

**COMPOSITE COPY**  
**OF THE**  
**OPTIONAL RETIREMENT PLAN OF THE**  
**COMMONWEALTH OF VIRGINIA**  
**FOR EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION**

(As Restated July 1, 2002)

Including:

1. First Amendment dated May 20, 2004
2. Second Amendment dated March 23, 2005
3. Third Amendment dated December 15, 2005
4. Fourth Amendment dated June 21, 2007
5. Fifth Amendment dated June 19, 2008

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Appendix A - Special Effective Dates for Certain Provisions

WITNESSETH:

WHEREAS, this Optional Retirement Plan of the Commonwealth of Virginia for Employees of Institutions of Higher Education (the “Plan”) was implemented by the Commonwealth of Virginia effective July 1, 1985.

WHEREAS, pursuant to Section 51.1-126 of the Code of Virginia (1950), as amended, the Plan is hereby amended and restated effective July 1, 2002, except as provided herein.

The Board intends to maintain the Plan as a qualified defined contribution plan within the meaning of Internal Revenue Code Section 401(a) as applicable to governmental plans as defined in Section 414(d) of the Code. The purpose of the Plan is to provide retirement benefits for eligible employees pursuant to the terms of the Plan in consideration of their services.

The Plan is available in lieu of the benefits established pursuant to the Virginia Retirement Act, Section 51.1-100 et seq. of the Code of Virginia (1950) as amended, but is available in addition to the deferred compensation and cash match plans established pursuant to the Government Employees Deferred Compensation Plan Act, Section 51.1-600 et seq. of the Code of Virginia (1950) as amended, as well as any tax sheltered annuity plans or programs available through any institution of higher education.

To comply with the requirements of Internal Revenue Code Section 401(a) and in accordance with Section 11 of Article X of the Constitution of Virginia (1971) as amended, the Board has established a related fund (“Fund”) pursuant to a trust agreement (“Trust Agreement”) in which all contributions to the Plan and the income thereon shall be held for the exclusive benefit of Participants and their Beneficiaries.

NOW, THEREFORE, in consideration of the premises herein, the Board agrees as follows:

**ARTICLE I**

**Definition of Terms**

The following words and terms as used in this Plan shall have the meaning set forth below, unless a different meaning is clearly required by the context.

1.1 **“Accrued Benefit”**: The sum of the balances in the following accounts of Participants under the Plan as of the most recent Valuation Date (or as otherwise provided herein):

1.1(a) **“Employer Account”**: The account of a Participant attributable to the Employer Contributions made on his behalf, plus any earnings or losses thereon, as provided in ARTICLE V.

1.1(b) **"Rollover Account"**: *[Effective July 1, 2004]* The account or accounts of a Participant in the Fund attributable to his Rollover Contributions consisting of his After-tax Rollover Account and his Regular Rollover Account as follows:

(i) **"After-tax Rollover Account"**: The Participant's account in the Fund attributable to after-tax employee contributions included in a Rollover Contribution by the Participant.

(ii) **"Regular Rollover Account"**: The Participant's account in the Fund attributable to allocations of his Rollover Contributions which are not after-tax employee contributions.

1.1(c) **"Transfer Account"**: *[Effective July 1, 2002]* The account or accounts of a Participant in the Fund attributable to his Transfer Contributions, consisting of his After-tax Transfer Account and his Regular Transfer Account as follows:

(i) **"After-tax Transfer Account"**: The Participant's account in the Fund attributable to after-tax employee contributions included in a Transfer Contribution by the Participant.

(ii) **"Regular Transfer Account"**: The Participant's account in the Fund attributable to allocations of his Transfer Contributions which are not after-tax employee contributions.

1.2 **"Adjustment Factor"**: The cost of living adjustment factor prescribed by the Secretary of the Treasury or his delegate under Section 415(d) of the Code for years beginning after December 31, 1987, applied to such items and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

1.3 **"Administrator"**: The Board ("Plan Administrator"), which shall appoint the Director of the Virginia Retirement System as chief administrative officer.

1.4 **"Agent"**: One or more plan service agents to be appointed by and serve at the pleasure of the Plan Sponsor.

1.5 **"Alternate Payee"**: *[Effective July 1, 2005]* The person who is or was the spouse of the Participant to the extent that such person is entitled to any or all of a Participant's Accrued Benefit under a court order that the Plan Administrator has determined to be an Approved Domestic Relations Order.

1.6 **"Approved Domestic Relations Order"**: A qualified domestic relations order within the meaning of Section 414(p) of the Code as applicable to governmental plans within the meaning of Section 414(d) of the Code and as determined by the Administrator pursuant to the Plan.

1.7 **“Beneficiary”**: The person or persons, whether natural or non-natural, including but not limited to a trustee or other fiduciary, designated by a Participant pursuant to ARTICLE VIII to receive benefits under the Plan attributable to such Participant after the death of such Participant.

1.8 **“Board”**: The Board of Trustees of the Virginia Retirement System.

1.9 **“Code”**: The Internal Revenue Code of 1986, as the same may be amended from time to time, or the corresponding section of any subsequent Internal Revenue Code, and, to the extent not inconsistent therewith, regulations issued thereunder.

1.10 **“Compensation”**: A Participant’s full compensation payable to the Participant working in an Eligible Position, including employee elective salary reduction or similar deferral contributions by reason of Section 125, 132(f), 402(g) or 457(b) of the Code. Such definition shall be interpreted in the same manner as the term “creditable compensation” under Va. Code Section 51.1-124.3 is interpreted by the Plan Sponsor.

1.11 **“Compensation Limit”**:

1.11(a) (i) For Plan Years beginning before January 1, 2002, \$150,000 (as adjusted in \$10,000 increments by the applicable Adjustment Factor determined on the basis of a base period of the calendar quarter beginning October 1, 1993).

(ii) For Plan Years beginning on and after January 1, 2002, \$200,000 (as adjusted in \$5,000 increments by the applicable Adjustment Factor on the basis of a base period of the calendar quarter beginning July 1, 2001).

(iii) Notwithstanding the foregoing, an individual who first became a Participant in the Plan or any predecessor established pursuant to the Enabling Statute during a Plan Year beginning before July 1, 1996, shall be subject to the annual compensation limit in effect under Section 401(a)(17) of the Code as in effect July 1, 1993, including any subsequent adjustments to such limit.

1.11(b) For purposes of applying the Compensation Limit:

(i) The Compensation Limit applicable to each Plan Year (or other applicable computation period) shall be the Compensation Limit in effect for each such Plan Year (or other applicable computation period), determined without increases in the Compensation Limit for subsequent periods.

(ii) If any Plan Year (or other stated computation period) is a period of less than twelve (12) months, then any dollar limitation referred to in this paragraph shall be prorated by multiplying the otherwise applicable dollar limitation for such Plan Year (or other stated computation period) by a fraction, the numerator of which is the number of months in such Plan Year (or other stated computation period) and the denominator of which is twelve (12).

1.12 **“Contract”**: Any type of contract or policy issued by the Insurance Company or by an investment or mutual fund company to effect the purposes of the Plan.

1.13 **“Effective Date”**:

- (i) The Effective Date of the Plan is July 1, 1985.
- (ii) The Effective Date of this Restatement of the Plan is July 1, 2002.

The Administrator shall maintain a list of the Effective Dates of participation of all Institutions participating in the Plan.

Appendix A sets forth the Special Effective Dates of Certain Provisions of the Plan.

1.14 **“Eligible Employee”**: An Employee who is employed by a participating Institution in an Eligible Position.

1.15 **“Eligible Position”**: The president of an Institution, the Chancellor of the Virginia Community College System, or any full-time salaried person engaged in teaching, administration or research who has faculty rank at an Institution.

1.16 **“Employee”**: Any individual employed in the service of the Employer as a common law employee.

1.17 **“Employer”**: *[Effective July 1, 2004]* The Commonwealth of Virginia and its agencies or any institution of higher education established as such under Chapters 5 through 16.1 and 16.3 and 16.4 of Title 23 of the Virginia Code. For purposes of determining a Participant’s date of hire in an Eligible Position and eligibility for distribution, all Employers participating in the Plan shall be treated as a single employer.

1.18 **“Enabling Statute”**: Section 51.1-126 of the Code of Virginia (1950) as amended.

1.19 **“Fund”**: The trust fund created under and subject to the Trust Agreement which holds the assets of the Plan, including, but not limited to, any Contracts issued by any Insurance Company under the Plan.

1.20 **“Institution”**: Any institution of higher education, including any state university, college or community college, which participates in the Plan pursuant to Article II.

1.21 **“Insurance Company”**: Any insurance company which issues a Contract to hold assets of the Plan or a policy to provide for payment of benefits under the Plan.

1.22 **“Participant”**: An Eligible Employee (or former Eligible Employee) who elected to participate in the Plan for so long as he is considered a Participant as provided in ARTICLE III.

1.23 **“Plan”**: This document as contained herein or as duly amended. The plan maintained pursuant hereto shall be known as the “Optional Retirement Plan of the Commonwealth of Virginia for Employees of Institutions of Higher Education”.

1.24 **“Plan Sponsor”**: The Virginia Retirement System, an independent state agency of the Commonwealth of Virginia with the authority pursuant to the Enabling Statute to establish and administer the Plan.

1.25 **“Plan Year”**: The 12 month period beginning on the first day of July.

1.26 **“Trust Agreement”**: The written agreement (or declaration) made by and between the Plan Sponsor and the Trustee under which the Fund is maintained.

1.27 **“Trustee”**: The trustee duly appointed and currently serving under the Trust Agreement. At all times, the Trustee shall be a directed trustee and (except as provided below) shall be completely subject to the direction of the Plan Administrator, or the Participant or Beneficiary or Alternate Payee. The Trustee’s only duty is to ensure that all investments, amounts, property, and rights held under the Fund are held for the exclusive benefit of Participants or their Beneficiaries.

1.28 **“VRS”**: The contributory defined benefit pension plan established pursuant to the Virginia Retirement Act, Section 51.1-100 et seq. of the Code of Virginia (1950) as amended.

1.29 **“Valuation Date”**: Each business day of the New York Stock Exchange.

## ARTICLE II

### Participating Institutions

2.1 **Participation by Institution**. All institutions of higher education that are agencies of the Commonwealth of Virginia shall be participating Institutions. However, with the consent of the Plan Sponsor, any such institution of higher education, including any state university, college or community college, may elect to withdraw from participation in the Plan, provided such institution obtains Board approval for such withdrawal. The Board shall approve the withdrawal of such institution from the Plan only if such institution provides sufficient assurances that it has adopted a plan document and has established administrative procedures to administer its optional retirement plan in accordance with all state and federal statutes, regulations and other guidance.

2.2 **Participating Institution Has Same Provisions**. Each Institution shall maintain the Plan as adopted by the Plan Sponsor, without amendment or revision.

2.2(a) Any amendment of the Plan by the Plan Sponsor is effective and binding upon all Institutions, without their consent.

2.2(b) An Institution has no power to amend the Plan in any way, except to discontinue making further contributions under this Plan.

## ARTICLE III

### **Eligibility and Participation**

#### 3.1 **Eligibility.**

3.1(a) Each Eligible Employee hired after the Effective Date of the Plan, may, upon his acceptance of the Eligible Position elect to become a Participant in the Plan. Such election shall be made within sixty (60) days of entry upon the performance of his duties in an Eligible Position and shall be irrevocable.

3.1(b) The election to participate in the Plan shall be made in accordance with the procedures adopted by the Plan Administrator for this purpose.

3.1(c) An Eligible Employee failing to elect to participate in this Plan shall automatically be enrolled as a member of the VRS, provided such Employee meets the membership requirements of the VRS. In the event an Eligible Employee dies or becomes disabled prior to the receipt of the election by the Institution, such Eligible Employees shall be considered enrolled in VRS.

3.2 **Length of Participation.** Except as provided in Paragraph 3.3 below, an Employee who becomes a Participant shall be or remain a Participant for so long as he is an Eligible Employee or he is entitled to future benefits under the terms of the Plan.

#### 3.3 **Irrevocable Election.**

3.3(a) For purposes hereof, the irrevocable election shall mean that for so long as an Eligible Employee is employed by a participating Institution or any institution of higher education, including any state university, college or community college which has opted with the approval of the Board to maintain and administer its own optional retirement plan, such Eligible Employee shall remain a Participant in this Plan.

3.3(b) If an Eligible Employee separates from employment with a participating Institution or any institution of higher education, including any state university, college or community college which has opted with the approval of the Board to maintain and administer its own optional retirement plan and is later reemployed by any such institution, regardless of whether it is the same such institution, such Eligible Employee have the opportunity to make a new election as though he were a new Eligible Employee. An Eligible Employee shall not be

considered to have separated from employment with a participating Institution or any institution of higher education, including any state university, college or community college which has opted with the approval of the Board to maintain and administer its own optional retirement plan unless such person has a break in service either from the first such institution, or between employment with such institution and such second institution. A break in service shall not be considered to have occurred unless the break is longer in duration than the break between academic year contract cycles or, in the case of twelve (12) month contracts, longer than 3 months. In addition, a break that is due to a temporary or provisional appointment or assignment shall not be considered to be a break in service.

3.3(c) If an Eligible Employee ceases to be classified as an Eligible Employee but is later reclassified as an Eligible Employee or becomes employed as an Eligible Employee by a different participating Institution or any institution of higher education, including any state university, college or community college which has opted with the approval of the Board to maintain and administer its own optional retirement plan, such Eligible Employee shall have the opportunity to make a new election as though he were a new Eligible Employee.

3.4 **Transfer Among Institutions.**

3.4(a) If an Eligible Employee transfers to or becomes employed by an Institution maintaining this Plan without a break in service immediately following employment by any institution of higher education, including any state university, college or community college which has opted with the approval of the Board to maintain and administer its own optional retirement plan and such Eligible Employee was a participant in the optional retirement plan maintained by such institution, such Eligible Employee shall become a Participant in this Plan upon the effective date of transfer to or employment by an Institution maintaining this Plan.

3.4(b) If an Eligible Employee is a Participant in this Plan and transfers to or becomes employed by any institution of higher education, including any state university, college or community college which has opted with the approval of the Board to maintain and administer its own optional retirement plan without a break in service, such Eligible Employee shall continue to be bound by the irrevocable election to forego membership in VRS and shall become a participant in the optional retirement plan maintained by such other institution under the terms and conditions of that institution's optional retirement plan.

## ARTICLE IV

### Contributions

4.1 **Amount and Timing of Contributions.** With respect to each payroll period ending on or after the date the Eligible Employee becomes a Participant:

4.1(a) The Employer shall contribute to the Plan ten and four-tenths percent (10.4%) of each Participant's Compensation for such period, or such other amount as may be provided in the Enabling Statute, as amended (sometimes referred herein to as the "Employer's Contribution"); and

4.1(b) For each Participant who elected to participate in the Plan prior to January 1, 1991, the Institution may supplement the contribution in (a) above, using funds other than general funds, tuition or fees, up to an additional two and seventeen one-hundredths percent (2.17%) of the Participant's Compensation (sometimes referred to herein as the "Institution's Contribution").

4.1(c) Such contributions shall be made as soon as reasonably practical following the payday for such payroll period.

4.2 **Participant Rollover Contributions and Plan to Plan Transfers From VRS.**  
*[Effective July 1, 2002]*

4.2(a) *[Effective July 1, 2005]* A Participant (including an Eligible Employee and a former Eligible Employee) may make a "Rollover Contribution" which is a qualifying rollover contribution under Section 402(a) of the Code of cash or other property acceptable to the Administrator, or cash attributable to the sale of property distributed (other than any distribution constituting accumulated deductible employee contributions within the meaning of Section 72(o)(5)(B) of the Code) from an eligible retirement plan.

For Plan Years beginning on or after January 1, 2002 or as otherwise stated below, the Plan will accept as a Rollover Contribution by Participant contribution, or by direct rollover, an eligible rollover distribution made from the following types of plans:

(i) A qualified plan described in Section 401(a) or 403(a) of the Code, including, effective July 1, 2004, after-tax employee contributions in a direct rollover;

(ii) An annuity contract described in Section 403(b) of the Code, excluding after-tax employee contributions;

(iii) An eligible plan under Section 457(b) of the Code 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; and

(iv) An individual retirement account or annuity described in section 408(a) or 408(b) of the Code, but only the portion of the distribution that is eligible to be rolled over and would otherwise be includible in gross income.

4.2(b) Before accepting such contribution, the Administrator may require the Participant and/or the Trustee, custodian or other funding agent of any such plan, trust, bond, annuity or account from which the cash or property is to be deposited, to make such certification as the Administrator deems necessary respecting the distributing plan, trust, bond, annuity or account, the amount and nature of the distribution and any other information the Administrator may reasonably require.

4.2(c) In the event that it is discovered that any Rollover Contribution by a Participant is not a qualifying rollover amount which is not permitted to be received as a Rollover Contribution under the Plan, the Accrued Benefit of the Participant attributable to such non-qualifying Rollover Contribution shall be returned to the Participant (or if deceased to his Beneficiary).

4.2(d) While an Eligible Employee, a Participant may make a “Transfer Contribution” which is a plan to plan direct transfer of the Participant’s “members accumulated contribution account” in the VRS defined benefit retirement system, as permitted pursuant to Va. Code Section 51.1-161.C.

4.3 **No Duty to Enforce Contribution.** The Trustee shall not be required to determine the amount of any contribution for any Plan Year or to enforce the duty of the Employer or Institution to make or pay over such contributions.

## ARTICLE V

### **Participant Accounts and Adjustments**

5.1 **Accounts and Vesting.** The Administrator shall establish and maintain on the books of the Fund for all Participants and all other persons having an interest therein separate accounts reflecting the Accrued Benefit of each Participant. Each Participant shall at all times have a non-forfeitable right to one hundred percent (100%) of his Accrued Benefit.

5.2 **Allocation of Contributions.** *[Effective July 1, 2002]* Subject to the applicable limitations contained herein:

5.2(a) The Employer’s Contribution and the Institution’s Contribution, if any, to the Fund for a Plan Year shall be allocated as of the date such contribution is made among the Employer Accounts of the Participants in proportion to Compensation for the period.

5.2(b) Rollover Contributions by a Participant shall be allocated when made as follows:

(i) Rollover Contributions of after-tax employee contributions shall be allocated to his After-tax Rollover Account.

(ii) All other Rollover Contributions shall be allocated to his Regular Rollover Account.

5.2(c) Transfer Contributions by a Participant shall be allocated when made as follows:

(i) Transfer Contributions consisting of after-tax employee accumulated contributions shall be allocated to his After-tax Transfer Account.

(ii) All other Transfer Contributions shall be allocated to his Regular Transfer Account.

### 5.3 **Dollar/% Limitations on Annual Additions.**

5.3(a) Notwithstanding any other provision of the Plan, for Plan Years beginning before January 1, 2002, the sum of all Annual Additions (as defined in subparagraph 5.3(d)) allocated to the accounts of any Participant for any Limitation Year may not exceed the lesser of:

(i) \$30,000 (referred to herein as the “Dollar Limitation”), or

(ii) Twenty-five percent (25%) of such Participant’s Total Compensation not in excess of the Compensation Limit for such Limitation Year.

5.3(b) Notwithstanding any other provision of the Plan, for Plan Years beginning on and after January 1, 2002, the sum of all Annual Additions (as defined in subparagraph 5.3(d)) allocated to the accounts of any Participant for any Limitation Year may not exceed the lesser of:

(i) \$40,000 (referred to herein as the “Dollar Limitation”), or

(ii) One hundred percent (100%) of such Participant’s Total Compensation not in excess of the Compensation Limit for such Limitation Year.

The limitations described in (1) and (2) above, as applicable, are referred to herein as the “Dollar/% Limitations”.

5.3(c) The Dollar Limitation shall be automatically adjusted by the Adjustment Factor, from time to time, to reflect any annual cost of living adjustments and any such adjustment (which with the original Dollar Limitation is referred to herein as the “adjusted Dollar Limitation”) shall be effective for the Limitation Year which ends with or within the calendar year for which such increase is effective. If any Limitation Year is a period of less than twelve (12) months, then the Dollar Limitation for such Limitation Year shall be prorated by multiplying the Dollar Limitation for such Limitation Year by a fraction, the numerator of which is the number of months in such Limitation Year and the denominator of which is twelve (12).

5.3(d) The term “Annual Additions” shall mean the sum of the following amounts allocated to a Participant’s account under the Plan for a Limitation Year:

- (i) All contributions by the Employer;
- (ii) All contributions by an Institution; and
- (iii) Any other amounts defined as “annual additions” under Section 415 of the Code.

Notwithstanding anything to the contrary herein, amounts which are excluded from being “annual additions” under Section 415 of the Code shall not be considered Annual Additions for purposes hereof.

5.3(e) For purposes hereof, the term “Limitation Year” means the calendar year.

5.3(f) For purposes hereof, the term “Total Compensation” means the total compensation from the Employer received by or made available to an Employee during any Plan Year or, for purposes of the limitations imposed by Section 415 of the Code, any Limitation Year:

(i) Including, but not limited to, wages, salary, earned income (in the case of self-employed individuals), vacation pay, sick pay, overtime pay, bonuses and commissions, as reportable to the Internal Revenue Service on Form W-2 (or its successor), where applicable, for federal income tax purposes, but

(ii) Including employee elective salary reduction or similar deferral contributions excluded from W-2 compensation by reason of Section 125, 132(f), 402(g)(3) or 457(b) of the Code (and elective deferrals or contributions under any other sections of the Code covered by Section 415(c)(3)(D) of the Code), and

(iii) Excluding, except as otherwise expressly included by clause (ii) above, paid or reimbursed expenses, contributions or benefits under a simplified employee pension plan, contributions (to the extent not includible in the Employee’s gross income when contributed) or benefits under this or any other plan of deferred compensation (other than an unfunded, non-qualified plan), contributions or benefits under any other employee benefit plan or arrangement (to the extent excludable from or not includible in gross income), now, heretofore or hereafter adopted, amounts paid or received or deemed received in connection with stock options or rights, other amounts which receive special tax benefits, or any amount otherwise paid as compensation but finally determined not to be deductible as compensation in determining the Employer’s federal taxable income.

5.3(g) For purposes hereof, the rules of Section 415 of the Code are incorporated by reference for purposes of determining “Annual Additions” and applying the “Dollar/% Limitations”.

**5.4 Additional Limitations on Annual Additions Where Employer Maintains More Than One Plan.**

5.4(a) If any Participant is or has been a participant in another Qualified Defined Contribution Plan, the limitations contained in paragraph 5.3 shall be appropriately adjusted when and as required by Section 415 of the Code which provisions are incorporated by reference and shall control over any contrary or omitted or inconsistent provisions in the Plan.

5.4(b) If any Participant is or has been a participant in more than one Qualified Defined Contribution Plan (whether or not terminated), the limitations under Section 415 of the Code apply as if all such Qualified Defined Contribution Plans were one plan. The following rules shall also apply:

(i) In the event that the Dollar/% Limitations would otherwise be exceeded for a Limitation Year, the applicable limitation shall be applied for such Participant by limiting the allocation of Annual Additions to the accounts of such Participant in the following order: first, allocations under all plans not hereinafter described, then profit sharing plan allocations (such as allocations to a plan providing matching contributions based on the employee's elective deferrals to a 403(b) or 457 plan), then money purchase pension plan allocations (such as those made under this Plan), then target benefit plan allocations, and lastly welfare benefit fund and individual medical benefit account allocations. Notwithstanding, an Institution may designate a different order for applying the Dollar/% Limitation on allocations of Annual Additions by filing a written plan for allocations with the Plan Sponsor.

(ii) If such Participant is a participant in two or more plans of the same type, the applicable limitation shall be applied to contributory plans or aspects thereof first and thereafter to non-contributory plans or aspects thereof and shall be applied pro rata among such plans or aspects thereof in the same limitation category on the basis of allocations thereunder before operation of the applicable limitation.

5.4(c) Solely for purposes of paragraphs 5.3, 5.4 and 5.5, the following words and terms shall have the meaning set forth below in this subparagraph:

(i) The term "Qualified Defined Contribution Plan" means any plan maintained by the Employer or portion thereof described or treated as a defined contribution plan within the meaning of Sections 414(i) and 415(k) of the Code, including, but not limited to, defined contribution plans qualified under Section 401(a) of the Code, tax sheltered annuity contracts described in Section 403(b) of the Code, simplified employee pension plans described in Section 408(k) of the Code, any employee contribution portion of and any cost-of-living protection arrangement under a defined benefit plan qualified under Section 401(a) of the Code, any individual medical account under a pension or annuity plan within the meaning of Section 415(l) of the Code, and any welfare benefit Contract within the meaning of Section 419(e) of the Code.

5.4(d) In complying with the limitations of Section 415 of the Code, all other transitional rules under any law enacting or amending Section 415 of the Code shall be applicable as determined by the Plan Sponsor.

**5.5 Special Account for Unallocated Annual Additions.**

5.5(a) In the event a Participant's Annual Additions for a Plan Year exceed his Dollar/% Limitations of paragraph 5.3, the excess Annual Additions of such Participant shall be reallocated, to the extent necessary to achieve compliance with the Dollar/% Limitations of paragraph 5.3.

5.5(b) All contributions by the Employer and/or the Institution for such Plan Year which are excess Annual Additions shall be retained as an undesignated account on the books of the Fund for allocation among the accounts of the Participants as a part of the Employer's contribution next due for the next following Plan Year. Any such amounts so used shall be treated for allocation purposes of the Plan as a part of the contribution by the Employer and/or the Institution.

5.5(c) The undesignated special account maintained pursuant to this paragraph shall be adjusted at each Valuation Date for its share of net increase or decrease in value of the Fund, and such account shall be held in such investment vehicles as the Administrator shall direct.

5.5(d) Notwithstanding any other provisions of the Plan, no contributions by the Employer which would constitute amounts subject to the Dollar/% Limitations of paragraph 5.3 for a Plan Year may be made to the Plan until any balance at the beginning of such Plan Year in the undesignated account maintained pursuant to this paragraph 5.5 has been allocated among the accounts of Participants.

**5.6 Special Rules for Reemployed Veterans. [Effective January 19, 2006]**

5.6(a) Notwithstanding any other provision of the Plan, the following special rules shall apply in order to provide Make-up Contributions to the Plan on behalf of Reemployed Veterans:

(i) Make-up Contributions shall be made to the Plan by the Employer and the Institution, if applicable, on behalf of a Reemployed Veteran, and allocated to the appropriate account of the affected Participant's Accrued Benefit, in such amount and such manner and at such time or times as is required by the USERRA. In accordance with the requirements of USERRA, the Plan Administrator may establish procedures for determining the proper timing and ordering of Make-up Contributions and other contributions made under the Plan and for determining the time periods during which Make-up Contributions may be made when a Reemployed Veteran has multiple periods of Qualified Military Service.

(ii) Make-up Contributions with respect to a Reemployed Veteran shall not be subject to any otherwise applicable contribution limits under Sections 402(g), 402(h), 403(b), 408, 415, or 457 of the Code as applied with respect to the Plan Year or taxable year, as applicable to the relevant section of the Code, in which the contribution is made. A Make-up Contribution shall not be taken into account in applying the contribution limits

to any other contribution made during the Plan Year or taxable year, as applicable to the relevant section of the Code. Make-up Contributions shall not exceed the aggregate amount of contributions that would have been permitted under the Plan contribution limits for the Plan Year or taxable year, as applicable to the relevant section of the Code, to which the contribution relates had the Reemployed Veteran continued to be employed by the Employer during the period of his Qualified Military Service.

(iii) Compensation to be used for purposes of determining Make-up Contributions with respect to a period of Qualified Military Service shall mean the Compensation (but based on rate of pay) which the Reemployed Veteran would have received but for his Qualified Military Service. If a Reemployed Veteran's pay is not reasonably certain, the Reemployed Veteran's Compensation shall then be his average Compensation for the 12-month period (or actual shorter period of employment) immediately preceding his Qualified Military Service.

(iv) Qualified Military Service of a Reemployed Veteran shall be counted as service for purposes of participation and benefit accrual under the Plan. Additionally, the time period between the end of the Reemployed Veteran's Qualified Military Service and his return to the Employer (including the time period spent recovering from an injury or illness as required under USERRA) shall be counted as Service for purposes of participation and benefit accrual under the Plan.

5.6(b) For purposes of this paragraph, the following terms have the following meanings:

(i) "Make-up Contributions" means the contributions which are required to be made to the Plan for a Reemployed Veteran pursuant to the USERRA and Section 414(u) of the Code. These contributions generally are the contributions by the Employer and the Institution, if applicable, that would have accrued to the Reemployed Veteran under the Plan, but for his absence due to his Qualified Military Service. Neither the Make-up Contribution obligation nor this paragraph requires that any earnings be credited to the account of a Reemployed Veteran with respect to any Make-up Contribution before such contribution is actually made.

(ii) "Qualified Military Service" means any service in the uniformed services (as defined under USERRA) by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service and to the Employer.

(iii) "Reemployed Veteran" means a person who is or, but for his Qualified Military Service, would have been a Participant at some time during his Qualified Military Service and who is entitled to the restoration benefits and protections of USERRA with respect to his Qualified Military Service and the Plan.

(iv) “USERRA” means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and the final regulations and any other applicable guidance issued thereunder.

## ARTICLE VI

### Accounts and Investments

#### 6.1 Investment Direction. *[Effective July 1, 2004]*

6.1(a) At the time an Employee becomes a Participant and each October thereafter, the Participant shall choose among the various Fund divisions (Contracts) provided by the Trustee for the investment of his Accrued Benefit. An election made in October shall be effective for all contributions made on or after the next following January 1<sup>st</sup>. From the effective date of such Contract election (i.e., date of participation or January 1<sup>st</sup>, as applicable), all Plan contributions made on behalf of the Participant shall be made to the selected Contract and, effective July 1, 2004, to the investment vehicles offered under the Plan within the applicable Contract(s). Notwithstanding the foregoing, each Participant shall be permitted to choose between the Fund divisions being made available effective July 1, 2004. The election shall be made during the period established by the Administrator for this purpose and shall be effective for contributions made to the Plan on or after July 1, 2004. The Administrator shall establish a default procedure applicable to contributions made on or after July 1, 2004 for Participants who fail to make timely Fund division (Contract) elections and who fail to make timely selections of investment vehicles offered under the Plan within the applicable Contracts. Accrued Benefits determined as of June 30, 2004 may remain invested in Contracts and investment funds that were available under the Plan prior to that date, unless otherwise elected by the Participant.

6.1(b) For each election period, with respect to amounts contributed subject to the current election and amounts contributed pursuant to prior year Contract elections, the Participant (and, when applicable, each Beneficiary or Alternate Payee) may direct the investment of his Accrued Benefit among the investment vehicles offered under the Plan within the applicable Contract(s). The Participant’s direction shall be subject to any procedures established by the Trustee and the Administrator governing investment direction of assets among the Fund divisions of the Trust.

6.1(c) Notwithstanding that this Plan’s procedure may permit the Agent to receive investment instructions, any investment direction is not effective unless and until actually delivered in good form to and accepted by the Plan Administrator and the Agent.

6.1(d) *[Effective July 1, 2005]* All investment directions shall be subject to any and all applicable restrictions imposed by the various investment vehicles.

6.2 Authority to Act. During the Participant’s life, the Participant shall direct the investment of his Accrued Benefit. If an Approved Domestic Relations Order is in place, the

Alternate Payee shall direct the investment of that portion of the Participant's Accrued Benefit assigned to such Alternate Payee pursuant to the order. During the Participant's disability or incompetence, the person who has authority to act for the Participant under a power-of-attorney accepted by the Plan Administrator or the person that is duly appointed and currently serving as conservator or guardian of the estate of the Participant shall direct investment of the Participant's Accrued Benefit. After the Participant's death, the Beneficiary shall direct the investment of his Accrued Benefit or each Beneficiary shall direct the investment of his segregated account.

6.3 **Investment Direction Must be in Writing.** Each investment direction must be in writing and shall not be proper unless the writing is signed by the Participant (and, when applicable, each Beneficiary or Alternate Payee). Except as otherwise specified by the Agent's investment direction procedure, "writing" and "signed" shall be construed according to paragraph 14.9, subject to any security procedures required by the Agent. Without limiting the comprehensive effect of the above, a signed writing includes, to the extent permitted by the applicable investment, a proper communication made in a manner prescribed by the Agent.

6.4 **Earnings or Loss to Accrued Benefit.**

6.4(a) As of each Valuation Date, there shall be credited to the Accrued Benefit an additional amount equal to the earnings on such account, which additional amount shall include interest, dividends, gain or loss on the sale of any investment, or any other increase or decrease in value, income, loss or earnings, as the case may be.

6.4(b) To the extent that any account is under an unallocated investment, all income, gains, losses, other elements of investment return or contract value, and expenses shall be allocated as provided by a procedure adopted by the Plan Administrator, which may be an agreement between the Plan Administrator and the Agent.

6.5 **Failure to Give Investment Direction.** If at any time a Participant (and, when applicable, each Beneficiary or Alternate Payee) fails to exercise his duty of investment direction (or an investment direction is refused), the Plan Administrator shall, to the extent of the failure of proper investment direction, cause the account or applicable sub-account(s) or segregated account to be invested as specified by a procedure adopted by the Plan Administrator.

6.6 **Investment Direction During a Domestic Relations Matter.**

6.6(a) Notwithstanding any notice to the Plan Administrator (or to any other person dealing with or performing services regarding the Plan) that a domestic relations order or similar court order relating to the Plan is or may be presented, the Participant shall continue to exercise his duty of investment direction as required by the Plan unless a final court order expressly provides otherwise and the Plan Administrator does not challenge, contest, or appeal the court order.

6.6(b) If such court order provides for an Alternate Payee (or any person other than the Participant) to have the right of investment direction under the Plan, the Plan Administrator may

give effect to that court order even contrary to the Plan if the Plan Administrator does not challenge, contest, or appeal the court order.

6.7 **Expenses.** All costs and expenses incurred by the Plan Sponsor in connection with investments and administration shall be borne by the appropriate account and appropriately reflected in the balance thereof.

6.8 **Relief from Fiduciary Responsibility.** Neither the Administrator, the Employer, the Board of Trustees of the Plan Sponsor, the Institution, the employees of the Plan Sponsor, nor the Investment Advisory Committee of the Plan Sponsor shall incur any liability to any Participant, Beneficiary, or other party with respect to the investment of, or return on, any funds to which a Participant or any Beneficiary may at any time become entitled.

6.9 **Statement of Accrued Benefit.** Within a reasonable period of time after each reporting period, not less often than quarterly, the Plan Administrator or Agent shall provide each Participant (and, when applicable, each Beneficiary, or Alternate Payee) a statement of the balance as of such date in the accounts including the nature and value of any assets or investments used for the purpose of valuing the accounts.

6.10 **Equitable Adjustment in Case of Error or Omission.** Where an error or omission is discovered in the account of the Participant, the Plan Administrator or Agent shall be authorized to make such equitable adjustment as it deems appropriate after consultation with the affected Institution .

## ARTICLE VII

### **Retirement Dates**

7.1 **Normal Retirement Date.** The Normal Retirement Date of a Participant shall be the first day of the calendar month coinciding with or next following the date on which the Participant attains his Normal Retirement Age of sixty-five (65).

7.2 **Early Retirement Date.** A Participant who either 1) has attained the age of fifty-five (55) years or 2) has attained the age of fifty (50) years with ten complete years of service may retire from the employment of the Employer prior to his Normal Retirement Date, and his Early Retirement Date shall be the first day of the calendar month coinciding with or next following the date on which he ceases to be employed.

7.3 **Delayed Retirement Date.** A Participant who continues in the active employment of the Employer beyond his Normal Retirement Date shall continue to participate in the Plan, and his Delayed Retirement Date shall be the first day of the calendar month coinciding with or next following the date of termination of his employment with the Employer.

7.4 **Disability Retirement Date.**

7.4(a) A Participant who, while an Eligible Employee, is Disabled may retire from the employment of the Employer prior to his Normal Retirement Date and his Disability Retirement Date shall be the first day of the calendar month coinciding with or next following the date of such retirement.

7.4(b) For purposes hereof, the existence of a "Disability" or the status of being "Disabled" shall be considered present during the period for which an Employee or former Employee is unable to perform each of the material duties of his regular occupation or if he is unable to perform each of the material duties of any gainful occupation for which he is reasonably fitted taking into consideration his training, education or experience, as well as prior earnings. The Administrator shall make the determination of whether a Disability exists based on the advice of one or more physicians appointed or approved by the Plan Sponsor and the Administrator shall have the right to require further medical examinations from time to time to determine whether there has been any change in the Participant's physical condition.

## ARTICLE VIII

### **Death Benefits**

8.1 **Death after Benefit Commencement.** If a Participant dies after his Accrued Benefit has begun to be paid to him, the only benefits payable under the Plan after his death shall be those, if any, provided under the form of payment being made to him at his death.

8.2 **Death before Benefit Commencement.** If a Participant dies before his Accrued Benefit has begun to be paid to him, his Accrued Benefit under the Plan shall be paid to his Beneficiary at the time and in the manner described in ARTICLE IX.

8.3 **Beneficiary Designation.** The Participant shall be entitled to designate a Beneficiary hereunder by filing a designation in writing with the Plan Administrator on the form provided for such purpose. Any Beneficiary designation made hereunder shall be effective only if signed and dated by the Participant and delivered to the Plan Administrator prior to the time of the Participant's death. Any Beneficiary designation hereunder shall remain effective until changed or revoked hereunder.

8.3(a) Any Beneficiary designation may include multiple, contingent or successive Beneficiaries, a trust, and may specify the proportionate distribution to each Beneficiary. The Participant shall designate each Beneficiary by name. Notwithstanding the rule that a Participant shall designate each Beneficiary by name, if the Plan Administrator, in its sole discretion, finds that a Beneficiary designation sufficiently describes a trust, that Beneficiary designation will be construed as naming the duly appointed and currently acting trustee of that trust.

8.3(b) A Beneficiary designation may be changed by the Participant at any time, or from time to time, by filing a new designation in writing with the Plan Administrator.

8.3(c) If the Participant dies without having designated a Beneficiary, or if the Beneficiary so designated has predeceased him, the Participant's Beneficiary shall be deemed to be:

- (i) The Participant's surviving spouse, or
- (ii) If none, his children and descendants of his deceased children, per stirpes, or
- (iii) If none, his parents, equally if both living, or
- (iv) If none, the duly appointed executor or administrator of his estate, or
- (v) If none, the next of kin entitled to inherit under the laws of the State of his domicile at the time of his death.

If a Beneficiary of the Participant shall survive the Participant but shall die before the Accrued Benefit hereunder has been distributed, then, absent any other provision by the Participant, the unpaid balance thereof shall be distributed to the estate of the deceased Beneficiary.

8.3(d) [*Effective July 1, 2002*] In the event that a Participant has Accrued Benefits held under more than one Contract, a separate Beneficiary designation shall be required for the Participant's interest in each separate Contract. Each Insurance Company or other vendor offering a Contract in which a Participant has an Accrued Benefit shall maintain and retain the Beneficiary designation applicable for the portion of the Participant's Accrued Benefit held under such Contract.

## **ARTICLE IX**

### **Distributions**

#### **9.1 Time of Payment.**

9.1(a) Except as provided in clause (ii) below, the Accrued Benefit of a Participant shall become payable to the Participant, if then alive, or otherwise to his Beneficiary, at the time elected by the Participant. Such time shall be: :

- (i) No earlier than his severance from employment with the Employer; and
- (ii) No later than the April 1 (sometimes referred to as the "Required Beginning Date") following the calendar year in which occurs the later of the date the Participant attains the age seventy and one-half (70-1/2), or the date the Participant retires from the service of the Employer or otherwise ceases to be employed by the Employer. If the Participant has

not begun payments by the Required Beginning Date, payments will automatically commence at that time.

9.1(b) The Accrued Benefit of a Participant who is deceased before such Accrued Benefit commences to be paid to him shall become payable to his Beneficiary at the time elected by the Beneficiary. Such payments may commence as soon as possible after the date of the Participant's death but no later than the time described in clauses (ii) or (iii) of subparagraph 9.1(c). If the Beneficiary has not begun payments by the date described in clause (ii) or (iii) of subparagraph 9.1(c), payments will automatically commence at such latest time.

9.1(c) Notwithstanding the foregoing provisions of this paragraph, a Participant, or the Beneficiary of a Participant who dies before his Accrued Benefit becomes payable, may elect a later date on which such Accrued Benefit shall become payable. Such later date shall not be later than:

(i) In the case of an election by a Participant, the latest time for payment under clause (ii) of subparagraph 9.1(a);

(ii) In the case of an election by a Beneficiary who is the Participant's spouse, the later of:

(A) The end of the fifth (5th) calendar year following the calendar year in which the Participant's death occurs, or

(B) The end of the calendar year in which the Participant would have attained the age of seventy and one-half (70-1/2); and

(iii) In the case of an election by a Beneficiary who is not the Participant's spouse, the end of the fifth (5th) calendar year following the calendar year in which the Participant's death occurs.

Such election shall be in writing, executed and filed with the Administrator at least thirty (30) days (or such shorter period as the Administrator may permit on a uniform and non-discriminatory basis) before the date such Accrued Benefit otherwise becomes payable, and it shall set forth and shall be conditioned upon the payment of such Accrued Benefit in a form provided herein. Any such election may be revoked or modified at any time.

9.1(d) Notwithstanding the foregoing provisions of this paragraph, payment may be delayed for a reasonable period in the event the recipient cannot be located or is not competent to receive the benefit payment, there is a dispute as to the proper recipient of such benefit payment, additional time is needed to complete the Plan valuation adjustments and allocations, or additional time is necessary to properly explain the recipient's options.

## 9.2 **Form of Payment When Participant Is the Initial Recipient.**

9.2(a) The Accrued Benefit of a Participant payable to him pursuant to paragraph 9.1 shall be paid to him in the applicable manner described in this paragraph. Payments continuing after a Participant's death shall be made to his Beneficiary.

9.2(b) The Accrued Benefit shall be paid in the form of a single annuity for the life of the Participant payable in equal monthly amounts on a stated day selected by the Participant of each calendar month during the lifetime of the Participant. This annuity is sometimes referred to herein as a "Life Annuity".

9.2(c) Each Participant shall have the right to elect, in lieu of the normal form of benefit provided in subparagraph 9.2(b), to receive his Accrued Benefit in one of the following optional forms:

(i) A joint and survivor annuity which provides for the payment to the Participant entitled thereto of equal monthly amounts on a stated day selected by the Participant of each calendar month during his lifetime and continuing as a survivor annuity for the life of the Participant's contingent annuitant at (A) fifty percent (50%) (B) sixty-six and two thirds percent (66-2/3%) or (B) one hundred percent (100%) of the amount of each monthly payment to the Participant. These annuities are sometimes referred to herein as a "Joint and x% Survivor Annuity".

Notwithstanding the foregoing, such Joint and x% Survivor Annuity paid to a non-spouse survivor must conform to the Minimum Distribution Incidental Benefit Rules ("MDIB Rules") described in Prop. Treas. Reg. Section 1.401(a)(9)-2. *[The following two sentences are deleted effective January 1, 2003]* With respect to distributions under the Plan made in calendar years beginning on or after January 1, 2001 the Plan will apply the minimum distribution requirement of Section 401(a)(9) of the Code in Accordance with the regulations under Section 401(a)(9) that were proposed in January 2001, notwithstanding any provision of the Plan to the contrary. This provision shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.]

(ii) In a Lump Sum Payment (as defined in paragraph 9.4).

(iii) In Periodic Installments (as defined in paragraph 9.5) of a fixed amount per payment or over a term certain, but in either case, not extending beyond:

(A) The life expectancy of the Participant, or

(B) If the Participant's Beneficiary is his spouse, the joint life and last survivor expectancy of the Participant and his spouse.

(iv) Any additional optional form of benefit offered under the Contract(s) in which the Participant's Accrued Benefit is invested.

For purposes hereof, life expectancies shall be determined at the time such Accrued Benefit becomes payable on the basis of the applicable expected return multiples under Section 72 of the Code, and life expectancies and the applicable term certain for periodic installments shall not be redetermined.

9.3 **Form of Payment When Beneficiary Is the Initial Recipient.**

9.3(a) In the event of a Participant's death before his Accrued Benefit commences to be paid to him, the Participant's Accrued Benefit payable pursuant to paragraph 8.1 shall be paid to his Beneficiary in the applicable manner described in this paragraph. Payments continuing after a Beneficiary's death shall be made to the successor Beneficiary.

9.3(b) The Beneficiary shall elect in writing the form in which such Accrued Benefit is to be paid; provided that payment shall be made in the form of a Lump Sum Payment if the Beneficiary fails to elect a form of payment. Such Accrued Benefit shall be paid either:

(i) In a single annuity for the life of the Beneficiary, payable in equal monthly amounts on the first day of each calendar month during the lifetime of such Beneficiary.

(ii) In a Lump Sum Payment (as defined in paragraph 9.4).

(iii) In Periodic Installments (as defined in paragraph 9.5) of a fixed amount per payment or over a term certain, but in either case, not extending beyond the end of the fifth (5th) calendar year following the calendar year in which the Participant's death occurs unless:

(A) Such term certain does not extend beyond the life expectancy of the Beneficiary and the Beneficiary is an individual, and

(B) Such installments commence not later than (I) the end of the first (1st) calendar year following the calendar year in which the Participant's death occurs in the case such individual Beneficiary is not the Participant's spouse or (II) the later of the end of the calendar year in which the Participant would have attained the age of seventy and one-half (70-1/2) or the end of the first (1st) calendar year following the calendar year in which the Participant's death occurs in the case such individual Beneficiary is the Participant's spouse.

(iv) Any additional optional form of benefit offered under the Contract(s) in which the Participant's Accrued Benefit is invested.

For purposes hereof, life expectancies shall be determined at the time such Accrued Benefit becomes payable on the basis of the applicable expected return multiples under Section 72 of the Code, and life expectancies and the applicable term certain for periodic installments shall not be redetermined.

9.4 **Lump Sum Payments.** The term “Lump Sum Payment” generally means a single payment of the entire Accrued Benefit or, when combined with another form of payment, the designated portion of the entire Accrued Benefit. An Accrued Benefit of a Participant payable in the form of a Lump Sum Payment shall be determined as of the Valuation Date (or other time of valuation hereunder) immediately preceding the date of payment to which shall be added any contributions or other adjustments allocated after such Valuation Date (or other time of valuation hereunder) and from which shall be subtracted any distributions or other adjustments since such Valuation Date (or other time of valuation hereunder). In the event an Accrued Benefit is to be paid in a Lump Sum Payment and the amount thereof has not been determined, the Administrator is authorized to make one or more interim payments prior to the time the amount of such Lump Sum Payment is finally determined.

9.5 **Periodic Installments.**

9.5(a) The term “Periodic Installments” means in the case of payments over a term certain, periodic payments in amounts determined by the Administrator and paid at least annually. Each installment paid to a Participant or to a Beneficiary shall be determined pursuant to a fractional method under which the amount of each installment is equal to the quotient obtained by dividing the amount of such Participant’s Accrued Benefit determined as though a Lump Sum Payment were being made as of the last Valuation Date (or other time of valuation hereunder) immediately preceding the date of payment of such installment by the number of installment payments then remaining to be made. In the case of payments of a fixed amount per payment and subject to the minimum distribution provisions of Section 401(a)(9) of the Code, periodic payments in the amount and frequency (at least annually) determined by the Participant upon election of the form of payment and paid until the Accrued Benefit has been completely distributed. The last payment in the series may be less than the fixed amount in order to clear the balance of the Accrued Benefit.

9.5(b) In the event an Accrued Benefit is to be paid in the form of Periodic Installments over a term certain and the amount of any installment has not been determined, the Administrator is authorized to make one or more interim payments prior to the time the amount of such installment is finally determined.

9.5(c) Upon the death of a Participant after his Accrued Benefit becomes payable in Periodic Installments, the amounts of any Periodic Installments remaining unpaid shall be paid to his Beneficiary over the remaining term certain for such installments subject to such advance or acceleration thereof permitted hereunder in the case of payments of a term certain or until the account is completely distributed in the case of payments of a fixed amount.

9.5(d) Notwithstanding the foregoing, if a Participant dies before the April 1 following the calendar year in which he reaches or would reach age seventy and one-half (70-1/2) and is receiving at the time of his death, Periodic Installments, the amount of any Periodic Installment shall be redetermined to the extent required to satisfy the minimum distribution requirement of Section 401(a)(9) of the Code.

**9.6 Advance on or Acceleration of Deferred Payment or Change to Periodic Installments and Suspension of Payment. [Effective July 1, 2005]**

9.6(a) If distribution of a Participant's Accrued Benefit has been deferred or is being made from the Fund in the form of Periodic Installments, payment of all or part of any such remaining Accrued Benefit may be made to the Participant or to the Beneficiary entitled to benefits prior to the scheduled time for payment upon written application delivered to the Administrator. If distribution of a Participant's Accrued Benefit is being made from the Fund in the form of Periodic Installments, payment of all or part of any such remaining Accrued Benefit may be delayed or decreased upon written application delivered to the Administrator, provided the requirements of paragraph 9.2(c)(iii) continue to be met following the change in payment. Only one such request shall be permitted in any Plan Year, unless more frequent requests are permitted under the Fund division.

9.6(b) If a Participant is at any time in service as an employee in a position covered for retirement purposes under the provisions of Chapters 1, 2, 2.1, or 3 of Title 51.1 of the Code of Virginia, his benefit payments under the Plan shall be suspended while so employed; provided, however, reemployment shall have no effect on the payment if the benefits are being paid in an annuity form under an annuity contract purchased with the Participant's his account balance.

**9.7 Plan to Plan Direct Rollover as a Distribution Option.**

9.7(a) [Effective January 1, 2007] Notwithstanding any contrary provision of the Plan, but subject to any de minimis or other exceptions or limitations provided for under Section 401(a)(31) of the Code:

(i) Any prospective recipient (whether a Participant, a surviving spouse, a current or former spouse who is an alternate payee under a Plan Approved Domestic Relations Order or any other person eligible to make a rollover) of a distribution from the Plan which constitutes an "eligible rollover distribution" (to the extent otherwise includible in the recipient's gross income) may direct the Trustee to pay the distribution directly to an "eligible retirement plan";

(ii) Effective January 1, 2006 (or any later effective date permitted by the Internal Revenue Service and utilized by the Administrator), if (A) the present value of the entire non-forfeitable Accrued Benefit payable to a Participant exceeds \$1,000, (B) the Participant has not attained the later of his Normal Retirement Age or the age of sixty-two (62) and (C) the Participant does not either consent in writing to a distribution to him (as opposed to a rollover to an "eligible retirement plan") or direct in writing the distribution be made to a specified "eligible retirement plan" or plans, then any "eligible rollover distribution" to him shall be made by the Trustee's paying the distribution directly to an "eligible retirement plan" which is an individual retirement plan in a direct rollover to the individual retirement plan on behalf of the recipient (an "automatic rollover"). This clause does not apply to payment made to a person who is not a Participant; and

(iii) Effective for distributions made after December 31, 2006, any non-Spouse designated Beneficiary within the meaning of Section 401(a)(9)(E) of the Code who is a prospective recipient of a distribution from the Plan that would be an eligible rollover distribution but for the fact that the recipient is not a Participant or a Participant's Spouse, may direct the Trustee to pay the distribution directly to an "inherited IRA."

9.7(b) *[Effective January 1, 2007]* For purposes hereof, the following terms have the meanings assigned to them in Section 401(a)(31) of the Code and, to the extent not inconsistent therewith, shall have the following meanings:

(i) The term "eligible retirement plan" means a defined contribution plan which is either an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract), an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the prospective recipient's eligible rollover distribution; provided, however, that in the case of an eligible rollover distribution payable to a Participant's surviving spouse, an "eligible retirement plan" means only an individual retirement account or individual retirement annuity. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code 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 and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code. *[Effective January 1, 2008]* Effective for distributions made after December 31, 2007, the definition of eligible retirement plan shall also include an individual retirement plan described in Section 408A of the Code provided the Participant does not have modified adjusted gross income in excess of \$100,000 and who is not married filing a separate return both as determined under Section 408A (c)(3)(b) of the Code.

(ii) The term "eligible rollover distribution" means any distribution other than:

(A) A distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made either for the life (or life expectancy) of the recipient or the joint lives (or joint life expectancies) of the recipient and his beneficiary who is an individual or for a specified period of ten (10) or more years,

(B) A distribution to the extent it is required under the minimum distribution requirement of Section 401(a)(9) of the Code,

(C) That portion of a hardship withdrawal attributable to pre-tax elective contributions or other contributions subject to the withdrawal restrictions of Section 401(k)(2)(B)(i)(IV) of the Code,

(D) For distributions made after December 31, 2001, any amount that is distributed on account of hardship, or

(E) Any other amount which is not considered an eligible rollover distribution for purposes of Section 402(c)(4) of the Code with respect to the Plan.

Effective for distributions made after December 31, 2001, a portion of a distribution shall not fail to be an “eligible rollover distribution” merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. For distributions made after December 31, 2006, such portion may also be paid to an annuity contract described in Section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(iii) The term “inherited IRA” means an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract) established for the purpose of receiving the distribution where the individual retirement account or annuity is treated as an inherited individual retirement account or annuity within the meaning of Section 408(d)(3)(C) of the Code.

9.7(c) Any such direction shall be filed with the Administrator in such form and at such time as the Administrator may require and shall adequately specify the eligible retirement plan to which the payment shall be made.

9.7(d) The Trustee shall make payment as directed only if the proposed transferee plan will accept the payment.

9.7(e) Any such plan to plan transfer shall be considered a distribution option under this Plan and shall be subject to all the usual distribution rules of this Plan (including, but not limited to, the requirement of an advance explanation of the option).

9.7(f) The Administrator is authorized in its discretion, applied on a uniform and non-discriminatory basis, to apply any discretionary de minimis or other discretionary exceptions or limitations provided for under Section 401(a)(31) of the Code in effecting or declining to effect plan to plan transfers hereunder.

9.7(g) *[Effective January 1, 2006]* Within a reasonable time (generally not more than ninety (90) nor less than thirty (30) days) before the benefit payment date of a prospective recipient of an eligible rollover distribution from the Plan, the Administrator shall provide the prospective recipient with a written explanation of the rollover and tax rules required by Section 402(f) of the Code. In addition, where the prospective distribution is described in clause (ii) of subparagraph 9.7(a), the Administrator shall provide the written notice to the prospective recipient required by Sections 401(a)(31)(B)(i) of the Code (either separately or at the time the notice under Section 402(f) of the Code is provided) that the automatic rollover to an individual retirement plan pursuant to clause (ii) of subparagraph 9.7(a) may be transferred to another individual retirement plan.

9.7(h) *[Effective January 1, 2006]* In the case of an automatic rollover described in clause (ii) of subparagraph 9.7(a):

(i) Unless otherwise determined by the Plan Sponsor by written agreement with another Plan fiduciary, the Administrator shall determine the individual retirement plan to receive the automatic rollover and the initial investment under the individual retirement plan in which the automatic rollover is invested;

(ii) The automatic rollover shall be made to an individual retirement plan within the meaning of Section 7701(a)(37) of the Code;

(iii) In connection with the automatic rollover, the Administrator shall enter into a written agreement with the individual retirement plan provider that provides:

(A) The rolled-over funds shall be invested in an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity;

(B) For purposes of clause (iii)(A) of this subparagraph, the investment product selected for the rolled-over funds shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan;

(C) The investment product selected for the rolled-over funds shall be offered by a state or federally regulated financial institution, which shall be either (I) a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, (II) a credit union, the member accounts of which are insured within the meaning of Section 101(7) of the Federal Credit Union Act, (III) an insurance company, the products of which are protected by State guaranty associations, or (IV) an investment company registered under the Investment Company Act of 1940;

(D) All fees and expenses attendant to an individual retirement plan, including investments of the individual retirement plan (e.g., establishment

charges, maintenance fees, investment expenses, termination costs and surrender charges) shall not exceed the fees and expenses charged by the individual retirement plan provider for comparable individual retirement plans established for reasons other than the receipt of a rollover distribution subject to the provisions of Section 401(a)(31)(B) of the Code; and

(E) The recipient on whose behalf the Plan makes an automatic rollover shall have the right to enforce the terms of the contractual agreement establishing the individual retirement plan, with regard to his rolled-over funds, against the individual retirement plan provider, and.

(iv) Participants shall be furnished a description of the Plan's automatic rollover provisions effectuating the requirements of Section 401(a)(31)(B) of the Code, including an explanation that the mandatory distribution in the form of an automatic rollover will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity, a statement indicating how fees and expenses attendant to the individual retirement plan will be allocated (i.e., the extent to which expenses will be borne by the account holder alone or shared with the distributing Plan or Plan Sponsor), and the name, address and phone number of a plan contact (to the extent not otherwise provided in the description) for further information concerning the Plan's automatic rollover provisions, the individual retirement plan provider and the fees and expenses attendant to the individual retirement plan.

It is intended that the automatic rollover provisions of the Plan satisfy the safe harbor therefore Section 51.1-124.30.F of the Code of Virginia, and such provisions shall be interpreted and administered in accordance therewith. There are no mandatory cash-out amounts described in the Plan which would require automatic rollovers as described in this paragraph.

#### 9.8 **Notice and Election Procedures Regarding Payment.**

9.8(a) Any election authorized by subparagraph 9.2(c) and 9.3(b) and any designation of a date of payment by a Participant or Beneficiary shall be in writing, shall clearly indicate the election or designation being made, and shall be filed with the Administrator and in accordance with the procedures provided in the following subparagraphs to this paragraph.

9.8(b) Within a reasonable time before a Participant's Accrued Benefit is to be paid to him, the Administrator shall by mail or personal delivery provide the Participant with a written explanation of:

(i) The terms and conditions of the applicable forms of payment, including the financial effects of the applicable forms of payment;

(ii) The Participant's right to delay receipt of his Accrued Benefit until such later date allowed under paragraph 9.1, including the right to modify or revoke any election thereunder; and

(iii) The Participant's right to obtain an advance on or acceleration of or a delay or decrease in payment of his Accrued Benefit as provided under paragraph 9.6.

9.8(c) Within a reasonable time before the Accrued Benefit of a Participant who died prior to commencement of payment of his Accrued Benefit is to be paid, the Administrator shall by mail or personal delivery provide the Participant's Beneficiary with a written explanation of:

(i) The terms and conditions of the applicable forms of payment;

(ii) The Beneficiary's right to delay receipt of the Participant's Accrued Benefit until such later date allowed under paragraph 9.1, including the right to modify or revoke any election thereunder; and

(iii) The Beneficiary's right to obtain an advance on or acceleration of or a delay or decrease in payment of the Participant's Accrued Benefit under paragraph 9.6.

9.8(d) *[Effective July 1, 2004]* The notices provided to Participants shall also include such other information as the Plan Sponsor and Employer determine is required to fully inform the Participant of his rights and obligations during retirement and the effect that his distribution elections under this Plan may have on other benefits available during retirement.

#### 9.9 **Benefit Determination and Payment Procedure.**

9.9(a) The Administrator shall make all determinations concerning eligibility for benefits under the Plan, the time or terms of payment, and the forms or manner of payment to the Participant or the Participant's Beneficiary, in the event of the death of a Participant. The Administrator shall promptly notify the Trustee of each such determination that benefit payments are due or should cease to be made and provide to the Trustee all other information necessary to allow it to carry out said determination, whereupon the Trustee shall pay or cease to pay such benefits in accordance with the Administrator's determination.

9.9(b) In making the determinations described in subparagraph 9.9(a), the Administrator shall take into account the terms of any Approved Domestic Relations Order received with respect to the Accrued Benefit of the Participant or any Death Benefit with respect to the Participant. The time and form of payment with respect to the Approved Domestic Relations Order and the time and form of payment chosen by the Participant or his Beneficiary or required by the Plan shall not be altered by the terms of the Approved Domestic Relations Order. The Administrator shall make all determinations regarding benefit payments to be made pursuant to an Approved Domestic Relations Order. Any benefit payments which may be subject to the terms of a domestic relations order received by the Administrator shall be suspended during the period the Administrator is considering whether the order is an Approved Domestic Relations Order. In the event that benefits are in pay status at the time that a domestic relations order is received, the Administrator shall promptly notify the Trustee of the amount, if any, of the benefit payments that must be suspended for the period required by the Administrator to determine the status of the order. Upon the completion of the Administrator's review or other determination of the status of the order, the Administrator shall promptly notify the Trustee of the time benefit

payments are to commence and of the identity of, and the amount and form of benefits to be paid to, the person or persons to whom payment is to be made. *[The following is added effective July 1, 2004]* Notwithstanding any other provision regarding the timing of distributions or withdrawal rights of a Participant, for Approved Domestic Relations Orders approved by the Plan on or after July 1, 2004, the non-forfeitable Accrued Benefit of a Participant, which is payable to an “alternate payee” (as defined in Section 414(p) of the Code) who is a Participant’s spouse (or former spouse) pursuant such order, shall be paid in a lump sum, subject to applicable rollover rights, as soon as reasonably practical following such approval.

9.9(c) If the Participant selects an annuity form of payment and the Contract in which the funds are invested does not provide an annuity form of payment, the Administrator shall have the right to direct the Trustee to purchase from an Insurance Company and either hold in the Fund or distribute to any Participant or his Beneficiary entitled thereto a Policy which will provide the annuity or other benefits under the Plan to which such Participant or his Beneficiary is entitled or elects to receive, provided proper application therefor is delivered to the Trustee. Each such Policy shall be owned by and transferable only by the Trustee and, if distributed, shall provide that the Participant or his Beneficiary entitled thereto is the retirement payee and death beneficiary thereunder and is nontransferable. Any such Policy may contain such feature or features, including, but not limited to, whether guaranteed or not guaranteed or participating or not participating, as the Administrator deems advisable in its discretion.

9.9(d) *[Deleted effective January 1, 2003]* To the extent the payment provisions of the Plan are inconsistent with and violative of the requirements of Section 401(a)(9) of the Code, the provisions of Section 401(a)(9) of the Code are hereby incorporated by reference and shall control.

9.10 **Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

9.11 **Distribution of Benefit When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a Participant or a Participant’s Beneficiary entitled to benefits under the Plan, including the mailing by certified mail of a notice to the last known address shown on the Employer’s, the Administrator’s, the Institution’s or the Trustee’s records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trustee shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

9.12 **Minimum Distribution.** *[Added Effective January 1, 2003]*

9.12(a) **Pre-2003 Minimum Distribution Requirements.** Any payment of benefits shall be made according to a form of distribution that begins not later than the Required Distribution Commencement Date and that provides - according to Section 401(a)(9) of the Code - that:

- (i) The entire Deferred Benefit will be distributed over the lives or over a period not extending beyond the life expectancy of the Participant and his designated Beneficiary, and
- (ii) the amounts payable with respect to the Participant will be paid at times which are not later than the times required by Sections 401(a)(9)(G) of the Code [relating to incidental death benefits], and
- (iii) any remaining payments after the death of the Participant shall be made at least as rapidly as under the form of distribution being used as of the date of the Participant's death, and
- (iv) the life expectancy or joint and last survivor life expectancy shall be computed using the expected return multiples in [IRS] Table V or Table VI under Treasury Reg. 1.72-9 or under any other method as permitted by Treasury Regulations under Section 401(a)(9) of the Code and shall not be redetermined.

For this purpose, the Required Distribution Commencement Date is the applicable date provided under Section 401(a)(9)(C) of the Code.

With respect to distributions under the Plan made in calendar years beginning on or after January 1, 2001 but before January 1, 2003, the Plan will apply the minimum distribution requirement of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) that were proposed in January 2001, notwithstanding any provision of the Plan to the contrary. This provision shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.

9.12(b) **Post December 31, 2002 Minimum Distribution Requirements.**

- (i) General Rules.
  - (A) Effective Date. The provisions of this paragraph will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
  - (B) Precedence. The requirements of this Paragraph will take precedence over any inconsistent provisions of the Plan.

(C) Requirements of Treasury Regulations Incorporated. All distributions required under this paragraph will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Code.

(ii) Time and Manner of Distribution.

(A) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

(B) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(2) If the Participant's surviving spouse is not the Participant's sole Beneficiary, then distributions to the Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(3) If there is no Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this clause 7.4(b)(ii)(B), other than subclause 9.12(b)(ii)(B)(1), will apply as if the surviving spouse were the Participant.

For purposes of this clause (ii)(B) and clause (iv) of subparagraph 9.12(b), unless clause (ii)(B)(4) of subparagraph 9.12(b) applies, distributions are considered to begin on the Participant's Required Beginning Date. If clause (ii)(B)(4) of subparagraph 9.12(b) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under clause (ii)(B)(1) of subparagraph 9.12(b). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under clause

(ii)(B)(1) of subparagraph 9.12(b)), the date distributions are considered to begin is the date distributions actually commence.

(C) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions will be made in accordance with clauses (iii) and (iv) of this subparagraph. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury Regulations.

(iii) Required Minimum Distributions During Participant's Lifetime.

(A) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(1) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(2) if the Participant's sole Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.

(B) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this clause (iii) of subparagraph 9.12(b) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

(iv) Required Minimum Distributions After Participant's Death.

(A) Death On or After Date Distributions Begin.

(1) Participant Survived by Beneficiary. If the Participant dies on or after the date distributions begin and there is a Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining

Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Beneficiary, determined as follows:

(I) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(II) If the Participant's surviving spouse is the Participant's sole Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(III) If the Participant's surviving spouse is not the Participant's sole Beneficiary, the Beneficiary's remaining Life Expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Beneficiary. If the Participant dies on or after the date distributions begin and there is no Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) Death Before Date Distributions Begin.

(1) Participant Survived by Beneficiary. If the Participant dies before the date distributions begin and there is a Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Beneficiary, determined as provided in clause (iv)(A) of subparagraph 9.12(b).

(2) No Beneficiary. If the Participant dies before the date distributions begin and there is no Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the

Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under clause (ii)(B)(1) of subparagraph 9.12(b), this clause (iv)(B) will apply as if the surviving spouse were the Participant.

(v) Definitions. For purposes of this paragraph, the follow terms shall have the meaning set forth below:

(A) "Beneficiary" shall mean the individual who is designated as the Beneficiary under the Plan in accordance with Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

(B) "Distribution Calendar Year" shall mean a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under clause (ii)(B) of subparagraph 9.12(b). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

(C) "Life Expectancy" shall mean the life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.

(D) "Participant's Account Balance" shall mean the account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year. *[Added Effective January 1, 2004]* For purposes of determining the application of the Required Minimum Distributions after a Participant's death, the Participant's Account Balance shall be divided into separate accounts as defined in

Section 1.401(a)(9)-8 of the Treasury Regulations to reflect the separate interest of each beneficiary for which the separate account is maintained.

(E) “Required Beginning Date” shall mean the date specified in subparagraph 9.1(a) of the Plan.

## ARTICLE X

### **Withdrawals and Loans**

10.1 **Not Available**. In-service withdrawals and loans are not available under the Plan.

## ARTICLE XI

### **Trust Fund**

11.1 **The Trust Fund**. All assets of the Plan shall be held and invested in the Fund in accordance with this Plan and the Trust Agreement.

## ARTICLE XII

### **Plan Administrator**

12.1 **Plan Administrator**. The Plan Administrator has full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Plan pursuant to the Enabling Statute. The Plan Administrator has any and all powers as may be necessary or advisable to discharge its duties under the Plan including the power and authority to interpret the terms of the Plan. The Plan Administrator does not have any duties concerning a Participant’s selection of Plan investments.

12.2 **Responsibilities of Plan Administrator**. The Plan Administrator is responsible for performing all duties required for the operation of the Plan, and is responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator’s responsibilities pursuant to the Enabling Statutes.

12.3 **Information from Employer or Institution**. To enable the Plan Administrator to perform its responsibilities, the Employer and Institution shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Plan Administrator in order to make any decision or determination under the Plan. The Plan

Administrator shall rely upon this information as supplied by the Employer or Institution, and shall have no duty or responsibility to verify this information.

12.4 **Plan Administrator May Delegate or Contract.** Except as prohibited by the Enabling Statute or other State or local law, the Plan Administrator may, except when expressly prohibited by this Plan, delegate any of its duties to any Institution, or to any officers, employees, or agents of any kind. Except as prohibited by the Enabling Statute or other State or local law, the Plan Administrator may, except when expressly prohibited by this Plan, contract any of its duties to the Agent or otherwise.

12.5 **Plan Services.** The Plan Administrator may contract with any person to provide services to assist in the administration of the Plan. The Plan Administrator must make such contracts in compliance with the Enabling Statute and other applicable State and local law. Any person other than the Plan Administrator who performs services regarding the Plan (including but not limited to the Agent) is subject to the supervision and direction of the Plan Administrator, and does not have authority to control the operation of the Plan.

## ARTICLE XIII

### **Amendment and Termination of Plan**

13.1 **Termination of the Plan.** The Commonwealth of Virginia reserves the right through action by the General Assembly to terminate this Plan at any time, provided that no such termination shall reduce, suspend or terminate the Accrued Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such termination. In the event of termination of this Plan, the various investment options provided for the Accrued Benefit, and all accounts invested therein, shall be immediately liquidated and all such Accrued Benefits shall be held in an account selected by the Plan Administrator, designed to insure the preservation of the assets of the terminated Plan. To the extent required by the exclusive benefit requirement, any termination of the Plan shall not be effective to the extent that the amendment has the effect of causing any Plan assets to be diverted to or inure to the benefit of the Employer, or to be used for any purpose other than providing Accrued Benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.

13.2 **Amendment of the Plan.** *[Effective July 1, 2008]*

13.2(a) The Board of the Plan Sponsor may amend the Plan at any time, after consultation with an advisory committee of higher education employees and consistent with the Enabling Statute, provided that no such amendment shall reduce, suspend or terminate the Accrued Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such amendment. To the extent required by the exclusive benefit requirement, any amendment of the Plan shall not be effective to the extent that the amendment has the effect of causing any Plan assets to be diverted to or inure to the benefit of the Employer, or to be used for any purpose

other than providing Accrued Benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.

13.2(b) Notwithstanding the foregoing, the Board hereby delegates to the VRS Director the right to modify, alter, or amend the Plan in whole or in part to make any technical modification, alteration or amendment which in the opinion of counsel for the Plan Sponsor is required by law and is deemed advisable by the Director of VRS and to make any other modification, alteration or amendment which does not, in the view of the Director of VRS, substantially increase costs, contributions or benefits and does not materially affect the eligibility, vesting or benefit accrual or allocation provisions of the Plan. The Director shall inform the Board of any such amendment at its next regularly scheduled meeting.

## ARTICLE XIV

### Miscellaneous

#### 14.1 Non-assignability.

14.1(a) The interests of each Participant under the Plan are not subject to the claims of the Participant's creditors; and neither the Participant nor his Beneficiary shall have any right to sell, assign, transfer or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

14.1(b) Notwithstanding the foregoing, the exceptions to the non-assignability provisions of 51.1-124.4.A of the Virginia Code shall apply to the Accrued Benefit under the Plan.

14.1(c) Neither the Employer, the Institution, the Trustee, the Plan Administrator, the Agent nor any person serving under contract or otherwise with respect to the Plan shall be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of or levy upon the Participant's Accrued Benefit or any distribution, including (but not limited to) any order in any bankruptcy proceeding of any kind. Notwithstanding the foregoing, if any such person is joined in any proceeding, the party may take such action as it considers necessary or appropriate to protect any and all of its legal rights, and the Participant (or Beneficiary or Alternate Payee) shall reimburse all actual fees of lawyers and legal assistants and expenses reasonably incurred by such party.

14.2 Binding Effect. The Plan shall be binding upon and inure to the benefit of the Plan Sponsor, its successors and assigns, and the Participant and his heirs, executors, administrators and legal representatives.

14.3 Construction. The Plan is intended to be a money purchase pension defined contribution plan within the meaning of Section 401(a) of the Code and maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision

of a state and the provisions of the Plan shall be interpreted and administered as such. Additionally, the Plan is established and maintained with the intent that the Plan conform to the applicable requirements of the Enabling Statute. The provisions of the Plan shall be interpreted whenever possible to conform to the applicable requirements of the Enabling Statute. When the Enabling Statute is amended or interpreted through subsequent legislation or regulations or an attorney general opinion, the Plan should be construed as consistent with such amendment or interpretation of the applicable law.

14.4 **Gender and Number.** In construction of the Plan, the masculine shall include the feminine or neuter and the singular shall include the plural and vice-versa in all cases where such meanings would be appropriate.

14.5 **Governing Law.** The Plan shall be construed, enforced and administered in accordance with the laws of the Commonwealth of Virginia, including any law preventing an individual or person claiming through him from acquiring property or receiving benefits as a result of the death of a decedent where such individual caused the death.

14.6 **No Rights Created by Allocation.** Any allocation of contributions or investment earnings to any Account shall not cause the Participant to have any right, title or interest, in any of the Plan, except as expressly provided by the Plan.

14.7 **Service of Legal Process.** Requests for information, claims or demands, legal process, and court orders are properly delivered when delivered to the Plan Administrator's principal place of business.

14.8 **Severability.** If any provision of the Plan should for any reason be declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall nevertheless remain in full force and effect.

14.9 **Signatures and Broad Acceptance of Writings.**

14.9(a) Except as provided in subparagraph 14.9(b), all notices required to be given in writing and all elections, consents, applications and the like required to be made in writing, under any provision of the Plan, shall be invalid unless made on such forms as may be provided or approved by the Administrator and, in the case of a notice, election, consent or application by a Participant or Beneficiary, unless executed by the Participant or Beneficiary giving such notice or making such election, consent or application.

14.9(b) Subject to limitations under applicable provisions of the Code, the Administrator is authorized in its discretion to accept other means for receipt of effective notices, elections, consents, applications and/or other forms or communications by Participants and/or Beneficiaries, including but not limited to electronic transmissions through e-mail, voice mail, recorded messages on electronic telephone systems, and other permissible methods, on such basis and for such purposes as it determines from time to time.

14.10 **Statute of Limitations.** As to any action at law or in equity under or with respect to this Plan (other than as described by the other sentence of this paragraph), the action shall be governed by (or precluded by) the relevant statute of limitations or statute of repose for actions upon a written contract according to the internal laws (without regard to the law of conflicts) of the Commonwealth of Virginia. For any dispute that was resolved by arbitration, to the extent that the statute of limitations or statute of repose relating to any arbitration proceeding or arbitration award or any other matter relating to arbitration shall be governed by the internal laws (without regard to the law of conflicts) of the Commonwealth of Virginia.

14.11 **Conclusiveness of Employer and Institution Records.** The records of the Employer and/or the Institution with respect to age, service, employment history, compensation, absences, illnesses and all other relevant matters shall be conclusive for purposes of the administration of the Plan.

14.12 **Right to Require Information and Reliance Thereon.** The Plan Sponsor, the Institution, the Administrator and the Trustee shall have the right to require any Participant, Beneficiary or other person receiving benefit payments to provide it with such information, in writing, and in such form as it may deem necessary to the administration of the Plan and may rely thereon in carrying out its duties hereunder. Any payment to or on behalf of a Participant or Beneficiary in accordance with the provisions of the Plan in good faith reliance upon any such written information provided by a Participant or any other person to whom such payment is made shall be in full satisfaction of all claims by such Participant and his Beneficiary; and any payment to or on behalf of a Beneficiary in accordance with the provisions of the Plan in good faith reliance upon any such written information provided by such Beneficiary or any other person to whom such payment is made shall be in full satisfaction of all claims by such Beneficiary.

14.13 **Payment of Expenses.** Unless or to the extent not paid by the Employer, all expenses of the Fund and the Plan, including reasonable legal, accounting, custodial, brokerage, consulting and other fees and expenses incurred in the establishment, amendment, administration and termination of the Fund and the Plan and/or the compensation, if any, of the Trustee and other fiduciaries of the Fund and the Plan to the extent provided under the Trust and Plan, and all taxes of any nature whatsoever, including interest and penalties, assessed against or imposed upon the Fund or the income thereof shall be paid out of the Fund and shall constitute a charge upon the Fund.

14.14 **Titles and Captions.** Titles and captions and headings herein have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

IN WITNESS WHEREOF, the undersigned has executed this restatement of the Plan this 14<sup>th</sup> day of March, 2002

By: /s/ W. Forrest Matthews, Jr.

Director

**APPENDIX A**  
**EFFECTIVE DATES OF CERTAIN PROVISIONS**

This Appendix A sets forth certain provisions of the Plan that are effective for specified periods prior to the general Effective Date of the Restatement of the Plan:

1. The definition of “Total Compensation” contained in Paragraph 5.3(f) which applies to the Code Section 415 limits described in Article V, shall be effective for Plan Years beginning on or after January 1, 1998, except that the reference to Section 132(f) shall be effective only for Plan Years beginning on or after the general Effective Date of the Restatement of the Plan.
2. The provisions of Paragraph 5.6 (concerning special rules that relate to military service) shall apply for Plan Years beginning on or after December 12, 1994.
3. The provisions of Paragraph 9.7 regarding direct rollovers shall be effective for distributions made on or after January 1, 1993.