

COMPOSITE COPY

OF THE

DEFERRED COMPENSATION PLAN

OF THE

COMMONWEALTH OF VIRGINIA

(As Restated Effective January 1, 2004)

Including:

1. First Amendment dated October 12, 2005
2. Second Amendment dated September 14, 2006
3. Third Amendment dated June 21, 2007

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WITNESSETH:

WHEREAS, pursuant to the Government Employees Deferred Compensation Plan Act of 1979, Chapter Six (Section 51.1-600 et seq.) of the Code of Virginia (1950), as amended, a Plan of Deferred Compensation was implemented by the Commonwealth of Virginia (the "Plan").

The Board intends to maintain the Plan as a plan that is an eligible deferred compensation plan within the meaning of Internal Revenue Code Section 457(b). The purpose of the Plan is to provide for the deferral of compensation by eligible employees pursuant to the terms of the Plan in consideration of their services and to provide Participants with a convenient way to save for retirement.

The Plan shall exist in addition to all other retirement, pension or other benefits available to the Participants, including the benefits established pursuant to the Virginia Retirement Act, Section 51.1-124.2 et seq. of the Code of Virginia (1950) as amended.

To comply with the requirements of Internal Revenue Code Section 457(g) and Section 51.1-602 of the Code of Virginia (1950) 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 **"Administrator"**: The Board ("Plan Administrator"), which shall appoint the Director of the Virginia Retirement System as chief administrative officer.

1.2 **"Agent"**: The plan service agent to be appointed by and serve at the pleasure of the Plan Sponsor.

1.3 **"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.

1.4 **“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 VII to receive benefits under the Plan attributable to such Participant after the death of such Participant.

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

1.6 **“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.

1.7 **“Compensation”**: *[Effective July 1, 2007]* A Participant’s wages, salary and other amounts received for personal services rendered to the Employer as an Eligible Employee during his current taxable year, including compensation payable as bonuses, as overtime or as taxable reimbursements for office expenses of members of the General Assembly, and excluding any compensation received in the form of non-taxable fringe benefits. Compensation shall include that portion of such amount deferred by the Participant as Deferred Compensation Contributions under this Plan. Compensation shall also include sick leave and family and personal leave payments, leave share payments and short term disability payments under the Virginia Sickness and Disability Program. Compensation shall also include compensatory time, accumulated sick pay (including the payout of disability credits under the Virginia Sickness and Disability Program), accumulated vacation pay and back pay (referred to as “post-employment compensation”) all payable with the Participant’s final paycheck or, if payable before June 1, 2005, within twenty (20) days after such final paycheck or, if payable after May 31, 2005 or before July 1, 2007, within two and one-half (2-1/2) months following severance from employment, or if payable after July 1, 2007, within the later of two and one-half (2-1/2) months following severance from employment or the end of the calendar year in which the severance from employment occurred. Compensation shall not include long term disability benefits paid under the Virginia Sickness and Disability Program or disability retirement payments under the Virginia Retirement System.

1.8 **“Deferred Benefit”**: The deferred amount due a Participant or his Beneficiary under the Plan, as determined by the balance in the Participant’s Deferred Compensation Account.

1.9 **“Deferred Compensation Account”**: The account or accounts of a Participant attributable to his Deferred Compensation Contributions and to any Catch-Up Contributions made pursuant to paragraph 3.9 of the Plan, and any earnings thereon, as provided in ARTICLE V. A subaccount shall be established to hold amounts attributable to a Rollover Contribution by Participant pursuant to paragraph 3.12.

1.10 **“Deferred Compensation Contribution”**: That portion of a Participant’s Compensation that is deferred under the Plan pursuant to a Deferred Compensation

Election described in ARTICLE III hereof and that portion of a Participant's Compensation that is deferred pursuant to a determination by the Employer to contribute an amount to the Plan on behalf of a Participant in accordance with the provisions of paragraph 3.10 of the Plan.

1.11 **“Deferred Compensation Election”**: The election (in the form prescribed by the Plan Administrator, as amended from time to time) made by and under which the Employee elects to participate in the Plan and, if the Participant so elects, agrees to make Deferred Compensation Contributions. The Deferred Compensation Election shall indicate the amount or percentage of any Deferred Compensation Contribution elected by the Participant and the Participant's directed investment election pursuant to ARTICLE V, may designate the Participant's Beneficiary(s), and shall refer to the provisions of the Plan.

1.12 **“Effective Date”**: The Effective Date of the Plan is July 1, 1980. The Effective Date of this Restatement is January 1, 2004.

1.13 **“Employee”**: The natural person who is employed by the Commonwealth of Virginia or a participating Employer as a common law employee, including one who is appointed or elected.

1.14 **“Employer”**: The Commonwealth of Virginia and its agencies. Any employer that is an instrumentality of the Commonwealth and any political subdivision of the Commonwealth or an agency or instrumentality of such a political subdivision(s) that is an “eligible employer” within the meaning of Section 457(e)(1)(A) of the Code who has entered into an agreement with the Plan Sponsor. The Administrator shall maintain a list of all such participating Employers that have adopted the Plan.

1.15 **“Enabling Statute”**: The Government Employee Deferred Compensation Plan Act of 1979, Title 51.1-1, Chapter Six (Section 51.1-600 et seq.) of the Code of Virginia (1950) as amended.

1.16 **“Fund”**: The trust fund created under and subject to the Trust Agreement.

1.17 **“Participant”**: An Employee (or former Employee) who has made a Deferred Compensation Election under the Plan and who has not yet received all of the payments of the Deferred Benefit to which the Employee is entitled under the Plan.

1.18 **“Plan”**: This document as contained herein or duly amended. The plan maintained pursuant hereto shall be known as the “Deferred Compensation Plan of the Commonwealth of Virginia”.

1.19 **“Plan 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.

1.20 **“Plan Sponsor”**: The Virginia Retirement System.

1.21 **“Plan Year”**: *[Effective July 1, 2007]* Prior to July 1, 2007, the twelve (12) month period beginning on the first day of July. Effective July 1, 2007, the six month period beginning July 1, 2007 and ending December 31, 2007. Thereafter, the twelve (12) month period beginning on the first day of January.

1.22 **“Trust Agreement”**: The written agreement (or declaration) made by and between the Plan Sponsor and the Trustee under which the Fund is maintained, which agreement is known as the “Master Trust for the Deferred Compensation Plan of the Commonwealth of Virginia”.

1.23 **“Trustee”**: The Trustee duly appointed and currently serving under the Trust Agreement.

At all times, every Trustee shall be a directed trustee and (except as provided by the next sentence) 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 and their Beneficiaries.

ARTICLE II **Participating Employers**

2.1 **Adoption by Employer**. With the consent of the Plan Sponsor, an Employer may adopt this Plan pursuant to the Enabling Statute and be an Employer with respect to this Plan.

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

2.2(a) **Amendment Binding Upon All Participating Employers**. Any amendment of the Plan by the Plan Sponsor is effective and binding upon all Employers, without their consent.

2.2(b) **No Amendment By Participating Employer**. An Employer (other than the Plan Sponsor) has no power to amend the Plan in any way, except to discontinue making further Deferred Compensation Contributions under this Plan.

2.2(c) **Withdrawal by Participating Employer**. An Employer other than the Commonwealth of Virginia and its agencies may upon its election to discontinue making contributions to the Plan and request that the accounts of its employees be transferred to a

separate plan established by it pursuant to Section 457(b) of the Code in accordance with the procedures provided by the Board.

2.3 *[Effective July 1, 2005]* **Termination of Participation Due to Failure to Make Timely Contributions**. The Board reserves the right to terminate the participation of an Employer, other than the Commonwealth of Virginia and its agencies, for reoccurring failures by the Employer to pay over to the Trustee Participant Deferred Compensation Contributions in a timely manner as required by Paragraph 3.13. Upon such termination, the accounts of such Employer's employees shall be transferred to a separate plan established by such Employer pursuant to Section 457(b) of the Code in accordance with the procedures established by the Board, or, if no such Plan is established, the accounts shall be distributed to employees as though the Plan were terminated by the Employer.

ARTICLE III **Participation and Contributions**

3.1 **Eligibility**. Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder.

3.2 **Participation**. *[Effective January 1, 2008]*

3.2(a) An Employee may elect to become a Participant in the Plan by executing a Deferred Compensation Election and filing it with the Plan Administrator. The Deferred Compensation Election shall be made on the form provided by the Plan Administrator and under which the Employee agrees to be bound by all the terms and conditions of the Plan.

3.2(b) Notwithstanding the foregoing, each Employee of the Commonwealth of Virginia and its agencies who is hired or rehired on or after January 1, 2008 in a salaried position who has not otherwise elected to participate in a plan established pursuant to Section 403(b) of the Code, shall become a Participant through a deemed election to contribute One Hundred Percent (100%) of the first Twenty Dollars (\$20.00) per semimonthly pay period, unless such Employee affirmatively elects not to make contributions and withdraws, pursuant to Paragraph 8.1A, any contributions made to the Plan prior to such affirmative election not to participate.

3.3 **Commencement of Participation**. *[Effective January 1, 2008]*

3.3(a) An Employee shall become a Participant as of the first day of the month following the date the Employee files a Deferred Compensation Election pursuant to paragraph 3.2, provided the Compensation deferred is not yet payable as of the first day of such month. A new Employee may become a Participant in the same month in which he is employed if the Employee files a Deferred Compensation Election on or before the first day on which the Employee performs services for the Employer. Deferred Compensation

Elections filed pursuant to this paragraph 3.3 shall remain effective unless amended (to increase, decrease or suspend) pursuant to paragraph 3.6.

3.3(b) Notwithstanding the foregoing, each Employee of the Commonwealth of Virginia and its agencies who is hired or rehired on or after January 1, 2008 in a salaried position who has not otherwise elected to participate in a plan established pursuant to Section 403(b) of the Code, shall become a Participant as of the first pay date following the ninetieth (90th) day of employment. The deemed Deferred Compensation Election described in subparagraph 3.2(b) shall remain effective unless amended pursuant to paragraph 3.6. However, such deemed election shall not apply to post-employment compensation.

3.4 **Length of Participation.** An Employee who becomes a Participant shall be or remain a Participant for so long as he is an Employee with a Deferred Compensation Election in effect or he is entitled to future benefits under the terms of the Plan.

3.5 **Responsibility to Notify or Enroll.** *[Effective January 1, 2008]*

3.5(a) The Plan Administrator shall not be responsible to notify any Employee that he has become eligible to participate in the Plan. The Employer shall be responsible for informing the Employee, upon his becoming an Employee, of the existence of the Plan and of his eligibility to participate. The Employee shall be responsible to take any action necessary to enroll in the Plan. Neither the Plan Administrator, the Plan Sponsor nor the Employer shall be liable for any missed Deferred Compensation Contributions as a result of an Employee's failure to enroll.

3.5(b) Notwithstanding the foregoing, the Commonwealth and its agencies shall, as soon as practical following the date of hire or rehire, notify each Employee of the Commonwealth of Virginia and its agencies who is hired or rehired on or after January 1, 2008 in a salaried position of:

- (i) The operation of the deemed Deferred Compensation Election;
- (ii) His right and the timing and procedures to increase, decrease or terminate such election;
- (iii) The procedures for making changes to such deemed election;
- (iv) How the contributions will be invested in the absence of an investment direction; and
- (v) The timing and procedures for obtaining a refund of any amounts contributed to the Plan pursuant to the deemed election.

Within a reasonable period prior to the beginning of each Plan Year, the Plan Administrator shall provide a notice to each Participant who has not made a subsequent election to change the deemed Deferred Compensation Election and who has not made an investment direction describing:

- (i) The operation of the deemed Deferred Compensation Election;
- (ii) His right and the timing and procedures to increase, decrease or terminate such election;
- (iii) The procedures for making changes to such deemed election; and
- (iv) How the contributions will be invested in the absence of an investment direction.

Each notice described above shall be sufficiently accurate and comprehensive as to apprise Participants of their rights and obligations under the Plan and shall be written in a manner calculated to be understood but by the average Plan Participant.

3.6 **Amendment of Deferred Compensation Election.** *[Effective January 1, 2008]* Subject to all the provisions of the Plan, a Participant may at any time amend his Deferred Compensation Election (including any deemed Deferred Compensation Election) to change the amount of his Deferred Compensation Contribution and/or his investment direction.

Effective January 1, 2004, unless the Deferred Compensation Election specifies a later effective date, a change in the amount of Deferred Compensation Contribution shall take effect as of the next available pay date (but no sooner than the first day of the next month) or as soon as administratively possible, if later. A change in the investment direction for Deferred Compensation Contributions shall take effect as of the next available pay date.

An amendment to the Deferred Compensation Election relating to deferral of post-employment compensation must be filed with the Plan Administrator while the Participant is still an Employee and no later than the last day of the calendar month prior to the date on which the amounts would otherwise be paid or made available to the Participant.

3.7 **Leave of Absence.** Unless his Deferred Compensation Election is otherwise amended, if a Participant is absent from work by leave of absence, Deferred Compensation Contributions under the Plan shall continue to the extent that Compensation continues.

3.8 **Disability.** *[Effective January 1, 2004]* A disabled Participant who has not had a severance from employment may make Deferred Compensation Contributions during any portion of the period of his disability to the extent that he has actual Compensation (not imputed compensation and not long term disability benefits or

disability retirement payments under the Virginia Retirement System) from which to make Deferred Compensation Contributions.

3.9 **Participant Catch-Up Contributions.** Each Participant who has attained age fifty (50) before the close of the Plan Year may make a Catch-Up Contribution in accordance with, and subject to the limitations of, Section 414(v) of the Code. An election to make a Catch-Up Contribution shall be made in accordance with procedures prescribed by the Administrator and shall be subject to the coordination limitation described in Section 4.1(e) of the Plan.

3.10 **Employer Contributions.** Employers may make contributions on behalf of Participants. All contributions made by the Employer under this Plan are discretionary and such contributions (if any) made for any Plan Year shall be made as declared by each Employer. All such contributions made by the Employer on behalf of Participants shall be allocated to the Deferred Compensation Accounts of Participants as specified by the Employer and treated as non-elective employer contributions for purposes of applying the various limitations.

3.11 **Protection of Persons Who Serve in a Uniformed Service.** *[Effective January 19, 2006]* To the extent required by the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, 38 U.S.C. 4301-4334, and the final regulations issued thereunder (collectively “USERRA”), a person who is a member of, applies to be a member of, has performed, applies to perform, or has an obligation to perform “service in the Uniformed Services” (as defined under USERRA) shall not be denied the right to make any Deferred Compensation Contribution or other right under this Plan on the basis of such membership, performance of service, application for service, or obligation. The right to make up any Deferred Compensation Contribution (including the timing and amount of such make up of any Deferred Compensation Contribution) upon reemployment under USERRA shall be determined upon an Employee’s reemployment in accordance with the requirements of USERRA.

Consistent with all provisions of USERRA, any right under the Plan arising out of or related to reemployment after service in the Uniformed Services does not apply unless and until: the person is eligible for reemployment under 38 U.S.C. 4304, the person applied for reemployment in compliance with 38 U.S.C. 4312, and the Participant or Employee furnishes to the Plan Administrator satisfactory documentation concerning the service in the Uniformed Services in accordance with 38 U.S.C. 4312(f)(3)(B).

3.12 **Rollover Contributions by Participants.** Any Participant may make a Rollover Contribution in the form of a lump sum in cash, or cash attributable to a sale of property. For purposes hereof, a “Rollover Contribution” is a qualifying rollover or a direct plan to plan transfer of an eligible rollover distribution under Section 401(a)(31) of the Code from an “eligible plan” within the meaning of Section 457(b) of the Code maintained by a governmental employer. Any amount attributable to an after-tax contribution to any plan will not be accepted as a Rollover Contribution.

The Administrator may require as a condition of any such Rollover Contribution that the Participant, and/or the trustee, custodian or issuer of any plan, trust, bond, annuity or account from which the amount to be rolled over or transferred is attributable, make such certification as the Administrator deems necessary respecting the qualification of the distributing or transferor plan, trust, or annuity, the amount and nature of the distribution or transfer, the qualification of the Rollover Contribution as a rollover amount with respect to this Plan, and any other information the Administrator may reasonably require.

In the event it is discovered that any Rollover Contribution made by or on behalf of a Participant is not a qualifying rollover amount or an eligible rollover distribution or otherwise is a contribution or transfer which is not permitted to be received as a Rollover Contribution under the Plan, the Deferred Benefit of the Participant attributable to such non-qualifying Rollover Contribution shall be returned to the Participant (or if deceased, his Beneficiary).

A Rollover Contribution shall not be treated as Deferred Compensation Contributions subject to the limitation of 4.1(a).

3.13 *[Effective July 1, 2005]* **Contributions Made Promptly.** Participant Deferred Compensation Contributions shall be paid over to the Trustee for deposit in the Participant's Deferred Compensation Account as soon as is reasonably practical after the amount can be segregated from the general assets of the Employer and in no event later than, ninety (90) days following the end of the month in which the amount would otherwise have been paid to the participants.

ARTICLE IV

Limitations on Deferred Compensation Contributions

4.1 **Annual Limit on Deferred Compensation Contributions.**

4.1(a) **Normal Limitation.** The minimum amount of Compensation which may be deferred under this Plan is \$10.00 per pay period in each of the Participant's taxable years. The maximum amount of Compensation which may be deferred (on an elective and non-elective basis) under this Plan and to any other eligible deferred compensation plan within the meaning of Section 457(b) of the Code shall not exceed the lesser of (i) the Applicable Dollar Amount or (ii) 100 percent (100%) of the Participant's Includible Compensation (the "Contribution Limitation").

4.1(b) **457 Catch-Up Limitation.** Notwithstanding anything contained in subparagraph 4.1(a) to the contrary, for one (1) or more of the Participant's last three (3) taxable years ending before he attains his Normal Retirement Age, the annual limitation shall be increased but it shall not exceed the lesser of;

- (i) Two (2) times the Applicable Dollar Amount, or
- (ii) The sum of:

(A) The Contribution Limitation established pursuant to subparagraph 4.1(a) for the taxable year determined without regard to this subparagraph, plus

(B) So much of the Contribution Limitation established for purposes of subparagraph 4.1(a) for the taxable years before the taxable year as has not theretofore been used under subparagraph 4.1(a) or this subparagraph (the “underutilized amount”).

Notwithstanding the foregoing, a Participant may not elect to have the underutilized amount of this subparagraph apply more than once. Any unused portion of the underutilized amount may be carried forward to the next of the three (3) taxable years ending before a Participant attains Normal Retirement Age. However, any unused portion of the underutilized amount may not be carried forward to the year of or any years after the Participant’s Normal Retirement Age, even if he rejoins the Plan, or participates in another eligible deferred compensation plan (within the meaning of Section 457 of the Code) after retirement.

For purposes of determining the amount in subparagraphs 4.1(a) and (b) for years prior to 2002, the limitations are reduced by amounts excluded from the Participant’s income for any prior taxable year by reason of a salary reduction or elective contribution under any other eligible Code Section 457(b) plan, Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Section 501(c)(18) of the Code. The plans described in this subparagraph may be referred to as “pre-2002 coordination plans”)

In addition, for purposes of applying the Section 457(b)(2)(B) limitation for Includible Compensation for years prior to 2002, the limitation shall be 33 1/3 percent of the Participant’s Compensation includible in gross income. Such limitations apply to the plans of all employers for whom a Participant has performed services, not just those of the Employer.

If a Participant, although eligible, did not defer any compensation under the Plan in any given year before 2002, for purposes of determining the underutilized amount, the Participant is treated as having deferred in a prior taxable year, the Participant’s aggregate salary reductions and elective deferrals under all pre-2002 coordination plans up to the maximum deferral limit in effective under Section 457(b) for the prior year.

For Plan Years beginning on or after January 1, 2002, if the Participant is or has been a Participant in one or more eligible deferred compensation plan(s) within the meaning of Section 457(b) of the Code, this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of subparagraphs 4.1(a) and (b).

4.1(c) **Limitation on the Years Taken into Account for the 457 Catch-Up**

Limitation. In applying subparagraph 4.1(b), a prior taxable year shall only be taken into account if (i) it begins after December 31, 1978, (ii) the Participant was eligible to participate in the Plan during all or a portion of the taxable year, and (iii) Compensation deferred, if any, under the Plan during the taxable year was subject to the Contribution Limitation described in subparagraph 4.1(a) or any other “plan ceiling” required by Section 457 of the Code.

4.1(d) **Special Definitions.** For purposes of the limitation provisions of this paragraph, the following terms have the following meanings:

(i) “Applicable Dollar Amount”: The amount established under Section 457(e)(15) of the Code applicable to a taxable year of the Participant. Such amounts are set forth below:

For taxable years beginning in ...	The Applicable Dollar Amount is:
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 and thereafter	\$15,000

Effective for years beginning after 2006, the \$15,000 amount shall be adjusted in \$500 increments at the same time and in the same manner as under Section 415(d) of the Code but on the basis of a base period of the calendar quarter beginning July 1, 2005;

(ii) “Includible Compensation”: The amount of the Participant’s Compensation that is “includible compensation” within the meaning of Section 457(e)(5) of the Code and that is currently includible in the Participant’s gross income, plus amounts otherwise excludable under Section 457 of the Code or any other amounts excluded from gross income such as contributions to a 403(b) plan, a cafeteria plan under Section 125 of the Code or a qualified transportation fringe benefit plan under Section 132(f)(4) of the Code. Includible Compensation is determined without regard to any community property laws. For purposes hereof, an amount that is paid by the Employer to the Virginia Retirement System or any other defined benefit plan on behalf of the Participant as a “pick-up” contribution within the meaning of Section 414(h) of the Code is not considered to be includable compensation.

(iii) “Normal Retirement Age”: *[Effective July 1, 2006]* The range of ages beginning no earlier than the earliest age at which the Participant has the right to file for and receive benefits from the Employer’s basic defined benefit pension plan (or a money purchase pension plan in which the Participant participates if the Participant is not eligible for the defined benefit plan) without the Employer’s consent and to receive immediate retirement benefits without any actuarial or similar reduction because of retirement before some later specified age in the Employer’s basic pension plan; and ending no later than age 70 1/2. For Participants who are not eligible for the defined benefit plan or for a money purchase pension plan, Normal Retirement Age is age sixty-two (62).

4.1(e) **Coordination of Catch-Up Contributions and the 457 Catch-Up Limitation.** A Participant who is eligible to make Catch-Up Contributions under paragraph 3.9 of the Plan and who is also subject to the increased 457 Catch-Up Limitation for the same year is entitled to make Deferred Compensation Contributions equal to the larger of:

(i) The Contribution Limitation established pursuant to subparagraph 4.1(a) of the Plan plus the applicable Catch-Up Contributions under paragraph 3.9 of the Plan; or

(ii) The Contribution Limitation established pursuant to subparagraph 4.1(a) of the Plan increased as provided in subparagraph 4.1(b), and disregarding the Catch-Up Contribution provision in paragraph 3.9.

The amount determined above shall be subject to adjustment, if applicable, pursuant to Treas. Reg. § 1.457-5(c).

4.1(f) **Coordination of Limits with Other Plans Maintained by the Employer.** To the extent that such maximum limitation described in this paragraph is exceeded:

(i) If the contributions to the any other eligible deferred compensation plan within the meanings of Section 457(b) of the Code are elective deferral contributions by the Participant, the excess shall be considered to have been made to the other eligible deferred compensation plan within the meaning of Section 457(b) of the Code first, before any corrective distribution as described in paragraph 4.2 is made from this Plan.

(ii) If the contributions to the any other eligible deferred compensation plan within the meanings of Section 457(b) of the Code are non-elective contributions by the Employer, the excess shall be considered to have been made to any other eligible deferred compensation plan within the meaning of Section 457(b) of the Code to which the Participant made elective deferral contributions

first, and then the excess will be considered to have been made to this Plan. A corrective distribution as described in paragraph 4.2 shall be made from this Plan if any excess continues to exist after the corrective distribution from the other plan to which the Participant made elective deferral contributions.

4.2 **Corrective Distribution.** *[Effective July 1, 2006]* If the Deferred Compensation Contributions made by or on behalf of a Participant exceed the limitations described above, then a distribution shall be made to remedy a violation or correct a potential violation of the limitations, in the following manner:

(i) There shall be returned to the Participant, first, the unmatched Deferred Compensation Contribution made by the Participant,

(ii) Then the Deferred Compensation Contribution made by the Participant which has been matched in whole or in part by a contribution made by the Employer, either to the Virginia Cash Match Plan or pursuant to paragraph 3.10, if any, (adjusted for any income or loss in value, if any, allocable thereto) to the extent necessary to achieve compliance with the limitations described above.

(iii) After the return to such Participant, any contributions made by the Employer on behalf of the Participant shall be forfeited and returned to the Employer to the extent necessary to achieve compliance with the limitations of paragraphs 4.1(a) and (b).

If a Participant's Deferred Compensation Contributions are returned pursuant to the foregoing, such contribution shall not be considered made for any benefit accrual requirement imposed by an Employer as a condition of receiving any Employer contributions thereon. A corrective distribution made pursuant to this paragraph shall be made as soon as administratively practicable after the Plan determines that there is an excess amount and shall include a distribution of the allocable net income on the excess amount. A corrective distribution is taxable to the Participant in the year in which the excess contribution was made. Any allocable net income thereon is taxable to the Participant in the year in which the corrective distribution is made. A corrective distribution made pursuant to this paragraph cannot be counted as a required distribution for the purposes of applying the minimum distribution requirements of paragraph 6.5 or otherwise under Section 401(a)(9) of the Code.

4.3 **Mistaken Contributions.** If any Deferred Compensation Contribution (or any portion of such Contribution) is made by the Employer by a good faith mistake of fact, upon receipt in good order of a proper request approved by the Plan Administrator, the amount of the mistaken contribution(s) shall be returned to the Employer or to the extent required or permitted by the Plan Administrator, directly to the Participant. The mistaken contributions (adjusted for any income or loss in value, if any, allocable thereto) shall be paid to the Participant by the Plan if the Participant's Employer notifies the Plan Administrator of the amount of the mistaken contribution.

4.3(a) **Participant Was Not An Employee.** If a court or agency having jurisdiction finally determines or if the Employer or the Plan Administrator receives written legal advice (other than under suit or proceeding initiated by the Participant) that any Participant was not an Employee at the relevant time or otherwise was not eligible to become a Participant, the Plan Administrator shall treat the mistakenly accepted Deferred Compensation Contributions made by or on behalf of the Participant and the related Deferred Compensation Account, to the extent that the Participant was not eligible to make or receive the contributions, as mistaken contributions.

4.3(b) **Plan Administrator not Responsible to Determine “Mistaken Contributions”.** The Plan Administrator shall not be responsible to determine the amount of any mistaken contributions.

ARTICLE V **Accounts and Investments**

5.1 **Plan Accounts.** The Plan Administrator shall keep (or cause to be kept) the Deferred Compensation Account (“Account”) for each Participant (or Beneficiary). The account or accounts of a Participant shall always be fully vested and non-forfeitable.

5.2 **Investment Direction.** At the time an Employee becomes a Participant and at such other times as the Plan Administrator may determine, the Participant shall choose among the various investment vehicles provided for the investment of the Deferred Compensation Account.

Thereafter, and with respect to any balance then in the Deferred Compensation Account, the Participant (and, when applicable, each Beneficiary or Alternate Payee) may, subject to the consent of the Plan Administrator, direct any prior investment of the Deferred Compensation Account be liquidated, sold, or otherwise disposed of with the proceeds reinvested in such manner as the Participant may designate in accordance with the foregoing provisions of this subparagraph.

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 or the Agent.

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

5.2(a) **Authority to Act.** During the Participant’s life, the Participant shall direct the investment of his Deferred Compensation Account. If a Plan Approved Domestic Relations Order entered prior to January 1, 2002 is in place, the Alternate Payee shall direct the investment of that portion of the Participant’s Deferred Compensation Account 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 conservator or guardian of the estate of the Participant shall direct investment of the Participant's Deferred Compensation Account. After the Participant's death, the Beneficiary shall direct the investment of his Account or each Beneficiary shall direct the investment of his segregated Account.

5.3 **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 13.9, 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.

5.4 **Earnings or Loss to Deferred Compensation Account.** There shall be credited to the Deferred Compensation Account 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.

5.5 **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 Deferred Compensation Account to be invested as specified by a procedure adopted by the Plan Administrator.

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

5.7 **Plan Administrator Relieved from Fiduciary Responsibility.** The Plan Administrator shall have all powers with respect to such invested funds as granted by the Enabling Statute. Neither the Commonwealth, the Board of Trustees of the Virginia Retirement System, the employees of the System, nor the Investment Advisory Committee of the System 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.

5.8 **Statement of Deferred Compensation Account Balance.** 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 Deferred Compensation Account including the nature and value of any assets or investments used for the purpose of valuing the Deferred Compensation Account.

5.9 **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.

ARTICLE VI **Payment of Benefits**

6.1 **Deferred Benefit.** The benefit payable (the “Deferred Benefit”) under the Plan shall be the balance in the Participant’s Deferred Compensation Account at the time of the benefit payment.

6.2 **Time of Payment.**

6.2(a) Except as provided in clause (ii) below, the Deferred 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 may be:

(i) *[Effective July 1, 2005]* No earlier than the date such Participant ceases to be employed by the Employer by reason of death, disability, retirement or other severance from employment within the meaning of Section 457(b) of the Code. (For this purpose, cessation of employment in connection with a transfer of substantially all the assets, duties and responsibilities of an agency of the Commonwealth to a political subdivision which is not a Participating Employer in the Plan will be deemed a severance from employment); 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.

6.2(b) The Deferred Benefit of a Participant who is deceased before such Deferred Benefit commences to be paid to him shall become payable to his Beneficiary at the time elected by such 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 6.2(d). If the Beneficiary has not begun payments by the date described in clauses (ii) or (iii) of subparagraph 6.2(d), payments will automatically commence at the applicable latest time.

6.2(c) With respect to Plan Approved Domestic Relations Order approved by the Plan prior to January 1, 2002, unless the Plan Approved Domestic Relations Order is more restrictive or the Alternate Payee requests a lump sum payment earlier, an Alternate Payee may make an election regarding the Alternate Payee’s distribution commencement

date within the same time frame and in the same manner as the Participant to whom the Deferred Benefit is attributable. If no election is made the default distribution commencement date shall be the date described in clause (ii) of subparagraph 6.2(a). For Plan Approved Domestic Relations Orders approved by the Plan on or after January 1, 2002, the distribution to the Alternate Payee shall be made as soon as reasonably practical following such approval.

6.2(d) Notwithstanding the foregoing provisions of this paragraph, a Participant, or the Beneficiary of a Participant who dies before his Deferred Benefit becomes payable, may elect a later date on which such Deferred 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 6.2(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 Deferred Benefit otherwise becomes payable, and it shall set forth and shall be conditioned upon the payment of such Deferred Benefit in a form provided herein. Any such election may be revoked or modified at any time.

6.2(e) 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.

6.3 **Form of Payment When Participant Is the Initial Recipient.**

6.3(a) The Participant shall elect in writing (or as otherwise permitted under paragraph 13.9) the form in which such Deferred Benefit is to be paid to him from the

forms of distribution available under the applicable Plan investments or that is otherwise provided by the Plan Administrator. Payments continuing after a Participant's death shall be made to his Beneficiary. If the Participant elects a periodic installment, such installments shall not extend over a term certain not extending beyond:

- (i) The life expectancy of the Participant, or
- (ii) The joint life and last survivor expectancy of the Participant and his designated Beneficiary (including a Beneficiary determined by operation of subparagraph 7.1(c)),

6.3(b) If the Participant fails to elect a form of distribution, the Participant shall receive a cash lump sum of the amount or the cash value of the Participant's Deferred Benefit, subject to applicable rollover rights.

6.3(c) With respect to Plan Approved Domestic Relations Order approved by the Plan prior to January 1, 2002, unless the Plan Approved Domestic Relations Order is more restrictive or the Alternate Payee requests a lump sum payment earlier, an Alternate Payee may make an election regarding the Alternate Payee's form of distribution within the same time frame and in the same manner as the Participant to whom the Deferred Benefit is attributable. If no election is made the default form of distribution described in subparagraph 6.3(b) shall apply. For Plan Approved Domestic Relations Orders approved by the Plan on or after January 1, 2002, the distribution to the Alternate Payee shall be made in a lump sum, subject to applicable rollover rights, as soon as reasonably practical following such approval.

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

6.4(a) In the event of a Participant's death before his Deferred Benefit commences to be paid to him, the Participant's Deferred Benefit payable pursuant to paragraph 6.2 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 if one is named by the Participant. If no successor Beneficiary is named by the Participant, then any remaining payments shall be made to the Beneficiary's estate in accordance with subparagraph 7.1(c).

6.4(b) The Beneficiary shall elect in writing the form in which such Deferred Benefit is to be paid to him from the forms of distribution available under the applicable Plan investments or that is otherwise provided by the Plan Administrator. If the Beneficiary elects a periodic installment, such installments may extend over a term certain not extending beyond the end of the fifth (5th) calendar year following the calendar year in which the Participant's death occurs unless:

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

(ii) Such installments commence not later than (A) 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 (B) 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.

6.4(c) If the Beneficiary fails to elect a form of distribution, the Beneficiary shall receive a cash lump sum of the amount or the cash value of the Participant's Deferred Benefit, subject to applicable rollover rights.

6.5 **Minimum Distribution.**

6.5(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 Beginning 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 Beginning 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.

6.5(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 (ii)(B) of subparagraph 6.5(b), other than clause (ii)(B)(1) of subparagraph 6.5(b), will apply as if the surviving spouse were the Participant.

For purposes of this clause (ii)(B) and clause (iv) of subparagraph 6.5(b), unless clause (ii)(B)(4) of subparagraph 6.5(b) applies, distributions are considered to begin on the Participant's Required Beginning Date. If clause (ii)(B)(4) of subparagraph 6.5(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 6.5(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 6.5(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 6.5(b). 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 6.5(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 6.5(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 6.5(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 6.5(b)(ii)(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.

[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 6.2(a) of the Plan.

6.6 Advance on or Acceleration of Deferred Payment or Change to Periodic Installments. If distribution of a Participant's Deferred 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 Deferred 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 Deferred Benefit is being made from the Fund in the form of periodic installments, payment of all or part of any such remaining Deferred Benefit may be delayed or decreased upon written application delivered to the Administrator, provided the requirements of paragraph 6.3(a) or 6.4(b) continue to be met following the change in payment. A Participant or Beneficiary may make up to two (2) changes or withdrawals in any calendar year without incurring a charge. An administrative fee may be applied to changes or withdrawals in excess of two (2).

6.7 Plan to Plan Direct Rollover as a Distribution Option.

6.7(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.”

6.7(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 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, 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. An eligible retirement plan shall also mean an annuity contract

described in Section 403(b) of the Code. The definition of eligible retirement plan applicable to a Participant shall also apply in the case of a distribution to a Participant's surviving spouse and to a Participant's spouse or former spouse who is the alternate payee under a Plan Approved Domestic Relations Order.

(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) Any amount that is distributed on account of hardship, or

(D) 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.

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 paid 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.

6.7(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.

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

6.7(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 an advance explanation of the option).

6.7(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.

6.7(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 6.7(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 6.7(a) may be transferred to another individual retirement plan.

6.7(h) *[Effective January 1, 2006]* In the case of an automatic rollover described in clause (ii) of subparagraph 6.7(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.

6.8 **Notice and Election Procedures Regarding Payment.**

6.8(a) Any election authorized 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.

6.8(b) Within a reasonable time before a Participant's Deferred 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 Deferred Benefit until such later date allowed under paragraph 6.2, including the right to modify or revoke any election thereunder.
- (iii) The Participant's right to obtain an advance on or acceleration of payment of his Deferred Benefit or to change any periodic installments as provided under paragraph 6.6.

6.8(c) Within a reasonable time before the Deferred Benefit of a Participant who died prior to commencement of payment of his Deferred 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 Deferred Benefit until such later date allowed under paragraph 6.2, including the right to modify or revoke any election thereunder.
- (iii) The Beneficiary's right to obtain an advance on or acceleration of payment of the Participant's Deferred Benefit or to change any periodic installments under paragraph 6.6.

6.9 **Benefit Determination and Payment Procedure.**

6.9(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 the Trustees to carry out said determination, whereupon the Trustee shall pay or cease to pay such benefits in accordance with the Administrator's determination.

6.9(b) In making the determinations described in subparagraph 6.9(a), the Administrator shall take into account the terms of any Plan Approved Domestic Relations Order received with respect to the Deferred Benefit of the Participant or any Death Benefit with respect to the Participant. The time and form of payment with respect to the Plan 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 Plan Approved Domestic Relations Order. The Administrator shall make all determinations regarding benefit payments to be made pursuant to a Plan 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 a Plan 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.

6.9(c) 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.

6.10 **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.

6.11 **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 Participant's spouse 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 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.

6.12 **Existing Elections of Distribution Commencement Date.** Distribution commencement date elections filed by Participants prior to the effective date of this Restatement of the Plan shall be disregarded and the time and form of payment rules set forth above shall control.

ARTICLE VII **Beneficiary Designation**

7.1 **Beneficiary Designation.** The Participant shall be entitled to designate a Beneficiary hereunder by filing a designation in writing (or as otherwise permitted under paragraph 13.9) 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.

7.1(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. If multiple beneficiaries are designated, absent any other provision by the Participant, those named or the survivors of them shall share equally in any amounts payable thereunder. 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.

7.1(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.

7.1(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 his
domicile at the time of his death.

If a Beneficiary of the Participant shall survive the Participant but shall die before the Deferred 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.

ARTICLE VIII
Withdrawals
[Effective July 1, 2006]

8.1 **Non-Hardship Withdrawal for Inactive Participant.** Consistent with Section 457(e)(9)(A) of the Code, a Participant (but not a Beneficiary or Alternate Payee) may elect to receive a Non-Hardship Withdrawal if the Participant's Deferred Benefit does not exceed the amount described in Section 457(e)(9)(A) of the Code [\$5,000 for Plan Years beginning on or after January 1, 1998] and the Participant has not made and the Participant's Deferred Compensation Account has not received any Deferred Compensation Contributions during the two year period that ends on the date of the Non-Hardship Withdrawal and the Participant has not previously received any Non-Hardship Withdrawal under this Plan.

8.1A **Withdrawal from Automatic Enrollment Arrangement.** *[Effective January 1, 2008]* A Participant who was enrolled in the Plan pursuant to the deemed Deferred Compensation Election provisions of subparagraph 3.2(b) and 3.3(b), may elect to receive a withdrawal of the amount of elective deferrals (and the earnings attributable thereto) made with respect to payroll periods beginning before the effective date of the election to receive the withdrawal. Such election must be made within 90 days after the date the first deemed elective deferral is made to the Plan.

8.2 **Unforeseeable Emergency Hardship Withdrawal.** *[Effective January 1, 2007]* In the event of any unforeseeable emergency, the Plan Administrator in its sole discretion may pay as an Unforeseeable Emergency Hardship Withdrawal all or any portion of a Participant's Deferred Benefit. Any such payment shall be limited to that amount reasonably necessary to alleviate the unforeseeable emergency (which may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the Unforeseen Emergency Hardship distribution). For purposes hereof:

(i) An unforeseeable emergency shall be defined in a manner consistent with the meaning ascribed thereto under Section 457 of the Code and the applicable regulations as severe financial hardship to the Participant resulting from an illness or accident of the Participant, the spouse, a dependent (as defined in Section 152(a) of the Code), or in the case of a distribution made after December 31, 2006, a Beneficiary of the Participant, loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., resulting from a natural disaster), the need to pay funeral expenses of the Participant's spouse, dependent (as defined in Section 152(a) of the Code), or in the case of a distribution made after December 31, 2006, a Beneficiary of the Participant, or any other similar extraordinary and unforeseeable circumstance arising as a result of events beyond the control of the Participant. The imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseen emergency. In addition, the

need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseen emergency.

(ii) The existence of an unforeseeable emergency shall be determined on the basis of the facts and circumstances of each case, but, in any event, payment may not be made to the extent that the hardship is or may be relieved:

(A) Through reimbursement or compensation by insurance or otherwise,

(B) By liquidation of the Participant's assets, to the extent such liquidation would not itself cause a severe hardship, or

(C) By cessation of deferrals under the Plan.

(iii) Examples of what are not considered unforeseeable emergencies include the need to send a Participant's child to college or the desire to purchase a home.

(iv) In order for an unforeseeable emergency hardship withdrawal to be permitted as a result of an event related to a Beneficiary, the Beneficiary must be a primary Beneficiary designated by the Participant on a form that is on file with the Administrator on both the date the application for the hardship is submitted and the date the distribution is made.

8.2(a) **Suspension of Contributions.** Effective only for withdrawals made prior to January 1, 2004, a Participant shall suspend Deferred Compensation Contributions for a period of six months upon approval of a request for an Unforeseeable Emergency Hardship Withdrawal.

8.3 **Withdrawals from Rollover Account.** Notwithstanding any other provision of the Plan except the latest time for payment under paragraph 6.2, withdrawals from the Rollover Account of a Participant may be made in accordance with the following subparagraphs.

8.3(a) A Participant who is an Employee may make withdrawals, in whole or in part, from his Rollover Account at any time.

8.3(b) The Rollover Account of a Participant who ceases to be an Employee may be withdrawn in whole or in part by such Participant or, if deceased, by his Beneficiary at any time after the date the Participant ceased to be an Employee and before such account commences to be paid pursuant to ARTICLE VI.

8.4 **Withdrawal Restrictions and Procedure.**

8.4(a) The amount of any withdrawal from any such account shall not be less than \$100, unless the Participant's account balance is less than \$100 in which case the then balance in the account may only be withdrawn. A Participant may make up to two (2) withdrawals in any calendar year without incurring a charge. An administrative fee may be applied to withdrawals in excess of two (2). Withdrawals from more than one account made at the same time shall only count as one withdrawal. Notwithstanding the foregoing, only one Non-Hardship Withdrawal for an Inactive Participant pursuant to paragraph 8.1 is permitted with respect to any Participant.

8.4(b) All withdrawals shall be made only by filing a written withdrawal request form with the Administrator in which the amount of withdrawal and such other information pertaining thereto as the Administrator may deem appropriate are stated.

8.4(c) All withdrawals shall be made in a lump sum payment in cash and shall be made pro rata from the investment vehicles or fund divisions in which the assets are invested unless otherwise specifically designated by the Participant.

8.4(d) In the event that a withdrawal is made from an account holding assets other than cash, assets in such account may be distributed or withdrawn, as determined by the Administrator in its discretion, and references to amounts herein shall be considered to refer to the value or the asset withdrawn, depending on the context.

8.4(e) All withdrawals other than Unforeseen Emergency Hardship Withdrawals shall be subject to the plan to plan direct rollover distribution option provided in paragraph 6.7.

8.5 **No Withdrawal Restoration.** Amounts withdrawn from the Plan may not be restored.

8.6 **Instructions to Trustee.** The Administrator, upon determination that a requested withdrawal is permissible under the Plan, shall immediately notify the Trustee, who shall pay from the Fund the amount of the withdrawal in accordance with the Administrator's instructions and shall deduct the amount thereof from the Participant's account in the Fund designated by the Administrator.

ARTICLE IX
Plan to Plan Transfers

9.1 **In-Service Transfer Out of Plan.** Consistent with Section 457(e)(17), the Plan shall transfer, in the form of a trustee-to trustee transfer, to a governmental defined benefit plan, such amount as the Participant shall request, but not to exceed the amount necessary (i) to purchase permissive service credits (as defined in Section

415(n)(3)(A) of the Code) and allowed under such plan or (ii) to make repayments to which Section 415 of the Code do not apply by reason of subsection (k)(3) thereof.

9.2 **Merger into Plan.** The Plan Administrator will accept and credit to a Participant's account, amounts transferred in a plan merger from another governmental employer representing amounts held by such other governmental employer under an "eligible" plan (within the meaning of Section 457(b) of the Code). Any such transferred amount shall not be treated as Deferred Compensation Contributions subject to the limitation of 4.1(a), except for the amount of deferred compensation contributions made by the Participant during the Participant's taxable year in which the transfer occurred which is treated as a Deferred Compensation Contribution subject to the limitation of 4.1(a). The amount of any deferred compensation under the merged plan shall be taken into account in computing the 457 catch-up limitation under 4.1(b).

9.3 **Transfer Upon Privatization.** If any Employer ceases to be an "eligible employer," as defined in Section 457(e)(1)(A) of the Code, the assets attributable to the Participants employed by such Employer may be transferred to another "eligible plan," as defined in Section 457(b) of the Code, provided the requirements of Treas. Reg. § 1.457-10(b)(2) (or any successor provisions thereto) are satisfied.

ARTICLE X **Trust Fund**

10.1 **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 XI **Plan Administrator**

11.1 **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 Title 51.1 Chapter Six of the Code of Virginia. 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.

11.2 **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.

11.3 **Information from Employer.** To enable the Plan Administrator to perform its responsibilities, the Employer(s) 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, and shall have no duty or responsibility to verify this information.

11.4 **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 Employer, 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.

11.5 **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 XII

Amendment and Termination of Plan

12.1 Termination of the Plan.

12.1(a) **Termination by Board.** The Commonwealth reserves the right to terminate this Plan at any time, provided that no such termination shall reduce, suspend or terminate the Deferred 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 Deferred Compensation Accounts, and all Deferred Compensation Accounts invested therein, shall be immediately liquidated and all such Deferred 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, 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 Deferred Benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan. In the event that the Plan is terminated, Employers other than the Commonwealth and its agencies may elect to withdraw pursuant to the provision of subparagraph 2.2(c) immediately before such termination.

12.1(b) **Termination by Ineligible Employer.** If a Participating Employer ceases to be an “eligible employer” as defined in Section 457(e)(1)(A) of the Code, such

Employer may terminate the Plan as it relates to its employees, in accordance with Treas. Reg. Section 1.457-10(a)(2), in lieu of transferring the assets attributable to its employees to another “eligible plan” as described in paragraph 9.3.

12.2 **Amendment of the Plan.** The Board of the Plan Sponsor may amend the Plan at any time, consistent with the Enabling Statute, provided that no such amendment shall reduce, suspend or terminate the Deferred Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such amendment. To the extent required by the exclusive benefit, 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 Deferred Benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.

ARTICLE XIII **Miscellaneous**

13.1 **Non-assignability.** The interests of each Participant hereunder 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.

13.1(a) **Exceptions.** Notwithstanding the foregoing, the Plan Administrator shall honor any Plan Approved Domestic Relations Order. In addition, the Plan Administrator shall honor any process for a debt to the Employer who has employed the Participant and any administrative actions pursuant to Chapter 13 of Title 63.1 (Section 63.1-249 *et seq.*) of the Code of Virginia in the same manner as described in Title 51.-124.4(A) of the Code of Virginia. Under no circumstances may a payment under the second sentence of this section take place before the Participant separates from service or reaches age 70-1/2, whichever is earlier.

13.1(b) **IRS Levy.** Notwithstanding the foregoing, the Plan Administrator may pay to the IRS from a Participant’s (or Beneficiary’s or Alternate Payee’s) Deferred Compensation Account the amount that the Plan Administrator finds is lawfully demanded under a levy issued by the IRS with respect to that Participant (or Beneficiary or Alternate Payee) 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 or Alternate Payee). Except in the case of an Alternate Payee, under no circumstances may a payment under this section take place before the Participant separates from service or reaches age 70-1/2, whichever is earlier.

13.1(c) **Cost Of Plan Defense.** Neither the Employer, 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 Deferred Compensation Account 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.

13.2 **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.

13.3 **Construction.** The Plan is intended to be an "eligible" deferred compensation plan within the meaning of Section 457(b) 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 it conform to the applicable requirements of the Enabling Statute. The provisions of the Plan shall be interpreted whenever possible to state provisions that 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 stating provisions consistent with such amendment or interpretation of the applicable law.

13.4 **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.

13.5 **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.

13.6 **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, interest, in any of the Plan, except as expressly provided by the Plan.

13.7 **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.

13.8 **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.

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

13.9(a) Except as provided in subparagraph 13.9(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.

13.9(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.

13.10 **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.

13.11 **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 20th day of May, 2004.

THE COMMONWEALTH OF VIRGINIA
Virginia Retirement System

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