

SAMPLE INFORMATION SHARING AGREEMENT

This Information Sharing Agreement ("Agreement") between _____ ("Provider")
_____ [Vendor]
and _____ ("Plan Sponsor")
_____ [School District/Intermediate Unit/Career and Technology Center]

establishes the understanding between Provider and Plan Sponsor to share information necessary for compliance with final 403(b) regulations relating to Exchanges by employees of Plan Sponsor made after September 24, 2007. Provider and Employer intend this Agreement to describe the respective duties and obligations of the parties with respect to Exchanges as set forth hereafter.

Plan Sponsor represents:

1. That it is an employer eligible to offer programs under §403(b) of the Internal Revenue Code of 1986, as amended (the Code);
2. That it has established and maintains a program for eligible employees intended to qualify under §403(b) of the Code ("403(b) Plan");
3. That, as part of the 403(b) Plan, Plan Sponsor either allows or intends to allow employees to Exchange their current 403(b) annuity contracts and/or custodial accounts under the Plan for 403(b) annuity contracts and/or custodial accounts offered by Provider;
4. That on or before January 1, 2009, Plan Sponsor shall adopt a written 403(b) plan document which shall authorize Exchanges executed under this Agreement and shall provide a means of providing a copy of the document and any updates, amendments or other changes to Provider.

Provider represents:

5. That it will offer for Exchange only 403(b) annuity contracts and/or custodial accounts that conform to applicable laws and regulations;
6. That an employee's accumulated benefit under the Provider's 403(b) annuity contract and/or custodial account after an Exchange shall be at least equal to the accumulated benefit of the employee's annuity contract and/or custodial account immediately prior to the Exchange, as such accumulated value is defined for purposes of applicable federal income tax regulations;
7. That the distribution restrictions applicable to the Provider's annuity contract and/or custodial account are at least as restrictive as the distribution requirements applicable to the 403(b) annuity contract and/or custodial account prior to the Exchange;
8. That it will, upon receiving a copy of the written 403(b) plan document, comply with its terms and conditions, provided that such plan document may not enlarge the rights of the participant or Plan Sponsor under the annuity contract and/or custodial account without the consent of the Provider and, where applicable, the participant; and
9. That it will, in the event of a tax audit of Plan Sponsor, cooperate in providing necessary information relating to the 403(b) Plan as requested

Plan Sponsor and Provider Agree:

10. That each, or their authorized representatives, shall exchange information necessary for compliance with the requirements of §403(b) related Code sections and other applicable laws and regulations, including, but not limited to information on employment status, contributions and transactions made to or from other 403(b) annuity contracts and/or custodial accounts under the 403(b) Plan, information on other exchanges, loans and hardship withdrawals (as permitted under the 403(b) Plan) and any other information necessary to facilitate activities permitted under the terms of the 403(b) Plan or tax compliance and reporting, as such information and details of such exchange shall be determined from time to time by agreement between Plan Sponsor and Provider.

11. That Provider shall indemnify and hold harmless Plan Sponsor, any member of its governing board and employees from any claim, demand, or suit which may arise out of, be connected with, or be made due to the Provider's failure, through negligence or otherwise, to fulfill its obligations under this Agreement. However, this indemnification shall not cover any claim, demand or suit based on erroneous information provided by Plan Sponsor, its employees, former employees or legal representatives of such parties, or any willful misconduct or negligence by such parties. Provider shall, at its own expense and risk, defend, or at its option, settle any legal proceeding brought against Plan Sponsor based on any claim, demand or suit covered by this indemnification, provided that Provider is notified by Plan Sponsor, in writing, within thirty (30) days of Plan Sponsor's receipt of such claim or demand. Provider's liability under this indemnification is limited to actual damages and out-of-pocket legal fees and expenses only.
12. That either Plan Sponsor or Provider, or their authorized representatives, may terminate this Agreement at any time by giving the other party written notice at least sixty (60) days before the effective date of the termination, provided that the provisions of Sections 4, 8, 9, 10, 11, 14 and 15 of this Agreement continue to be effective after termination of this Agreement with respect to annuity contracts and/or custodial accounts entered into under the terms of this Agreement prior to this Agreement's termination.
13. That, for purposes of this Agreement, "Exchange" means the tax-free exchange (as defined under applicable federal income tax regulations under Code Section 403(b)) of all or some portion of an employee's 403(b) annuity contract and/or custodial account from another investment provider, or from another annuity contract and/or custodial account of the Provider, to a 403(b) annuity contract and/or custodial account with the Provider under the Plan Sponsor's plan for the purpose of changing investments.
14. That the dates set forth in this Agreement, except for the execution date, are automatically extended to conform to any later available compliance dates that may be provided under applicable guidance issued after this Agreement is executed.
15. That the benefits and obligations of this Agreement apply to each party and to its heirs, successors and assigns. The parties agree that written notice will be provided to the other party of any heirs, successors and assigns which assume the benefits and obligations of this Agreement as soon as possible after such assumption.

Provider

Plan Sponsor

By: _____ By: _____

Title: _____ Title: _____

Date: _____ Date: _____

This document is provided by ASBO International solely for the use if its members and is not intended, nor should it be used, as a substitute for legal advice. You should consult with your counsel. Further this document is not intended, nor should it be construed as tax advice. You should consult with your tax advisor. Members may also consult the model language issued by the Internal Revenue Service, which can be found at Revenue Procedure 2007-71 www.irs.gov.

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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