employer Data files and related materials, in TPA's format or, at PERS' option, in a format reasonably requested by PERS, to Employer or its agent at the time reasonably requested by PERS and otherwise cooperate with PERS and Employer in the transmission of data to a successor TPA.
  - (b) TPA shall fully cooperate with PERS and Employer and the successor TPA in performing all actions necessary to effect the transfer to the successor TPA on the date of termination all assets, funds and property held by TPA under his agreement. Such assets, funds and property shall be delivered in a form acceptable to PERS.
- 13.2** Following notice of termination of TPA's rights and obligations under this Agreement pursuant to Sections 12.2 or 12.3, PERS shall:
- (a) Select a successor TPA ("New TPA"); and
  - (b) Coordinate the transfer of the Employer Data files and related materials and fund assets to the New TPA.
- 13.3** Employer acknowledges and agrees that PERS has sole power and authority to select any New TPA under this Agreement. Employer agrees that any New TPA will become a party to this Agreement as the TPA and with all the rights and obligations of the TPA hereunder upon execution by PERS and the New TPA of an Addendum to Administrative Services Agreement in the form attached hereto as Exhibit A (the "Addendum") and delivery of the executed Addendum to Employer in accordance with the notice provisions of this Agreement.
- 13.4** Employer further acknowledges and agrees that PERS has the right and power to negotiate changes in the TPA Services ("New TPA Services") with the New TPA and that such changes shall be binding on Employer under this Agreement so long as the New TPA Services are substantially similar to the TPA Services. The New TPA Services shall become the TPA Services under this Agreement upon the delivery of a new Schedule A to Employer.



- 13.5** Transfer of Employer Data files (and any other information or records governed by this Agreement) and Fund assets pursuant to termination shall be at no additional cost to PERS or Employer; provided, however, that if TPA incurs extraordinary costs to transfer Employer Data files (or any other information or records governed by this agreement), Employer shall reimburse TPA for such extraordinary costs. TPA shall submit monthly invoices to Employer for such extraordinary costs. The invoices shall describe all work performed for which the extraordinary costs are incurred with particularity, by whom the work was performed, and shall itemize and explain all extraordinary costs for which TPA claims reimbursement. Each invoice also shall include the total amount invoiced to date by TPA prior to the current invoice. Extraordinary costs shall not include the following costs:
- (a) To transmit data in readable form in TPA's format or a format TPA is already using with respect to TPA Services provided to Employer or PERS.
  - (b) To transmit data or reports that TPA is being paid to provide pursuant to this agreement.
  - (c) Similar to costs incurred by previous TPA, when ING became the new TPA under the present OSGP.
- 13.6** The TPA, PERS and Employer agree to cooperate with each other to ensure an orderly termination process.
- 13.7** Upon termination TPA shall be entitled to pro rata fees, except as provided in paragraph 3.7.
- 13.8** If PERS is delayed by causes other than those caused by the TPA, its agents or subcontractors, in phasing out the services provided by this agreement beyond the effective date of termination, the TPA shall provide (at PERS' request) extended operation services for a period not to exceed six (6) months from the effective date of termination. Such services shall be provided at the same compensation rate as provided under this agreement.

#### **ARTICLE XIV - FORCE MAJEURE: OTHER FAILURES OR DELAYS**

- 14.1** Neither party shall be liable to the other for any failure to comply with the terms of this Agreement, for any delay in the performance thereof or for failure to perform under the terms and provisions of this Agreement, where such failure or delay is due to causes beyond such party's reasonable control, provided the party whose performance is so delayed promptly notifies the other party of the cause of such delay, the delay is of no greater scope or of no greater duration than required by the circumstances and the party claiming such delay promptly employs all reasonable efforts to remove or avoid the cause of delay and resumes performance of its obligations hereunder.

#### **ARTICLE XV - GOVERNING LAW, VENUE; CONSENT TO JURISDICTION**

- 15.1** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between any of PERS (and/or any other agency or department of the State of Oregon), Employer and TPA that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EMPLOYER AND TPA, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## ARTICLE XVI - COMPLIANCE WITH APPLICABLE LAW

- 16.1** Employer and TPA shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement. Without limiting the generality of the foregoing, Employer and TPA expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the this Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. PERS' performance under this Agreement is conditioned upon Employer's and TPA's compliance with the provisions of ORS 279.312, 279.314, 279.316 and 279.320, which are incorporated by reference herein. Employer and TPA shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279.545(4)), recycled PETE products (as defined in ORS 279.545(5)), and other recycled products (as "recycled product" is defined in ORS 279.545(6)).

## ARTICLE XVII - SCHEDULES

- 17.1** The Schedules attached to this Agreement and referred to herein shall be deemed to be a part hereof. If there is any conflict between the terms of the Agreement and the terms of the schedules, the terms of this Agreement shall have precedence.

## ARTICLE XVIII - TERM OF AGREEMENT

- 18.1** This Agreement shall become effective as of the date stated in the first paragraph of this Agreement and shall continue in full force and effect until terminated as provided in Article XII.

## ARTICLE XIX - SEVERABILITY

- 19.1** If any provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue to be fully effective, provided that the parties shall exercise their best efforts in good faith to replace by mutual agreement any such invalid or unenforceable provision that in the opinion of either party materially affects their position under the Agreement.

## ARTICLE XX - MISCELLANEOUS

- 20.1** The Employer represents and warrants that the Deferred Compensation Investment Program in which participants will be investing is held in trust with the Employer acting as trustee for the exclusive benefit of participants and their beneficiaries in accordance with IRC 457(g).
- 20.2** No party to this Agreement shall assign its rights or delegate its duties or responsibilities under this Agreement, or subcontract any of its responsibilities, except as expressly provided in this Agreement, without the prior written approval of the other parties. Such approval shall not be unreasonably withheld. Unless otherwise expressly stated in such approval by a party, any such assignment or delegation shall not relieve the assignor or delegator of any of its duties or obligations under this Agreement.

**20.3** This agreement and the provisions thereof shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties.

**20.4** This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

**ARTICLE XXI - SURVIVABILITY**

**21.1** The provisions of Articles VII, XI, XIII, XV, XIX and sections 3.4, 3.5, 3.6, 4.5, 4.6, 8.2, 9.1 and 11.2 shall survive the termination of this agreement.

**ARTICLE XXII - NOTICES**

**22.1** Notices and demands to be given under this Agreement by one party to another shall be given by United States mail, certified, addressed to the party to be notified or upon whom a demand is being made, at the respective addresses set forth in this Agreement or such other place as any party may, from time to time, designate in writing to the other parties. Notice shall be deemed to be effective on the day the notice is mailed.

If to Employer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to PERS: **Oregon Public Employees' Retirement System**  
**Attn: Gay Lynn Bath, OSGP Manager**  
**800 Summer Street N.E., Suite 200, Salem, OR 97301**

If to ING: **ING**  
**c/o Oregon Savings Growth Plan**  
**30 Braintree Hill Office Park**  
**Braintree, MA 02184**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

\_\_\_\_\_ (Employer)

Signature	Date
Printed Name	Title

**Oregon Public Employees' Retirement System**

Signature	Date
Printed Name	Title

**ING**

Signature	Date
Printed Name	Title

**EXHIBIT A**

**ADDENDUM TO ADMINISTRATIVE SERVICES AGREEMENT**

This Addendum to Administrative Services Agreement (the "Addendum") is executed as of \_\_\_\_\_ by \_\_\_\_\_ ("New TPA"). By execution of this Addendum, New TPA agrees to become a party, as the "TPA" thereunder, to that certain Administrative Services Agreement dated as of \_\_\_\_\_ by and among the Oregon Public Employees' Retirement System ("PERS"), \_\_\_\_\_ ("Employer") and a TPA (the "Administrative Services Agreement"). New TPA shall become a party to the Administrative Services Agreement as the TPA thereunder and shall have all the rights and obligations of the TPA thereunder on the date PERS delivers this executed Addendum to Employer in accordance with the notice provisions of the Administrative Services Agreement (the "Effective Date"). If PERS and TPA have agreed to any changes to the TPA Services from those in existence prior to the Effective Date, a full description of the TPA Services as agreed to between PERS and TPA is set forth on the Schedule of TPA Services attached hereto and this Schedule of TPA Services shall become Schedule A to the Administrative Services Agreement on the Effective Date, replacing in its entirety any Schedule A to the Administrative Services Agreement in existence prior to the Effective Date. All capitalized terms used but not defined herein or in the TPA Services replacing Schedule A to the Administrative Services Agreement shall have the meanings assigned thereto in the Administrative Services Agreement.

**(NEW TPA)**

Signature	Date
Printed Name	Title

**ACCEPTED AND AGREED TO:**

**OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM**

Signature	Date
Printed Name	Title