

**OPTIONAL RETIREMENT PLAN
OF THE
COMMONWEALTH OF VIRGINIA
FOR
POLITICAL APPOINTEES**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. ESTABLISHMENT AND RESTATEMENT OF PLAN	1
Section 1.01. Plan Establishment and History	1
Section 1.02. Plan Restatement.....	1
ARTICLE II. CONSTRUCTION AND DEFINITIONS	1
Section 2.01. Construction and Governing Law	1
Section 2.02. Definitions	2
ARTICLE III. ELIGIBILITY AND PARTICIPATION	8
Section 3.01. Participation	8
Section 3.02. Reemployment	8
Section 3.03. Prohibition Against Simultaneous Participation.....	9
ARTICLE IV. CONTRIBUTIONS.....	9
Section 4.01. Employer Contributions	9
Section 4.02. Mandatory Employee Contributions.....	9
Section 4.03. Rollover Contributions to the Plan.....	10
Section 4.04. Transfers to the Plan.....	10
Section 4.05. Expenses of Plan	11
ARTICLE V. LIMITATIONS ON CONTRIBUTIONS.....	11
Section 5.01. Code Section 415(c) Limits	11
Section 5.02. Excess Annual Additions	11
ARTICLE VI. ACCOUNTING	12
Section 6.01. Participant Accounts.....	12
Section 6.02. Participant Statements.....	12
Section 6.03. Value of Account	12
ARTICLE VII. INVESTMENT OF CONTRIBUTIONS.....	12
Section 7.01. Investment Funds	12
Section 7.02. Default Investments.....	12
ARTICLE VIII. TRUST	13
Section 8.01. Trust Fund	13
Section 8.02. Trust Status.....	13
ARTICLE IX. DISTRIBUTIONS	13
Section 9.01. Distribution Restrictions.....	13
Section 9.02. Forms of Payment	13
Section 9.03. Reemployment	14
Section 9.04. Mandatory Cash-Out.....	14
Section 9.05. Death Benefit	14
Section 9.06. Required Minimum Distribution Rules	14

Section 9.07.	Permissive Service Credit Transfers to VRS	15
Section 9.08.	Additional Tax on Early Withdrawals	16
ARTICLE X. LOANS.....		16
ARTICLE XI. VESTING.....		16
Section 11.01.	Vesting	16
Section 11.02.	Felony Convictions	16
ARTICLE XII. ROLLOVERS FROM THIS PLAN.....		17
Section 12.01.	Definitions for this Article	17
Section 12.02.	Direct Transfer of Eligible Rollover Distribution	18
Section 12.03.	Mandatory Withholding of Eligible Rollover Distributions	18
Section 12.04.	Explanation of Plan Distribution and Withholding Requirements	19
ARTICLE XIII. ADMINISTRATION OF THE PLAN		19
Section 13.01.	Authority of the Administrator	19
Section 13.02.	Responsibility of the Employer	20
Section 13.03.	Powers of the Administrator	20
Section 13.04.	Delegation by Administrator	20
Section 13.05.	Employment of Consultants	20
ARTICLE XIV. REQUESTS FOR INFORMATION AND OTHER CLAIMS		
PROCEDURES		20
Section 14.01.	Requests for Information Concerning Eligibility, Participation and Contributions.....	20
Section 14.02.	Requests for Information Concerning Investment Funds.....	20
Section 14.03.	Processing of Claims	21
ARTICLE XV. AMENDMENT AND TERMINATION		21
Section 15.01.	Amendment and Termination.....	21
Section 15.02.	Adverse Effects	21
Section 15.03.	Distribution Upon Termination of the Plan.....	21
ARTICLE XVI. MISCELLANEOUS.....		21
Section 16.01.	Non-Alienation.....	21
Section 16.02.	Military Service	22
Section 16.03.	Limitation of Rights and Obligations	23
Section 16.04.	Federal and State Taxes.....	24
Section 16.05.	Erroneous Payments	24
Section 16.06.	Payments to Minors or Incompetents.....	24
Section 16.07.	Missing or Lost Participants	24
Section 16.08.	Stale Distribution Checks	24
Section 16.09.	No Reversion.....	25
Section 16.10.	Claims of Other Persons	25
Section 16.11.	Counterparts.....	25

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ARTICLE I.

ESTABLISHMENT AND RESTATEMENT OF PLAN

Section 1.01. Plan Establishment and History.

(a) Pursuant to the Section 51.1-126.5 the Code of Virginia ("Va. Code"), the Board of Trustees of the Virginia Retirement System ("Board") established the Optional Retirement Plan of the Commonwealth of Virginia for Political Appointees ("Plan"), effective January 17, 1998, in order to provide retirement benefits for eligible employees. Eligible employees may elect to participate in the Plan in lieu of retirement benefits available under Va. Code Section 51.1-124.1 *et seq.* or Va. Code Section 51.1-169.

(b) The Plan is, and is intended to remain, a defined contribution plan qualified under Code Section 401(a) and a money purchase pension plan within the meaning of Treasury Regulation Section 1.401-1(b)(1)(i). The Plan is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(c) The Plan was most recently amended and restated effective January 1, 2014.

Section 1.02. Plan Restatement.

(a) The Plan is now being amended and restated effective January 1, 2021.

(b) Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2021, and to transactions under the Plan on and after January 1, 2021. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2021, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

ARTICLE II.

CONSTRUCTION AND DEFINITIONS

Section 2.01. Construction and Governing Law.

(a) This Plan shall be interpreted, enforced, and administered in accordance with the Code and, when not inconsistent with the Code, or expressly provided otherwise herein, the Va. Code without regard to conflict of law principles.

(b) Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and *vice versa*, and words used herein in the singular or plural shall be construed as being in the plural or singular, where appropriate, and *vice versa*.

(c) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(d) If any provision of the Plan shall be held to violate the Code or be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise impair or affect the Plan.

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute a qualified plan under the provisions of Code Section 401 with the earnings of the Trust exempt from income tax under Code Section 501, (ii) constitute a money purchase pension plan within the meaning of Treasury Regulation Section 1.401-1(b)(1)(i), (iii) be a governmental plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iv) comply with all applicable requirements of the Code, shall prevail over any different interpretation.

Section 2.02. Definitions. When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "Account" means the aggregate of the following separate accounts maintained for each Participant reflecting his or her interest under the Plan as follows:

(1) "Employer Contribution Account" means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Employer Contributions pursuant to Section 4.01.

(2) "Mandatory Employee Contribution Account" means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Mandatory Employee Contributions pursuant to Section 4.02.

(3) "Rollover Contribution Account" means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions pursuant to Section 4.03. There shall be the following separate subaccounts under the Rollover Contribution Account:

(i) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from an eligible retirement plan within the meaning of Section 4.03(a) that consists of after-tax employee contributions; and

(ii) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from an eligible retirement plan within the meaning of Section 4.03(a) that consists of employer and/or employee contributions other than after-tax employee contributions.

(4) "Transfer Contribution Account" means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Transfer Contributions pursuant to Section 4.04. There shall be the following separate subaccounts under the Transfer Contribution Account:

(i) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Transfer Contributions from an eligible retirement plan within the meaning of Section 4.04(a) that consists of after-tax employee contributions; and

(ii) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Transfer Contributions from an eligible retirement plan within the meaning of Section 4.04(a) that consists of employer and/or employee contributions other than after-tax employee contributions.

(b) "Administrator" means VRS; provided, however, that to the extent that VRS has delegated any of its responsibilities as Administrator to any other person or persons, the term Administrator shall be deemed to refer to that person or persons. The VRS Director shall serve as the chief administrative officer of the Plan.

(c) "Agent" means a service provider selected by the Administrator, in its sole and absolute discretion, to provide services under the Plan.

(d) "Annual Addition" means the annual addition as defined in Code Section 415(c) and as modified in Code Sections 415(l)(1) and 419A(d)(2). In general, Code Section 415(c) defines annual addition as the sum of the following amounts credited to a Participant's accounts for the Limitation Year under this Plan and any other defined contribution plan maintained by the Employer:

(1) Employee contributions, including Mandatory Employee Contributions under Section 4.02;

(2) Employer contributions, including Employer Contributions under Section 4.01;

(3) forfeitures;

(4) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by the Employer or a Related Employer, or both, as applicable; and

(5) mandatory employee contributions to a defined benefit plan maintained by the Employer, unless the contributions are picked up by the Employer pursuant to Code Section 414(h)(2).

Annual Additions shall not include Transfer Contributions or Rollover Contributions.

(e) "Applicable Form" means the appropriate form as designated and furnished by the Administrator or the Agent to make any election or provide any notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Administrator and/or the Agent may prescribe an electronic or telephonic form in lieu of or in addition to a written form.

(f) "Beneficiary" means any person, company, trustee or estate designated by the Participant on the Applicable Form to receive any benefits payable under the Plan in the event of the Participant's death. If the designated primary or contingent Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's Beneficiary shall be determined in accordance with Va. Code Section 51.1-162, as follows: (i) the Participant's surviving Spouse, or if none; (ii) the Participant's children and descendants of deceased children, per stirpes, or if none; (iii) the Participant's parents equally if both living, or if none; (iv) the duly appointed executor or administrator of the Participant's estate, or if none; (v) the next of kin entitled to inherit under the laws of the Participant's domicile at the time of death. If a Beneficiary survives the Participant but dies before the entire Account has been distributed, then the unpaid balance of the Account shall be distributed to the Beneficiary's estate. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

(g) "Board" means the Board of Trustees of the Virginia Retirement System.

(h) "Break in Service" means a period of at least one full calendar month from the end of the month in which the Participant has a Severance from Employment.

(i) "Code" means the Internal Revenue Code of 1986, as amended from time to time.

(j) "Commonwealth" means the Commonwealth of Virginia and an agency or instrumentality thereof.

(k) "Contributions" means Employer Contributions, Mandatory Employee Contributions, Rollover Contributions, and Transfer Contributions.

(l) "Cost-of-Living Adjustment" means the cost-of-living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17) or 415(d) for any applicable year.

(m) "Creditable Compensation" has the meaning set forth in Va. Code Section 51.1-124.3, as interpreted by VRS. Creditable Compensation generally means the Employee's annual salary, not including overtime pay, payment of a temporary nature, or payments for extra duties. Creditable Compensation shall not include any amounts paid after Severance from Employment except for regular pay that would have been paid to the Employee prior to a Severance from Employment if the Employee continued in employment with the Participant Employer and that is otherwise Creditable Compensation. Creditable Compensation shall not exceed the limits under Code Section 401(a)(17), increased by the Cost-of-Living Adjustment.

(n) "Effective Date" of the Plan means January 17, 1998, and of this amendment and restatement means January 1, 2021.

(o) "Eligible Employee" means an Employee employed by an Employer in a position described in Subdivision 3, 4, or 20 of Va. Code Section 2.2-2905 or an officer or employee appointed by the Attorney General or Lieutenant Governor to a position designated as a deputy, counsel, or director position.

(p) "Employee" means any common law employee employed by the Employer. An Employee does not include an independent contractor.

(q) "Employer" means the Commonwealth.

(r) "Employer Contributions" mean the contributions made to the Plan by the Employer on behalf of a Participant pursuant to Section 4.01.

(s) "Excess Annual Additions" mean that portion of a Participant's Mandatory Employee Contributions and Employer Contributions to the Plan, and contributions to another 401(a) defined contribution plan maintained by the Employer or a Related Employer for a Limitation Year which exceeds the limits of Code Section 415.

(t) "HEART" means the Heroes Earnings Assistance and Relief Tax Act of 2008, as amended from time to time.

(u) "Investment Funds" means the mutual funds, collective investment trust funds, insurance company separate accounts, annuity contracts, or other investment vehicles made available to Participants for the investment of their Accounts. The Administrator, in its sole and absolute discretion, shall select the Investment Funds and may add or delete Investment Funds.

(v) "Limitation Year" means the 12 month period beginning January 1.

(w) "Mandatory Employee Contributions" mean the contributions required to be made by a Participant to the Plan pursuant to Section 4.02.

(x) "Normal Retirement Age" means:

(1) with respect to a Pre-July 1, 2010 Participant, age 65; and

(2) with respect to a Post-June 30, 2010 Participant, the Participant's full retirement age under Social Security.

(y) "Participant" means any Eligible Employee who is or may become eligible to receive a benefit of any type under the Plan. A Participant shall also mean, when appropriate to the context, a former Eligible Employee who is eligible to receive a benefit of any type under the Plan. Participants shall be classified as follows:

(1) A "Pre-July 1, 2010 Participant" means a person who on June 30, 2010, is a member of a retirement plan administered by the Virginia Retirement System as that term is defined in Va. Code Section 51.1-124.3 (which term excludes the Virginia Cash Match Plan and the Deferred Compensation Plan of the Commonwealth of Virginia). For this purpose, a Participant is a member of such a plan if the Participant has creditable

service under a defined benefit plan or any account balance under a defined contribution plan. A Pre-July 1, 2010 Participant shall also include a person who prior to March 15, 2010, entered into a written employment contract for employment in a covered position in the case of a defined benefit plan administered by VRS or an eligible position in the case of a defined contribution plan administered by VRS even if the employment pursuant to such agreement commences on or after July 1, 2010. A subsequent Severance from Employment shall not alter the Participant's status as a Pre-July 1, 2010 Participant. However, if, upon reemployment following a Severance from Employment, a person no longer has creditable service under a defined benefit plan or any account balance under a defined contribution plan administered by VRS, such person shall no longer be a Pre-July 1, 2010 Participant. For the purposes of this definition, an account balance includes a payout annuity.

(2) A "Post-June 30, 2010 Participant" means any Participant other than a Pre-July 1, 2010 Participant.

(z) "Plan" means the Optional Retirement Plan of the Commonwealth of Virginia for Political Appointees, as amended from time to time.

(aa) "Plan Compensation" means all compensation as defined in Code Section 415(c)(3). In general, Code Section 415(c)(3) defines compensation as all of an Employee's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, Plan Compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Code Section 125, 403(b), 132(f)(4), 401(k), or 457(b). Plan Compensation for a Plan Year includes compensation paid by the later of (i) two and one-half months after an Employee's Severance from Employment, or (ii) the end of the Plan Year that includes the date of the Employee's Severance from Employment, if:

(1) the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (*e.g.*, overtime or shift differential), commissions, bonuses, or other similar payments and the payment would have been paid to the Employee prior to a Severance from Employment if the Employee had continued in employment with the Employer; or

(2) the payment is for unused accrued bona fide sick, vacation, or other leave, but only if the Employee would have been able to use the leave if the Employee had continued in employment.

Plan Compensation does not include any amounts "picked up" by the Employer within the meaning of Code Section 414(h). Plan Compensation shall not exceed the limits under Code Section 401(a)(17), increased by the Cost-of-Living Adjustment.

- (bb) "Plan Year" means the 12 month period beginning July 1.
- (cc) "Related Employer" means the Employer and any other entity which is under common control with the Employer under Code Section 414(b), (c) or (m). For this purpose, the Board shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.
- (dd) "Rollover Contributions" mean the contributions made to the Plan pursuant to Section 4.03.
- (ee) "Section" means, when not preceded by the word Code, a section of the Plan.
- (ff) "Severance from Employment" means the complete termination of the employment relationship between the Employee, the Employer, and any employer who participates in a retirement plan established under Chapters 1, 2, 2.1, or 3 of Title 51.1 of the Va. Code.
- (gg) "Spouse" means the person to whom the Participant is legally married under federal law.
- (hh) "Transfer Contributions" mean the contributions made to the Plan pursuant to Section 4.04.
- (ii) "Trust" means the Master Trust for the Defined Contribution Plans of the Commonwealth of Virginia, which may incorporate one or more qualified trusts under Code Section 401(a), custodial accounts treated as qualified trusts under Code Section 401(f), and/or annuity contracts treated as qualified trusts under Code Section 401(f), established under the Plan to hold Plan assets.
- (jj) "Trust Fund" means the assets of the Plan held pursuant to the terms of the Plan and the Trust.
- (kk) "Trustee" means the trustee or any successor trustee designated and appointed by VRS, and includes a custodian of a custodial account or an insurer of an annuity contract under Code Section 401(f).
- (ll) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.
- (mm) "Va. Code" means the Code of Virginia, as amended from time to time.
- (nn) "Vested" means the interest of the Participant or Beneficiary in his or her Accounts which is unconditional, legally enforceable, and nonforfeitable at all times.
- (oo) "VRS" means the Virginia Retirement System.

(pp) "VRS Defined Benefit Plan" means the defined benefit retirement plan established under Va. Code Section 51.1-124.1 *et seq.* and administered by VRS.

(qq) "VRS Hybrid Retirement Program" means the hybrid retirement program established under Va. Code Section 51.1-169 and administered by VRS.

ARTICLE III.

ELIGIBILITY AND PARTICIPATION

Section 3.01. Participation.

(a) An Eligible Employee who is a Participant on the day before the Effective Date of this amended and restated Plan shall continue to be a Participant on the Effective Date.

(b) An Employee who becomes an Eligible Employee on or after the Effective Date of this amended and restated Plan shall make an irrevocable election to participate in the Plan. An Eligible Employee who makes an irrevocable election to participate in the Plan shall remain a Participant in the Plan for as long as he or she remains an Eligible Employee. The Eligible Employee shall make this election by following the enrollment procedures prescribed by the Administrator. If an Eligible Employee fails to make a timely election, he or she shall be deemed to have irrevocably elected to participate in the VRS Defined Benefit Plan or VRS Hybrid Retirement Program, as applicable based on his or her membership date. An Eligible Employee who elects to participate in the Plan shall become a Participant in the Plan as of the date he or she becomes an Eligible Employee.

(c) Notwithstanding paragraph (b), an Employee who has been in continuous service without a Break in Service with another Employer when he or she becomes an Eligible Employee, and who was most recently covered by:

(1) the VRS Defined Benefit Plan or the VRS Hybrid Retirement Program, may not participate in the Plan and shall continue his or her participation in the VRS Defined Benefit Plan or the VRS Hybrid Retirement Program, as applicable; or

(2) the Plan, shall become a Participant in the Plan on the date such Employee becomes an Eligible Employee.

(d) VRS shall notify the Eligible Employee of his or her eligibility to participate in the Plan. To become a Participant under the Plan, an Eligible Employee must complete the Applicable Forms, which may include enrollment, beneficiary designation, and investment election forms, and return them to the Administrator or Agent, as applicable.

Cessation of Contributions. A Participant shall cease to be eligible for Contributions under the Plan when (i) he or she is no longer an Eligible Employee or (ii) the Plan is terminated.

Section 3.02. Reemployment. A former Eligible Employee who subsequently becomes an Eligible Employee again shall participate in the Plan as described in Section 3.01.

Section 3.03. Prohibition Against Simultaneous Participation. A Participant in this Plan may not at the same time either (i) participate in the VRS Defined Benefit Plan or the VRS Hybrid Retirement Program or (ii) receive benefits from the VRS Defined Benefit Plan or the VRS Hybrid Retirement Program, other than as a contingent annuitant.

ARTICLE IV.

CONTRIBUTIONS

Section 4.01. Employer Contributions.

(a) Each Participant shall receive an Employer Contribution each payroll period as follows:

(1) On behalf of each Pre-July 1, 2010 Participant, an Employer shall make an Employer Contribution to the Plan equal to ten and four-tenths percent (10.4%) of the Participant's Creditable Compensation, or such other rate that may be established from time to time by VRS pursuant to Va. Code Section 51.1-126.5.

(2) On behalf of each Post-June 30, 2010 Participant, an Employer shall make an Employer Contribution to the Plan equal to eight and five-tenths percent (8.5%) of the Participant's Creditable Compensation, or such other rate that may be established from time to time by VRS pursuant to Va. Code Section 51.1-126.5.

(b) Subject to Article V, Employer Contributions shall be made on behalf of a Participant who is on an authorized educational leave of absence, and who is receiving at least half of his or her Creditable Compensation, based on the Creditable Compensation that the Participant receives during the period of leave.

(c) Employer Contributions shall be paid to the Plan as soon as administratively practicable following each payroll period, but no later than as permitted by law for the Plan Year during which they are being made. Employer Contributions shall be allocated to each Participant's Employer Contribution Account as of the date made to the Plan, but no later than the last day of the Plan Year.

Section 4.02. Mandatory Employee Contributions.

(a) Each Post-June 30, 2010 Participant is required as a condition of employment to make a Mandatory Employee Contribution to the Plan each Plan Year equal to five percent of his or her Creditable Compensation, or such other rate that may be established from time to time by VRS pursuant to Va. Code Section 51.1-126.5.

(b) Mandatory Employee Contributions shall be picked up by the Employer and treated as paid by the Employer pursuant to Code Section 414(h)(2). The Employer shall remit the picked up Mandatory Employee Contributions directly to the Plan, instead of paying such amounts to the Participant. A Participant may not elect to receive such Mandatory Employee Contributions directly instead of having them paid by the Employer to the Plan.

(c) Mandatory Employee Contributions shall be paid to the Plan by the Employer each payroll period on a basis consistent with its payroll practices, but no later than as permitted by law for the Plan Year during which they are being made.

Section 4.03. Rollover Contributions to the Plan.

(a) A Participant may transfer to the Plan as a Rollover Contribution a distribution from:

(1) a Code Section 401(a) or 403(a) qualified plan, including after-tax employee contributions in a direct rollover;

(2) a Code Section 403(b) plan, excluding after-tax employee contributions;

(3) a Code Section 457(b) eligible deferred compensation plan which is maintained by an eligible employer described in Code Section 457(e)(1)(A); or

(4) a Code Section 408 individual retirement account or annuity, with respect to the portion of the distribution that is eligible to be rolled over and would otherwise be includible in gross income.

A Rollover Contribution under this paragraph shall be made directly from such prior plan, or if such amount was distributed to the Participant, shall be made within 60 days after the Participant receives the rollover amount, unless the 60 day deadline is waived under Code Section 402(c)(3)(B) or a later deadline is established under Internal Revenue Service guidance.

(b) A Rollover Contribution shall be subject to the Trustee's determination, in its discretion, that the Rollover Contribution satisfies all applicable requirements of the Code.

(c) A Rollover Contribution shall be allocated to a Rollover Contribution Account as of the date of the contribution; provided, however, that separate subaccounts shall be maintained to reflect Rollover Contributions from after-tax employee contributions and contributions other than after-tax employee contributions, as provided in Section 2.02(a).

(d) Before a Rollover Contribution is made, the Participant shall designate on the Applicable Form the Investment Funds in which to invest his or her Rollover Contribution.

Section 4.04. Transfers to the Plan.

(a) The Plan shall accept as a Transfer Contribution a transfer of a Participant's accumulated contributions from the VRS Defined Benefit Plan or VRS Hybrid Retirement Program pursuant to Va. Code Section 51.1-161(C). The Plan shall not accept a transfer from any other plan.

(b) The transfer shall satisfy such rules and policies established by the Administrator.

(c) A Transfer Contribution shall be allocated to the Transfer Contribution Account of the Participant as of the date of the transfer.

Section 4.05. Expenses of Plan. All reasonable expenses of administering the Plan shall be charged against and paid from the Participant's Accounts, subject to the terms of the applicable Investment Funds, unless paid by the Employer. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with rules promulgated by the Internal Revenue Service.

ARTICLE V.

LIMITATIONS ON CONTRIBUTIONS

Section 5.01. Code Section 415(c) Limits.

(a) Notwithstanding any provision of the Plan to the contrary, Annual Additions to the Plan and any other Code Section 401(a) plan maintained by the Employer or a Related Employer for a Participant in a Limitation Year shall not exceed the limitations set forth in Code Section 415(c).

(b) The Code Section 415(c) limit for any Limitation Year is the lesser of:

(1) \$58,000 for 2021, increased by the Cost-of-Living Adjustment thereafter;

or

(2) 100% of the Participant's Plan Compensation for the Limitation Year.

Section 5.02. Excess Annual Additions.

(a) If as of the end of the Plan Year, the Annual Additions allocated to any Participant's Account exceed the limitations of this Article V, the Excess Annual Additions will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar Internal Revenue Service correction program).

(b) If a Participant has Excess Annual Additions for a Plan Year, an adjustment to comply with this Article shall be made as soon as administratively possible, but no later than the time permitted under Internal Revenue Service guidance: (i) first, to all plans not hereinafter described; (ii) second, to any profit sharing plan (such a plan providing matching contributions based on the employee's elective deferrals to a 403(b) or 457(b) plan) that is required to be aggregated with this Plan; (iii) third, to any money purchase pension plan (such as this Plan) that is required to be aggregated with this Plan; (iv) fourth, to any target benefit plan that is required to be aggregated with this Plan; and (v) fifth, to any welfare benefit fund and individual medical benefit account.

(c) If a Participant is a participant in two or more plans of the same type described in paragraph (b), the adjustment provided for in paragraph (b) to such plans shall be made: (i) to contributory plans or aspects thereof first, and then to non-contributory plans or aspects thereof; and (ii) to plans or aspects thereof in the same limitation category separately maintained and administered by the Employer in accordance with rules established by such Employer, and then to the Virginia Cash Match Plan.

ARTICLE VI.

ACCOUNTING

Section 6.01. Participant Accounts. The Agent shall establish and maintain adequate records to reflect the Accounts of each Participant and Beneficiary. Credits and charges shall be made to such Accounts to reflect additions, distributions, and withdrawals, and to reflect gains or losses pursuant to the terms of each Investment Fund. The maintenance of individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

Section 6.02. Participant Statements. The Agent shall provide to each Participant a quarterly statement reflecting the value of the Participant's Account as of the end of each quarter and shall provide similar information to the Administrator upon its request.

Section 6.03. Value of Account. The value of the Account of a Participant as of any valuation date is the value of the Account balance as determined by the Agent. The valuation date shall be the last day of the Plan Year and each other date designated by the Administrator or Agent in a uniform and nondiscriminatory manner. All transactions and Account records shall be based on fair market value.

ARTICLE VII.

INVESTMENT OF CONTRIBUTIONS

Section 7.01. Investment Funds.

(a) All Contributions under the Plan shall be transferred to the Trust to be held, managed, invested, and distributed in accordance with the provisions of the Plan and the Investment Funds as applicable.

(b) Participants' Accounts shall be invested in one or more of the Investment Funds available to Participants under this Plan, as selected by the Administrator and communicated to Participants. The Administrator's current selection of Investment Funds is not intended to limit future additions or deletions of Investment Funds.

(c) A Participant shall have the right to direct the investment of his or her Account among the Investment Funds by filing the Applicable Form with the Administrator. A Participant may change his or her investment election as often as determined by the Administrator. A Participant may elect to transfer all or any portion of his or her Accounts invested in any one Investment Fund to another Investment Fund, subject to the limitations of the Investment Fund, by filing a request on the Applicable Form with the Administrator.

Section 7.02. Default Investments. If a Participant does not have a valid and complete investment direction on file with the Administrator on the Applicable Form, Contributions may be invested in a default fund selected by the Administrator in its sole discretion, until the Participant makes an affirmative election regarding the investment of his or her Account.

ARTICLE VIII.

TRUST

Section 8.01. Trust Fund. All Contributions under the Plan shall be transferred to the Trustee to be held in Trust as part of the Trust Fund in accordance with the provisions of the Plan and the Investment Funds, as applicable. All assets held in connection with the Plan, including all Contributions, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts, property or rights, shall be held in, managed, invested and distributed in Trust as part of the Trust Fund, in accordance with the provisions of the Plan. All benefits under the Plan shall be distributed solely from the Trust Fund, and VRS and/or Employer shall have no liability for any such benefits other than the obligation to make Contributions as provided in the Plan.

Section 8.02. Trust Status. The Trust Fund shall be held in Trust for the exclusive benefit of Participants and Beneficiaries under the Plan in accordance with Code Section 501(a). No part of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries, and for defraying the reasonable expenses of the Plan and Trust. The Trust is exempt from tax pursuant to Code Sections 401(a) and 501(a).

ARTICLE IX.

DISTRIBUTIONS

Section 9.01. Distribution Restrictions.

(a) Except as otherwise provided in this Section 9.01, a Participant or Beneficiary is not entitled to a distribution of his or her Vested Accounts under the Plan until the Participant has had a Break in Service following a Severance from Employment.

(b) Notwithstanding paragraph (a), a Participant may request a distribution from his or her Rollover Contribution Account at any time.

(c) A Participant or Beneficiary may submit a request for a distribution to the Administrator on the Applicable Form. The Employer shall certify that the Participant has had a Severance from Employment, if applicable.

Section 9.02. Forms of Payment.

(a) Subject to Section 9.06, the terms of the Investment Funds, and any restrictions established by VRS, a Participant may elect to receive his or her Vested Account under any form of payment approved by the Administrator, which may include a lump sum payment, annuity payment, periodic payment, or partial lump sum with remainder paid as a periodic payment or annuity payment.

(b) Notwithstanding paragraph (a), a distribution under Section 9.01(b) made prior to Severance from Employment shall only be made as a lump sum payment.

Section 9.03. Reemployment. If a Participant who has had a Severance from Employment is subsequently reemployed in a position covered for retirement purposes under the provisions of Chapters 1, 2, 2.1, or 3 of Title 51.1 of the Va. Code, and distribution of his or her Accounts has begun under a payment option other than annuity payments, such distributions shall immediately cease, and the Eligible Employee shall not receive any benefits under the Plan until the Employee is entitled to a distribution under Section 9.01.

Section 9.04. Mandatory Cash-Out. A lump sum payment of the Participant's Account may be made at the Participant's Severance from Employment without his or her consent, provided that the Account balance (not including the Rollover Contribution Account) does not exceed \$1,000, unless the Participant elects to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover. Any lump sum payments made under this Section 9.04 shall be made in a uniform and nondiscriminatory manner.

Section 9.05. Death Benefit. If a Participant dies before distribution of his or her entire Account, his or her Account shall be payable to his or her Beneficiary under the distribution options available under the Investment Funds, subject to Code Section 401(a)(9).

Section 9.06. Required Minimum Distribution Rules.

(a) The provisions of this Section 9.06 take precedence over any inconsistent provisions of the Plan. All distributions under this Plan shall be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G), and the changes under the Setting Every Community Up for Retirement Enhancement Act of 2019, and any regulatory guidance issued thereunder, and shall comply with rules under this Section 9.06.

(b) Distributions may only be made over one of the following periods (or a combination thereof):

- (1) The life of the Participant;
- (2) The life of the Participant and a designated individual Beneficiary;
- (3) A period certain not extending beyond the life expectancy of the Participant; or
- (4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated individual Beneficiary.

(c) A Participant's Accounts shall be distributed to the Participant beginning no later than his or her "required beginning date" as defined in this paragraph or, if applicable, as defined in subsequent legislation or regulations that amend the definition of required beginning date for purposes of Code Section 401(a)(9). Subject to the preceding sentence, required beginning date shall mean April 1 of the calendar year following the calendar year in which the Participant attains age 70½ (age 72 for distributions required to be made after December 31, 2019, with respect to a Participant who would have attained age 70½ after December 31, 2019) or, if later, April 1 of the calendar year following the calendar year that the Participant has a Severance from

Employment. The Administrator or its Agent shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions prior to the date distributions must begin.

(d) The Administrator or its Agent shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions prior to the date distributions must begin.

(e) Notwithstanding anything in this Section 9.06 to the contrary, for 2020 or such longer period as provided in legislation modifying or extending the Coronavirus Aid, Relief, and Economic Security Act of 2020, the minimum distribution requirements will be satisfied as provided in this paragraph (e).

(1) Effective March 27, 2020, or as soon as administratively practicable thereafter, a Participant or Beneficiary who would have been required to receive a required minimum distribution in 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a required beginning date of April 1, 2021) but for the enactment of Code Section 401(a)(9)(I) ("2020 RMDs") and who would have satisfied that requirement by receiving distributions that are equal to the 2020 RMDs, will not receive these distributions unless the Participant or Beneficiary chooses to receive the distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

(2) Effective March 27, 2020, or as soon as administratively practicable thereafter, a Participant who would have been required to receive 2020 RMDs and who would have satisfied that requirement by receiving distributions that are one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancies) of the Participant and the Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will receive these distributions unless the Participant or Beneficiary chooses not to receive the distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence.

(3) In addition, solely for purposes of applying the direct rollover provisions of Article VII, 2020 RMDs and Extended 2020 RMDs will be treated as eligible rollover distributions in 2020.

Section 9.07. Permissive Service Credit Transfers to VRS.

(a) A Participant who ceases to be an Eligible Employee but who remains employed by the Commonwealth may transfer his or her Account balance to the VRS Defined Benefit Plan or VRS Hybrid Retirement Program, as applicable, in a manner determined by VRS.

(b) If the Participant makes such an election, the Participant's Account shall be transferred to VRS and his or her participation in the Plan shall cease. With the exception of the

Mandatory Employee Contribution Account and Rollover Contribution Account, any portion of the Participant's Account which exceeds the amount required under VRS to purchase all of the Participant's creditable service under VRS as an Eligible Employee under the Plan shall be forfeited by the Participant. Years of creditable service are determined in the same manner as under VRS. Forfeitures arising under this paragraph (b) shall be allocated to a forfeiture account. The Employer shall use the forfeitures to reduce future Employer Contributions.

Section 9.08. Additional Tax on Early Withdrawals.

(a) Generally, and except as described in paragraph (b), if a Participant receives any amount under the Plan, his or her tax for the taxable year in which such amount is received is increased by an amount equal to 10% of the portion of such amount which is includible in gross income. Such amount shall be included in gross income to the extent allocable to income on the Investment Fund and shall not be included in gross income to the extent allocable to the investment in the Investment Fund as provided in Code Section 72(e)(2)(b).

(b) The penalty described in paragraph (a) generally does not apply to any distribution (i) made on or after the date on which the Participant attains age 59½, (ii) made on or after the death of the Participant, (iii) attributable to the Participant becoming disabled within the meaning of Code Section 72(m)(7), (iv) which is part of a series of substantially equal periodic payments made (not less frequently than annually) for the life or life expectancy of the Participant or the joint lives (or joint life expectancies) of such Participant and his or her designated Beneficiary, (v) made to a Participant after Severance from Employment following the attainment of age 55, (vi) which is a qualified reservist distribution within the meaning of Code Section 72(t)(2)(G)(iii), or (vii) any other circumstance permitted by the Code or the Internal Revenue Service.

ARTICLE X.

LOANS

Loans are not permitted under the Plan.

ARTICLE XI.

VESTING

Section 11.01. Vesting. Except as provided under Section 9.07, a Participant shall be 100% Vested in his or her Accounts at all times.

Section 11.02. Felony Convictions.

(a) Notwithstanding Section 11.01, if a Participant (i) is convicted of a felony and (ii) his or her Employer determines that the felony arose from misconduct occurring on or after July 1, 2011, in any position in which the Participant was covered for retirement purposes under any retirement system administered by the Board, the Participant shall forfeit his or her Employer Contribution Account and Transfer Contribution Account, if any. Such forfeiture shall occur following the Employer's notification to VRS that a felony conviction arising from such

misconduct has been obtained and the administrative process as set forth in Va. Code Section 51.1-124.13 has concluded. If the Participant is or becomes a Participant in service after such forfeiture, he or she shall be entitled to the benefits based solely on his or her service after the forfeiture.

(b) Forfeitures arising under paragraph (a) shall be allocated to a forfeiture account under the Plan and shall be used to reduce Plan expenses.

ARTICLE XII.

ROLLOVERS FROM THIS PLAN

Section 12.01. Definitions for this Article. For purposes of this Article, the following definitions shall apply.

(a) "Direct Rollover" means an Eligible Rollover Distribution that is paid directly to an Eligible Retirement Plan for the benefit of the Distributee.

(b) "Distributee" means a Participant, the Spouse of the Participant, or the Participant's former Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p), and a Participant's non-Spouse Beneficiary, any of whom is eligible to receive a distribution from the Plan.

(c) "Eligible Retirement Plan," as defined under Code Section 402(c)(8)(B), means:

- (1) an individual retirement account described in Code Section 408(a);
- (2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);
- (3) any annuity plan described in Code Section 403(a);
- (4) a plan described in Code Section 403(b);
- (5) a qualified plan described in Code Section 401(a);
- (6) a Code Section 457(b) eligible deferred compensation plan 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;
- (7) a Roth individual retirement account described in Code Section 408A(e) provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs; and
- (8) a SIMPLE IRA described in Code Section 408(p)(1), provided that the rollover contribution is made after the two year period described in Code Section 72(t)(6).

In the case of a distribution to a non-Spouse Beneficiary, an Eligible Retirement Plan means the plans described in subparagraphs (1) and (2) only, to the extent consistent with the provisions of Code Section 402(c)(11) and any successor provisions thereto or additional guidance issued thereunder.

(d) "Eligible Rollover Distribution," as defined in Code Section 402(f)(2)(A), means any distribution of all or any portion of the balance to the credit of the Distributee under the Plan, excluding the following:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of 10 years or more;

(2) any distribution to the extent such distribution is required under Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; however, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income, although such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b) or to a qualified retirement plan described in Code Section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(4) any distribution which is made upon the financial hardship of the Participant; and

(5) other items designated by regulations, or by the Commissioner in revenue rulings, notices, or other guidance, as items that do not constitute an eligible rollover distribution.

Section 12.02. Direct Transfer of Eligible Rollover Distribution. A Distributee may elect on an Applicable Form to have an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan as specified by the Distributee in a Direct Rollover, at the time and in the manner prescribed by the Administrator. An Eligible Rollover Distribution that is paid to an Eligible Retirement Plan in a Direct Rollover is excludable from the Distributee's gross income under Code Section 402; provided, however, if any portion of such Eligible Rollover Distribution is subsequently distributed from the Eligible Retirement Plan, that portion shall be included in gross income to the extent required under Code Section 402, 403, or 408.

Section 12.03. Mandatory Withholding of Eligible Rollover Distributions.

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be

subject to a mandatory 20% federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e), and only to the extent such amount would otherwise be includible in the Distributee's taxable gross income.

(b) If a Distributee elects to have an Eligible Rollover Distribution paid to the Distributee, the distribution may be excluded from the gross income of the Distributee provided that said distribution is contributed to an Eligible Retirement Plan no later than the 60th day following the day on which the Distributee received the distribution.

(c) If the Plan distribution is not an Eligible Rollover Distribution, said distribution shall be subject to the elective withholding provisions of Code Section 3405(a) and (b).

Section 12.04. Explanation of Plan Distribution and Withholding Requirements.

(a) Not fewer than 30 days nor more than 180 days before an Eligible Rollover Distribution, the Administrator shall provide each Distributee a written explanation as required under Code Section 402(f), which explains the rules:

(1) under which a Distributee may elect to have an Eligible Rollover Distribution paid in a Direct Rollover to an Eligible Retirement Plan;

(2) that require the withholding of tax on an Eligible Rollover Distribution if it is not paid in a Direct Rollover to an Eligible Retirement Plan;

(3) that provide that a distribution shall not be subject to tax if the distribution is rolled over to an Eligible Retirement Plan within 60 days after the date the Distributee receives the distribution; and

(4) if applicable, certain special rules regarding taxation of the distribution as described in Code Sections 402(d) and (e).

(b) Notwithstanding paragraph (a), a distribution may begin fewer than 30 days after the notice discussed in the preceding sentence is given, provided that the Administrator clearly informs the Participant that he or she has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution and the Participant, after receiving a notice, affirmatively elects a distribution.

ARTICLE XIII.

ADMINISTRATION OF THE PLAN

Section 13.01. Authority of the Administrator. The Administrator is responsible for performing the duties required for operation of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. In connection therewith, the Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time

amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan.

Section 13.02. Responsibility of the Employer. The Employer is responsible for notifying Participants that they are eligible to participate in the Plan, providing the Administrator complete and accurate information as needed to administer the Plan, and such other responsibilities as may be delegated to Employer by the Administrator from time to time. An Employer that is a state agency and has decentralized its payroll function is responsible for timely remitting Contributions for its Employees to the Trust. The Department of Accounts of the Commonwealth is responsible for timely remitting Contributions to the Trust on behalf of Employees of any other Employer.

Section 13.03. Powers of the Administrator. The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claims procedures, the Administrator should be the sole and final judge of such expediency. Benefits under the Plan shall be paid only if the Administrator decides in its discretion that the Participant or Beneficiary is entitled to them.

Section 13.04. Delegation by Administrator. The Administrator may delegate to an individual, committee, or organization to carry out its fiduciary duties or other responsibilities under the Plan. Any such individual, committee, or organization delegated fiduciary duties shall be a fiduciary until the Administrator revokes such delegation. A delegation of the Administrator duties or responsibilities may be revoked without cause or advance notice. Such individual, committee, or organization shall have the same power and authority with respect to such delegated fiduciary or other responsibilities as the Administrator has under the Plan.

Section 13.05. Employment of Consultants. The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

ARTICLE XIV.

REQUESTS FOR INFORMATION AND OTHER CLAIMS PROCEDURES

Section 14.01. Requests for Information Concerning Eligibility, Participation and Contributions. Requests for information concerning eligibility, participation, contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the Administrator of the Plan.

Section 14.02. Requests for Information Concerning Investment Funds. Requests for information concerning the Investment Funds and their terms, conditions, and interpretations thereof, claims thereunder, and any requests for review of such claims, should be in writing and directed to the Administrator of the Plan.

Section 14.03. Processing of Claims. Claims under the Plan shall be processed in a manner consistent with the Virginia Administrative Process Act, Va. Code Section 2.2-4000 *et seq.*

ARTICLE XV.

AMENDMENT AND TERMINATION

Section 15.01. Amendment and Termination. While it is expected that the Plan shall continue indefinitely, the Commonwealth reserves the right to amend, freeze, or terminate the Plan, or to discontinue any further Contributions to the Plan at any time. The Board may, consistent with Va. Code Section 51.1-126.5, make any amendment to the Plan, provided that no such amendment shall reduce, suspend or terminate the accrued benefits otherwise payable to a Participant or Beneficiary hereunder as of the date of such amendment. To the extent required by the exclusive benefit rule, any amendment 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 benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.

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 (i) in the opinion of VRS' counsel is necessary to comply with federal law or (ii) does not substantially increase costs, contributions, or benefits or materially affect the eligibility, vesting or benefit accrual or allocation provisions of the Plan.

Section 15.02. Adverse Effects. Any amendment or termination of the Plan cannot adversely affect the benefits accrued by Participants prior to the date of amendment or termination. The Plan may not be amended in a manner that violates any provision of the Code.

Section 15.03. Distribution Upon Termination of the Plan. The Commonwealth has the right to completely terminate this Plan at any time and in its sole discretion. In such a case, VRS shall arrange for suitable distribution of Plan assets, including the possibility of transfer to another 401(a) plan or plans. The Trustee shall not be required to pay out any asset of the Trust Fund to Participants and Beneficiaries or a successor plan upon termination of the Trust until the Trustee has received written confirmation from VRS (i) that all provisions of the law with respect to such termination have been complied with, and, (ii) after the Trustee has made a determination of the fair market value of the assets of the Plan, that the assets of the Plan are sufficient to discharge when due all obligations of the Plan required by law. The Trustee shall rely conclusively upon such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

ARTICLE XVI.

MISCELLANEOUS

Section 16.01. Non-Alienation.

(a) A Participant's Account under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntary or involuntary alienation or other legal or equitable process, nor transferable by operation of law.

(b) Notwithstanding paragraph (a), the Plan shall comply with any judgment, decree or order ("domestic relations order") which establishes the right of an alternate payee within the meaning of Code Section 414(p)(8) to all or a portion of a Participant's benefit under the Plan to the extent that it is a "qualified domestic relations order" ("QDRO") under Code Section 414(p). The Administrator shall establish reasonable written procedures to determine whether a domestic relations order is a QDRO and to administer the distribution of benefits with respect to such orders, which procedures may be amended from time to time, and which shall be provided to Participants upon request. Notwithstanding any other provisions in the Plan, the Plan may make an immediate distribution to the alternate payee pursuant to a QDRO.

(c) Notwithstanding paragraph (a), the Plan shall offset from the benefit otherwise payable to a Participant or his or her Spouse such amounts as are permitted to be offset under a court order, civil judgment, or settlement agreement in accordance with Code Section 401(a)(13)(C).

(d) Notwithstanding paragraph (a), the Administrator may pay from Participant's or Beneficiary's Account under the Plan the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary. Except in the case of an alternate payee within the meaning of Code Section 414(p)(8), under no circumstances may a payment under this paragraph (d) take place before a Participant has a Severance from Employment.

(e) Notwithstanding paragraph (a), pursuant to Va. Code Section 51.1-124.4(A), the Administrator shall honor any process for a debt to the Employer that has employed such person, and except for administrative actions pursuant to Chapter 19 (Section 63.2-1900 *et seq.*) of Title 63.2 of the Va. Code or any court process to enforce a child or child and spousal support obligation. Under no circumstances may a payment under this paragraph (e) take place before a Participant has a Severance from Employment.

Section 16.02. Military Service.

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with USERRA, HEART, Code Section 414(u), and Code Section 401(a)(37). For purposes of this Section, "qualified military service" means any service in the uniformed services as defined in USERRA by any individual if such individual is entitled to reemployment rights under USERRA with respect to such service.

(b) If a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service under Code Section 414(u), timely resumes employment with the Employer in accordance with USERRA as an Eligible Employee, the Participant may elect to make the Mandatory Employee Contributions upon resumption of employment with the Employer that would have been required (at the same level of Compensation) without the interruption of leave. Except to the extent provided under Code Section 414(u), this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). Such Mandatory Employee Contributions may only be made during such period and while the Participant is reemployed by the Employer. Such Mandatory Employee Contributions shall be picked up by the Employer and treated as paid by the Employer pursuant to Code Section 414(h)(2).

(c) If a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service under Code Section 414(u), timely resumes employment with the Employer in accordance with USERRA as an Eligible Employee, the Employer shall make the Employer Contributions that would have been made if the Participant had remained employed during the Participant's qualified military service. Contributions must be made no later than 90 days after the date of reemployment or when the Employer Contributions are normally due for the year in which the qualified military service was performed, if later.

(d) To the extent provided under Code Section 401(a)(37), in the case of a Participant whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such Participant shall be entitled to any additional benefit (other than benefit accruals) provided under the Plan as if the Participant timely resumed employment in accordance with USERRA and then, on the next day, terminated employment on account of death.

(e) Differential wage payments within the meaning of Code Section 414(u)(12)(D) shall be treated as Creditable Compensation and Plan Compensation under the Plan.

Section 16.03. Limitation of Rights and Obligations. Neither the establishment nor maintenance of the Plan, nor any amendment thereof, nor the purchase of any insurance contract, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(a) as conferring upon any Participant, Beneficiary or any other person any right or claim against VRS, Employer, Administrator, or Trust, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(b) as a contract or agreement between VRS and/or the Employer and any Participant or other person; or

(c) as an agreement, consideration, or inducement of employment or as affecting in any manner or to any extent whatsoever the rights or obligations of VRS, the Employer, or any Employee to continue or terminate the employment relationship at any time.

Section 16.04. Federal and State Taxes. It is intended that Contributions, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries. However, the Administrator does not guarantee that any particular federal or state income, payroll or other tax consequence will occur as a result of participation in this Plan.

Section 16.05. Erroneous Payments. If the Administrator or its Agent makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Administrator or Agent may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Agent, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or Agent may deduct it when making any future payments directly to that Participant.

Section 16.06. Payments to Minors or Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is determined to be legally incapable of giving valid receipt and discharge for such benefits by a court or by the Administrator, benefits shall 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 the Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

Section 16.07. Missing or Lost Participants. In the event that the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary under the Plan, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. A reasonable attempt to locate a missing or lost Participant or Beneficiary shall include: (i) providing notice to the Participant at the Participant's last known address via certified mail; (ii) determining whether the Participating Employer's records or the records of another plan maintained by the Participating Employer has a more current address for the Participant; (iii) attempting to contact any named Beneficiary of the Participant; and (iv) searching for the missing Participant via free electronic search tools, such as Internet search engines, public record databases, obituaries, and social media. If such search methods are unsuccessful, based on the facts and circumstances, the Administrator may use other search methods, including using Internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases, and analogous services that may involve charges. The Administrator may charge missing Participants and Beneficiaries reasonable expenses for efforts to find them. In the event that the Administrator is unable to locate a Participant or Beneficiary entitled to benefits under the Plan after reasonable attempts, the Trustee shall continue to hold the benefits due to such person under the Plan except as otherwise provided in Section 16.08.

Section 16.08. Stale Distribution Checks. A distribution check that remains uncashed five years following its issuance shall be remitted to the State Treasurer in accordance with the provisions of the Virginia Disposition of Unclaimed Property Act (Va. Code § 55.1-2500 et seq.).

Section 16.09. No Reversion. Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, VRS or the Employer, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, if Contributions are made by VRS or the Employer by mistake of fact, these amounts and, if applicable, any interest earned therein, may be returned to VRS or Employer, as applicable, within one year of the date that they were made.

Section 16.10. Claims of Other Persons. The provisions of the Plan will not be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against VRS or Employer, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

Section 16.11. Counterparts. The Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be evidenced by any one counterpart.

IN WITNESS WHEREOF, the Board has caused this amended and restated Plan to be adopted as of the Effective Date.

**BOARD OF TRUSTEES OF THE
VIRGINIA RETIREMENT SYSTEM**

By: _____

Printed Name: _____

Title: _____

Date: _____