

**COMMONWEALTH OF VIRGINIA 457 DEFERRED  
COMPENSATION PLAN**

Amended and Restated Effective January 1, 2021; Amended Effective July 1, 2023; Amended  
Effective July 1, 2024

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# COMMONWEALTH OF VIRGINIA 457 DEFERRED COMPENSATION PLAN

## ARTICLE I.

### ESTABLISHMENT AND RESTATEMENT OF PLAN

#### Section 1.01. Plan Establishment and History.

(a) Pursuant to the Government Employees Deferred Compensation Plan Act of 1979, Section 51.1-600 *et seq.* of the Code of Virginia ("Va. Code"), the Board of Trustees of the Virginia Retirement System ("Board") established the Commonwealth of Virginia 457 Deferred Compensation Plan ("Plan"), effective July 1, 1980, in order to provide eligible employees the opportunity to make voluntary deferrals.

(b) The Plan is, and is intended to remain, an eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code ("Code"), and is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). As a governmental plan, ERISA does not apply.

(c) The Plan was most recently amended and restated effective January 1, 2014, to add the hybrid deferred compensation provisions established under Va. Code Section 51.1-169, and has been amended once thereafter, generally effective July 1, 2015.

#### Section 1.02. Plan Restatement.

(a) The Plan is now being amended and restated effective January 1, 2021, except as otherwise specifically provided herein, to reflect the separation of the hybrid deferred compensation portion of the Plan to the Virginia Hybrid 457 Deferred Compensation Plan ("Hybrid 457 Plan").

(b) To effectuate the separation of the hybrid deferred compensation portion of this Plan to the Hybrid 457 Plan, the Board shall direct a transfer of the Plan assets held for eligible employees to the Hybrid 457 Plan trust as soon as administratively practicable following the establishment of the Hybrid 457 Plan.

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

## ARTICLE II.

### CONSTRUCTION AND DEFINITIONS

#### Section 2.01. Construction and Governing Law.

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

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

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

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

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute an eligible deferred compensation plan under the provisions of Code Section 457(b), (ii) be a governmental plan as defined in ERISA Section 3(32) and Code Section 414(d), and (iii) comply with all applicable requirements of the Code, shall prevail over any different interpretation.

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

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

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

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

(3) "Rollover Contribution Account" means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions pursuant to Section 4.05. There shall be the following separate subaccounts under the Rollover Contribution Account:

(i) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from a Code Section 457(b) plan within the meaning of Section 4.05(a);

(ii) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from a Code Section 457(b) plan within the meaning of Section 4.05(a) that consists of Roth elective deferrals within the meaning of Section 4.05(b);

(iii) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from an eligible retirement plan within the meaning of Section 4.05(a) other than a Code Section 457(b) plan; and

(iv) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Rollover Contributions from an eligible retirement plan within the meaning of Section 4.05(a) other than a Code Section 457(b) plan that consists of Roth elective deferrals within the meaning of Section 4.05(b).

(4) "Transfer Contribution Account" means the account maintained to reflect the Participant's interest under the Plan attributable to his or her Transfer Contributions pursuant to Section 4.06. There shall be the following separate subaccounts under the Transfer Contribution Account:

(i) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Transfer Contributions from an eligible retirement plan within the meaning of Section 4.06(a) that consists of after-tax employee contributions; and

(ii) A subaccount to reflect the Participant's interest under the Plan attributable to his or her Transfer Contributions from an eligible retirement plan within the meaning of Section 4.06(a) that consists of employer and/or employee contributions other than after-tax employee contributions.

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

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

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

(e) "Auto-Enrolled Employee" means a Participant who is subject to an Automatic Contribution Arrangement pursuant to either Va. Code Section 51.1-601.1 or 51.1-603.1(B), which shall include:

(1) An Employee of the Commonwealth employed or reemployed on or after January 1, 2008, in a position covered by VRS, who (i) has not elected to participate in a Code Section 403(b) plan or (ii) does not participate in the Hybrid 457 Plan.

(2) If provided in the Participating Employer's agreement with VRS, an Employee of a Political Subdivision employed or reemployed on or after a specified date agreed upon by VRS and the Political Subdivision who (i) has not elected to participate in a Code Section 403(b) plan or (ii) does not participate in the Hybrid 457 Plan.

(f) "Automatic Contribution Arrangement" is an arrangement under which, in the absence of an affirmative election by an Auto-Enrolled Employee, the Auto-Enrolled Employee shall be automatically enrolled in the Plan and deemed to have elected to have his or her Compensation reduced by a specified amount and paid to the Plan as a Pre-Tax Contribution, as described in Section 4.02.

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

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

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

(j) "CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act of 2020.

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

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

(m) "Compensation" means a Participant's wages, salary, and other amounts received for personal services rendered to the Participating Employer as an Employee during the Employee's taxable year. Compensation includes: (i) any amounts excludable from taxable



income because of an election under Code Sections 401(k), 403(b), 457(b), 125, and 132(f); (ii) bonuses; (iii) overtime; (iv) taxable reimbursements for office expenses of members of the General Assembly; (v) sick leave payments; (vi) family and personal leave payments; (vii) leave share payments; (viii) short-term disability payments under the Virginia Sickness and Disability Program or the Virginia Local Disability Program; and (ix) back pay. Compensation does not include: (a) any compensation received in the form of non-taxable fringe benefits; (b) long term disability benefits paid under the Virginia Sickness and Disability Program or the Virginia Local Disability Program; or (c) disability retirement payments under VRS. Compensation includes payments described in paragraphs (1) or (2) paid after the Employee's Severance from Employment, provided it is paid by the later of two and one-half months after the Employee's Severance from Employment or the end of the calendar year in which the Employee has a Severance from Employment:

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

(2) a payment for unused vacation, sick pay (including the payout of disability credits under the Virginia Sickness and Disability Program), or accumulated compensatory time, but only if the Employee would have been able to use the leave if employment had continued and the payment would be Compensation if paid prior to the Employee's Severance from Employment.

Any payment that is not described in the preceding sentence is not considered Compensation if paid after Severance from Employment.

(n) "Contributions" mean Pre-Tax Contributions, Roth Contributions, Discretionary Employer Contributions, Rollover Contributions, and Transfer Contributions.

(o) "Coronavirus-Related Distribution" means a distribution made on or after April 9, 2020, but before December 31, 2020, or such later date as provided in legislation modifying or extending the CARES Act or regulatory guidance under the CARES Act, to a Qualified Individual in accordance with Section 9.05.

(p) "Cost-of-Living Adjustment" means the cost-of-living adjustment prescribed by the Secretary of the Treasury under Code Section 401(a)(17), 414(v), or 457(e)(15) for any applicable year.

(q) "Discretionary Employer Contributions" mean contributions made to the Plan by the Participating Employer on behalf of a Participant in accordance with Section 4.03.

(r) "Effective Date" of the Plan means July 1, 1980, and of this amendment and restatement means January 1, 2021.

(s) "Elective Deferral" means Pre-Tax Contributions and Roth Contributions.

(t) "Employee" means any common law employee employed by a Participating Employer, including appointed or elected officials, who is designated as an Employee by the Participating Employer. An Employee includes an independent contractor only when expressly authorized by the Va. Code.

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

(v) "Hybrid 457 Plan" means the Virginia Hybrid 457 Deferred Compensation Plan, as amended from time to time.

(w) "Includible Compensation" means all compensation received by an Employee from the Participating Employer that is includible in his or her gross income for federal income tax purposes (computed without regard to Code Section 911) for that taxable year. Includible Compensation also includes any amounts excludable from taxable income because of an election under Code Sections 401(k), 403(b), 457(b), 125, and 132(f). Includible Compensation includes any compensation described in paragraphs (1), (2), or (3), provided the compensation is paid by the later of two and one-half months after the Employee's Severance from Employment or the end of the calendar year in which the Employee has a Severance from Employment:

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

(2) a payment for unused accrued bona fide sick leave, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued and the payment would have been included in the definition of Includible Compensation if paid prior to the Employee's Severance from Employment; and

(3) a payment received by an Employee pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the Employee at the same time if the Employee had continued in employment with the Participating Employer and only to the extent that the payment is includible in the Employee's gross income.

Includible Compensation is determined without regard to any community property laws. Includible Compensation shall not exceed the limits under Code Section 401(a)(17), to the extent applicable, increased by the Cost-of-Living Adjustment.

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

(y) "Normal Retirement Age" means the age elected by the Participant on the Applicable Form that is (i) on or after the earlier of age 65 or the age at which the Participant can

retire and receive an unreduced benefit from the Participating Employer's pension plan and (ii) not later than age 70½.

(z) "Participant" means any Employee who is or may become eligible to receive a benefit of any type under the Plan. A Participant shall also mean, when appropriate to the context, a former Employee who is eligible to receive a benefit of any type under the Plan.

(aa) "Participating Employer" means (i) the Commonwealth or (ii) a Political Subdivision that is an eligible employer within the meaning of Code Section 457(e)(1)(A) that has elected to offer the Plan to its Employees pursuant to Va. Code Section 51.1-603.1; provided, however, that a Political Subdivision that becomes a Participating Employer on or after January 1, 2021, must also be an employer as defined under Va. Code Section 51.1-124.3.

(bb) "Plan" means the Commonwealth of Virginia 457 Deferred Compensation Plan, as amended from time to time.

(cc) "Plan Year" means the calendar year.

(dd) "Political Subdivision" means a county, municipality, authority, school division, or other political subdivision of the Commonwealth or an agency thereof.

(ee) "Pre-Tax Contributions" mean the contributions made to the Plan by the Participating Employer at the election of a Participant pursuant to a Salary Reduction Agreement in accordance with Section 4.01.

(ff) "Qualified Distribution" means a distribution from a Roth Contribution Account after the Participant has satisfied a five year tax holding period and has attained age 59½, died, or become disabled, in accordance with Code Section 402A(d). The five year tax holding period is the period of five consecutive taxable years that begins with the first day of the first taxable year in which the Participant makes a designated Roth Contribution under the Plan or to another retirement plan which amount was directly rolled over to the Plan, and ends when five consecutive taxable years have been completed.

(gg) "Qualified Individual" means a Participant:

(1) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;

(2) whose Spouse or dependent (as defined in Code Section 152) is diagnosed with such virus or disease by such a test; or

(3) who experiences adverse financial consequences as a result of:

(i) the Participant, the Participant's Spouse, or a member of the Participant's household (a) being quarantined, (b) being furloughed or laid off or having work hours reduced due to such virus or disease, (c) being unable to work due to lack of child care due to such virus or disease, (d) having a reduction in pay

(or self-employment income) due to such virus or disease, or (e) having a job offer rescinded or start date for a job delayed due to such virus or disease;

(ii) closing or reducing hours of a business owned or operated by the Participant, the Participant's Spouse, or a member of the Participant's household due to such virus or disease; or

(iii) other factors as determined by the Secretary of the Treasury (or the Secretary's delegate); or

(4) any other Participant who satisfies the definition of a Qualified Individual as provided in legislation modifying or extending the CARES Act or regulatory guidance under the CARES Act.

For purposes of this paragraph (gg), a member of the Participant's household means someone who shares the Participant's principal residence.

(hh) "Related Employer" means the Participating Employer and any other entity which is under common control with the Participating Employer under Code Section 414(b), (c) or (m). For this purpose, the Board shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

(ii) "Rollover Contributions" mean the contributions made to the Plan pursuant to Section 4.05.

(jj) "Roth Contributions" mean contributions made to the Plan by the Participating Employer at the election of a Participant under a Salary Reduction Agreement that have been (i) designated irrevocably by the Participant as a Roth Contribution being made in lieu of all or a portion of the Pre-Tax Contributions the Participant is otherwise eligible to make under the Plan, and (ii) treated by the Participating Employer as includible in the Participant's gross income at the time the Participant would have received that amount in cash if the Participant had not made such an election.

(kk) "Salary Reduction Agreement" means an agreement entered into between an Employee and the Participating Employer pursuant to Section 4.01. Such agreement shall not be effective with respect to Compensation made available prior to the effective date of such agreement and shall be binding on the parties and irrevocable with respect to Compensation earned while it is in effect.

(ll) "Section" means, when not preceded by the word Code, a section of the Plan.

(mm) "Severance from Employment" means the complete termination of the employment relationship between the Employee and the Participating Employer.

(nn) "Spouse" means the person to whom the Participant is legally married under federal law.

(oo) "Transfer Contributions" mean the contributions made to the Plan pursuant to Section 4.06.

(pp) "Trust" means the Master Trust for the Deferred Compensation Plan of the Commonwealth of Virginia, which may incorporate one or more qualified trusts under Code Section 457(g), custodial accounts treated as qualified trusts under Code Section 401(f), and/or annuity contracts treated as qualified trusts under Code Section 401(f), established under the Plan to hold Plan assets.

(qq) "Trust Fund" means the assets of the Plan held pursuant to the terms of the Plan and the Trust.

(rr) "Trustee" means the trustee or any successor trustee designated and appointed by VRS and includes a custodian of a custodial account or an insurer of an annuity contract under Code Section 457(g)(3).

(ss) "Unforeseeable Financial Emergency" means a severe financial hardship of the Participant resulting from:

(1) an illness or accident of the Participant, the Participant's Spouse, the Participant's dependent (as defined in Code Section 152, without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)), or a Beneficiary of the Participant;

(2) 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.*, as a result of a natural disaster);

(3) the need to pay funeral expenses of the Participant's Spouse, the Participant's Dependent (as defined in Code Section 152, without regard to Code Sections 152(b)(1), (b)(2), and (d)(1)(B)), or a Beneficiary of the Participant; or

(4) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

(tt) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(uu) "Va. Code" means the Code of Virginia, as amended from time to time.

(vv) "Vested" means the interest of the Participant or Beneficiary in his or her Accounts which is unconditional, legally enforceable, and nonforfeitable at all times.

(ww) "VRS" means the Virginia Retirement System.

**ARTICLE III.**

**ELIGIBILITY AND PARTICIPATION**

**Section 3.01.**      **Participation.**

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

(b) An Employee may become a Participant in the Plan immediately after commencement of employment or reemployment with a Participating Employer as an Employee.

(c) The Participating Employer shall notify the Employee of his or her eligibility to participate in the Plan. To become a Participant under the Plan, an Employee must complete the Applicable Forms, which may include a Salary Reduction Agreement and enrollment, beneficiary designation, and investment election forms, and return them to the Administrator or Agent, as applicable. Subject to Section 4.02, an Employee who fails to complete the Applicable Forms shall be deemed to have waived all of his or her rights under the Plan, provided that such Employee may become a Participant in the Plan at any time thereafter by completing the Applicable Forms and returning them to the Administrator or Agent, as applicable.

**Section 3.02.**      **Cessation of Contributions.** A Participant shall cease to be eligible for Contributions under the Plan when (i) he or she is no longer an Employee, (ii) his or her Participating Employer ceases to be a Participating Employer, or (iii) the Plan is terminated.

**Section 3.03.**      **Reemployment.** If an Employee has a Severance from Employment from his or her Participating Employer and is then reemployed by that Participating Employer or is employed by another Participating Employer, the Participant must complete the Applicable Forms pursuant to Section 3.01(c) to be eligible again for Contributions under the Plan.

**ARTICLE IV.**

**CONTRIBUTIONS**

**Section 4.01.**      **Elective Deferrals.**

(a) Subject to the limitations under Article V, an Employee who has satisfied the participation requirements under Section 3.01 may enter into a written Salary Reduction Agreement agreeing to contribute each pay period Pre-Tax Contributions and/or Roth Contributions to the Plan equal to a specified dollar amount of his or her Compensation, as permitted by the Administrator. The Administrator may establish a minimum Elective Deferral amount from time to time.

(b) Elective Deferrals shall begin as soon as administratively practicable following the date specified in the Salary Reduction Agreement, or, if later or if no date is specified, as soon as administratively practicable after the Salary Reduction Agreement is filed with the Administrator.

(c) Elective Deferrals shall reduce the Compensation otherwise payable to a Participant and shall be paid in cash to the Trustee by the Participating Employer, on a basis consistent with its payroll practices, as soon as administratively feasible after being withheld from the Compensation of a Participant, but no later than 15 business days following the end of the month in which such amount is withheld from the Compensation of the Participant.

(d) If the Participant fails to designate whether Elective Deferrals are Pre-Tax Contributions or Roth Contributions, the Participant will be deemed to have designated his or her Elective Deferrals as Pre-Tax Contributions. Pre-Tax Contributions shall be allocated to the Pre-Tax Contribution Account of the Participant as of the date of contribution. Roth Contributions shall be allocated to the Roth Contribution Account of the Participant as of the date of contribution.

(e) A Participant may change his or her election to make Pre-Tax Contributions and/or Roth Contributions at any time by entering into a new Salary Reduction Agreement. Any such changes shall be effective as soon as administratively practicable following the date specified in the new Salary Reduction Agreement, or, if later, as soon as administratively practicable after the Salary Reduction Agreement is filed with the Administrator.

(f) A Participant may terminate his or her election to make Elective Deferrals at any time by filing the Applicable Form with the Administrator, which shall be effective as soon as administratively practicable after the Applicable Form is filed with the Administrator.

(g) If a Participant's Elective Deferrals to the Plan cease during a Plan Year because they exceed the limits set forth in Article V, the Participant must either ensure that his or her Employer begins Elective Deferrals pursuant to the existing Salary Reduction Agreement the following Plan Year or enter into a new Salary Reduction Agreement for the following Plan Year in order to continue making Elective Deferrals under the Plan.

(h) An election to make Elective Deferrals shall not be valid with respect to any period during which the Participant is not an Employee. No election to make, change, or discontinue Elective Deferrals shall be given retroactive effect.

(i) The Administrator may establish additional nondiscriminatory rules and procedures governing the manner and timing of elections by Participants to make, change, or discontinue Elective Deferrals.

**Section 4.02. Automatic Elective Deferrals.**

(a) Notwithstanding Section 4.01 or any other provision of the Plan, an Employee who is an Auto-Enrolled Employee shall be automatically enrolled in the Plan pursuant to this Section 4.02.

(b) An Auto-Enrolled Employee shall be deemed to have elected to contribute Pre-Tax Contributions to the Plan, for the Plan Year and each subsequent Plan Year, in an amount equal to \$20.00 each semi-monthly pay period. The preceding sentence shall not apply if, within a reasonable period of time (pursuant to policy established by the Administrator which shall be uniformly applied on a nondiscriminatory basis) after receipt of the notice described in paragraph

(d) below, the Auto-Enrolled Employee affirmatively elects not to make Elective Deferrals to the Plan or affirmatively elects to make Pre-Tax Contributions and/or Roth Contributions under the Plan in a greater or lesser amount pursuant to Section 4.01.

(c) Automatic Pre-Tax Contributions shall become effective as soon as administratively practicable following the Employee's 90<sup>th</sup> day of employment.

(d) Prior to making automatic Pre-Tax Contributions to the Plan on behalf of any Auto-Enrolled Employee, and at least 30 days but not more than 90 days before the beginning of each Plan Year thereafter, the Administrator or the Agent shall provide notice to the Auto-Enrolled Employee that explains:

- (1) the amount and timing of automatic Pre-Tax Contributions;
- (2) how Pre-Tax Contributions will be invested in the absence of an investment election by the Participant;
- (3) the Auto-Enrolled Employee's right to modify or terminate automatic Pre-Tax Contributions, including to have contributions designated as Roth Contributions;
- (4) the procedures for exercising the Auto-Enrolled Employee's right to make an affirmative election under the Plan;
- (5) the timing for implementation of any such election; and
- (6) the Auto-Enrolled Employee's right to make a withdrawal of automatic Pre-Tax Contributions in accordance with paragraph (f).

(e) Except as provided in paragraph (f), automatic Pre-Tax Contributions under this Section 4.02 shall remain in effect until the Participant affirmatively elects to modify or terminate automatic Pre-Tax Contributions by filing the Applicable Form under Section 4.01.

(f) An Employee may request a withdrawal of any automatic Pre-Tax Contributions made under this Section 4.02, provided that such request must be made no later than 90 days after the date automatic Pre-Tax Contributions are first withheld from Compensation. The effective date of the withdrawal shall be as soon as administratively practicable, but in no event later than the earlier of (i) the pay date for the second payroll period that begins after the Employee's withdrawal request and (ii) the first pay date that occurs after 30 days after the Employee's withdrawal request. The withdrawal shall include earnings through the date of distribution. Distributions made pursuant to this paragraph (f) are not counted against the limitations under Article V. Unless the Employee affirmatively elects otherwise, any withdrawal request shall be treated as an affirmative election to terminate Pre-Tax Contributions made on the Employee's behalf.

(g) Automatic Pre-Tax Contributions shall reduce the Compensation otherwise payable to a Participant and shall be paid in cash to the Trust Fund by the Participating Employer, on a basis consistent with its payroll practices, as soon as administratively feasible after being



withheld from the Compensation of a Participant, but no later than 15 business days following the end of the month in which such amount is withheld from the Compensation of the Participant.

(h) Automatic Pre-Tax Contributions shall be allocated to the Pre-Tax Contribution Account of the Participant as of the date of contribution.

(i) Automatic Pre-Tax Contributions shall be invested in a default Investment Option described in Section 7.02 until such time that the Participant makes an affirmative investment election with the Administrator on the Applicable Form.

(j) The Administrator may establish additional nondiscriminatory rules and procedures governing the administration of automatic Pre-Tax Contributions.

**Section 4.03. Discretionary Employer Contributions.**

(a) A Participating Employer may make Discretionary Employer Contributions by completing and returning any Applicable Form to the Administrator.

(b) Notwithstanding Section 3.01(c), if an Employee fails to complete the Applicable Forms at such time that the Employee is eligible for Discretionary Employer Contributions, Discretionary Employer Contributions shall be made by the Participating Employer to the Participant's Pre-Tax Contribution Account under the Plan and invested in the default Investment Option described in Section 7.02 until such time that the Employee completes the Applicable Form.

(c) VRS shall establish reasonable policies to govern Discretionary Employer Contributions under the Plan, which may be amended from time to time. All Discretionary Employer Contributions shall comply with such policies and shall be administered in accordance with such policies.

(d) Discretionary Employer Contributions shall be allocated to each Participant's Pre-Tax Contribution Account as of the date made to the Plan, but no later than the last day of the Plan Year.

**Section 4.04. Sick, Vacation and Back Pay.** A Participant who has not had a Severance from Employment may elect to defer accumulated sick pay, accumulated vacation pay, and back pay under the Plan if the requirements of Code Section 457(b) are satisfied. These amounts may be deferred for any calendar month only if a Salary Reduction Agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee on the date the amounts would otherwise be paid or made available. Compensation that would otherwise be paid for a payroll period that begins before Severance from Employment is treated as an amount that is paid or made available before an Employee has a Severance from Employment.

**Section 4.05. Rollover Contributions to the Plan.**

(a) An Employee or former Employee may transfer to the Plan as a Rollover Contribution a distribution from:

- (1) a Code Section 401(a) or 403(a) qualified plan, excluding after-tax employee contributions;
- (2) a Code Section 403(b) plan, excluding after-tax employee contributions;
- (3) a Code Section 457(b) eligible deferred compensation plan which is maintained by an eligible employer described in Code Section 457(e)(1)(A); or
- (4) a Code Section 408 individual retirement account or annuity, with respect to the portion of the distribution that is eligible to be rolled over and would otherwise be includible in gross income.

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

(c) An Employee or former Employee may also transfer to the Plan as a Rollover Contribution a distribution from a Roth elective deferral account under a Code Section 401(a) plan, a Code Section 403(b) plan, or a Code Section 457(b) eligible deferred compensation plan which is maintained by an eligible employer described in Code Section 457(e)(1)(A), but only to the extent that the Rollover Contribution is made directly from such prior plan and only to the extent the rollover is permitted under the rules of Code Section 402(c).

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

(e) A Rollover Contribution shall be allocated to a Rollover Contribution Account as of the date of the contribution; provided, however, that separate subaccounts shall be maintained to reflect Rollover Contributions from Code Section 457(b) plans and plans other than Code Section 457(b) plans, and separate subaccounts shall be maintained to reflect Rollover Contributions from elective deferral accounts and Roth elective deferral accounts, as provided in Section 2.02(a).

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

#### **Section 4.06. Transfers to the Plan.**

(a) Subject to the conditions set forth in this Section, the Plan shall accept as a Transfer Contribution a transfer on behalf of a: (i) Participant from the Hybrid 457 Plan if the transfer is to correct an eligibility error; or (ii) group of Participants from another 457(b) plan established and maintained by the Participating Employer if the other 457(b) plan is being merged into the Plan.

(b) The Plan shall only accept a transfer that satisfies the following conditions:

(1) The transferor plan permits the transfer;

(2) The Participant whose amounts are being transferred will have a deferred amount immediately after the transfer at least equal to the deferred amount with respect to that Participant immediately before the transfer; and

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

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

**Section 4.07.**      **Leave of Absence.** During a paid leave of absence, Contributions shall continue to be made for a Participant on the basis of Compensation paid by the Participating Employer during the leave. No Contributions shall be made on behalf of a Participant who is on an unpaid leave of absence.

**Section 4.08.**      **Disability.** A Participant who has not had a Severance from Employment may make Elective Deferrals during any period of time that he or she is disabled to the extent that the Participant has Compensation. Compensation does not include imputed compensation, long term disability benefits paid under the Virginia Sickness and Disability Program or the Virginia Local Disability Program, or disability retirement payments under VRS.

**Section 4.09.**      **Expenses of Plan.** All reasonable expenses of administering the Plan shall be charged against and paid from the Participants' Accounts, subject to the terms of the applicable Investment Funds, unless paid by the Participating Employer. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with rules promulgated by the Internal Revenue Service.

## **ARTICLE V.**

### **LIMITATIONS ON CONTRIBUTIONS**

#### **Section 5.01.**      **Elective Deferral Limits.**

(a) The maximum amount of Elective Deferrals to the Plan for any calendar year shall be limited to the lesser of (i) the applicable dollar amount as provided in Code Section 457(e)(15) or (ii) the Participant's Includible Compensation as provided in Code Section 457(b)(2). The applicable dollar amount is \$22,500 for 2023, increased thereafter by the Cost-of-Living Adjustment.

(b) A Participant who attains age 50 or more by the end of the calendar year, and who is contributing up to the applicable dollar amount under paragraph (a), may make additional Elective Deferrals under Code Section 414(v) of up to \$7,500 for 2023, increased thereafter by the Cost-of-Living Adjustment. The Administrator shall have the authority, in its sole discretion, if determined necessary to comply with applicable law, to suspend the right to make Elective Deferrals under this paragraph for 2024 or any subsequent calendar year. Any suspension under

this subsection shall apply to any new or existing Salary Reduction Agreements in effect for such year or years.

(c) If the applicable year is one of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this paragraph (c) exceeds the amount computed under paragraphs (a) and (b), then the Elective Deferrals limit under this Article V shall be the lesser of:

(1) An amount equal to two times the applicable dollar amount set forth in paragraph (a) for such year; or

(2) The sum of:

(i) An amount equal to (i) the aggregate paragraph (a) limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (ii) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(ii) An amount equal to (i) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to paragraph (b) or (c)), minus (ii) the aggregate contributions to Pre-2002 Coordination Plans (as defined by Treasury regulations and as provided in Section 5.03(c)) for such years.

However, in no event can the Elective Deferrals be more than the Participant's Compensation for the year.

**Section 5.02. Participating Employer Contribution Limits.** If the Participating Employer elects to make Discretionary Employer Contributions to the Plan on behalf of a Participant pursuant to Section 4.03, the Discretionary Employer Contributions shall be deemed Elective Deferrals for purposes of this Article, and shall apply toward the maximum Elective Deferral limits set forth in this Article in the taxable year that they are Vested.

**Section 5.03. Coordination of Limits.**

(a) If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code Section 457(b), including the Hybrid 457 Plan, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article V. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Participating Employer for which the Administrator receives from the Participating Employer sufficient information concerning such plan, and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) In applying Section 5.03, a year shall be taken into account only if:

(1) the Participant was eligible to participate in the Plan during all or a portion of the year; and

(2) Compensation deferred, if any, under the Plan during the year was subject to the applicable dollar amount described in Section 5.01(a) or any other plan ceiling required by Code Section 457(b).

(c) For purposes of Section 5.01(c)(2)(ii) "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any 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 Code Section 501(c)(18), including plans, arrangements or accounts maintained by the Participating Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 5.01(c)(2)(ii) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code Section 457(b)(2) for that year.

(d) For 2002 and thereafter, any amounts contributed by the Participant to a tax-sheltered annuity pursuant to Code Section 403(b) or to a 401(k) plan pursuant to Code Section 402(e)(3) shall not reduce the maximum Elective Deferrals under Section 5.01.

(1) An individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent excess deferrals under the plan are distributed, as described in Section 5.04. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

(2) The Participant is responsible for ensuring coordination of these limits.

#### **Section 5.04. Correction of Excess Deferrals.**

(a) If the Elective Deferrals on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferrals on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Elective Deferrals, to the extent in excess of the applicable limitation and adjusted for earnings, shall be distributed to the Participant no later than the April 15 following the calendar year in which the excess Elective Deferral was made.

(b) Excess Elective Deferrals shall be distributed from the following plans in the following order:

(1) the other eligible deferred compensation plan or plans (not including the Hybrid 457 Plan);

- (2) a Participant's unmatched Roth Contributions to this Plan;
- (3) a Participant's unmatched Pre-Tax Contributions to this Plan;
- (4) a Participant's matched Roth Contributions to this Plan;
- (5) a Participant's matched Pre-Tax Contributions; and
- (6) a Participant's Discretionary Employer Contributions.

## **ARTICLE VI.**

### **ACCOUNTING**

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

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

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

## **ARTICLE VII.**

### **INVESTMENT OF CONTRIBUTIONS**

**Section 7.01.**      **Investment Funds.**

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

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

(c) A Participant shall have the right to direct the investment of his or her Account among the Investment Funds by filing the Applicable Form with the Administrator. A Participant

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

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

## **ARTICLE VIII.**

### **TRUST**

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

**Section 8.02.**      **Trust Status.** The Trust Fund shall be held in Trust for the exclusive benefit of Participants and Beneficiaries under the Plan in accordance with Code Section 457(g). No part of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries, and for defraying the reasonable expenses of the Plan and Trust. The Trust is exempt from tax pursuant to Code Sections 457(g)(2) and 501(a).

## **ARTICLE IX.**

### **DISTRIBUTIONS**

#### **Section 9.01.**      **Distribution Restrictions.**

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

(b) Notwithstanding paragraph (a), a Participant who is an Employee may request a distribution of his or her Account on or after the January 1 of the calendar year in which the Participant attains age 70½, even if the Participant has not had a Severance from Employment.

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

(d) Notwithstanding paragraph (a), a Participant who is an Employee may request a distribution of his or her Account at any time if (i) his or her Account balance does not exceed the *de minimis* amounts under Code Section 457(e)(9)(A), (ii) no contributions have been made to the Participant's Account in the 24 month period preceding the date the distribution request, (iii) the Participant has not previously taken a withdrawal under this paragraph (d), and the distribution equals the Participant's entire Account balance.

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

**Section 9.02.**            **Forms of Payment.**

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

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

**Section 9.03.**            **Reemployment.** If a Participant who is a former Eligible Employee subsequently becomes an Eligible Employee again after distribution of his or her Accounts has begun under a payment option other than annuity payments, such distributions shall immediately cease, and the Eligible Employee shall not receive any benefits under the Plan until the Employee is entitled to a distribution under Section 9.01.

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

**Section 9.05.**            **Coronavirus-Related Distributions.**

(a) Notwithstanding Section 9.01 and subject to the limitation under paragraph (b) and the terms of the Investment Funds, a Participant who is a Qualified Individual may request one or more Coronavirus-Related Distributions from his or her Vested Accounts.

(b) Coronavirus-Related Distributions to a Participant from this Plan and all other plans maintained by the Participating Employer or a Related Employer may not exceed \$100,000.

(c) A Participant shall certify to the Administrator that he or she is a Qualified Individual prior to receiving a Coronavirus-Related Distribution.



(d) Notwithstanding any other provision of the Plan, Coronavirus-Related Distributions shall be made in accordance with the CARES Act, any subsequent legislation addressing Coronavirus-Related Distributions, and any regulatory guidance issued thereunder.

**Section 9.06.**      **Death Benefit.** If a Participant dies before distribution of his or her entire Account, his or her Account shall be payable to his or her Beneficiary under the distribution options available under the Investment Funds, subject to Code Section 401(a)(9).

**Section 9.07.**      **Required Minimum Distribution Rules.**

(a) The provisions of this Section 9.07 take precedence over any inconsistent provisions of the Plan. All distributions under this Plan shall be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the incidental death benefit rules under Code Section 401(a)(9)(G), and the changes under the Setting Every Community Up for Retirement Enhancement Act of 2019, and any regulatory guidance issued thereunder, and shall comply with rules under this Section 9.07.

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

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

(c) A Participant's Accounts shall be distributed to the Participant beginning no later than his or her "required beginning date" as defined in this paragraph or, if applicable, as defined in subsequent legislation or regulations that amend the definition of required beginning date for purposes of Code Section 401(a)(9). Subject to the preceding sentence, required beginning date shall mean April 1 of the calendar year following the calendar year in which the Participant attains his or her applicable age as such term is defined in Code Section 401(a)(9)(C)(v) or, if later, April 1 of the calendar year following the calendar year that the Participant has a Severance from Employment.

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

(e) Notwithstanding anything in this Section 9.07 to the contrary, for 2020 or such longer period as provided in legislation modifying or extending the CARES Act, the minimum distribution requirements will be satisfied as provided in this paragraph (e).

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

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

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

**Section 9.08. Unforeseeable Financial Emergency Distributions.**

(a) A Participant who has not had a Severance from Employment may receive a distribution for an Unforeseeable Financial Emergency from his or her Account.

(b) Any distribution made because of the Participant's Unforeseeable Financial Emergency shall not exceed the amount reasonably necessary to relieve the Participant's need, including any anticipated taxes or penalties associated with such distribution.

(c) The Participant's distribution request shall specify the reason for the Unforeseeable Financial Emergency and specify the amount the Participant wishes to withdraw to meet the need caused by the Unforeseeable Financial Emergency.

(d) A distribution on account of Unforeseeable Financial Emergency shall not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of Elective Deferrals under the Plan.

(e) The Administrator or its Agent shall determine based on uniform and nondiscriminatory standards whether an Unforeseeable Financial Emergency exists based on the facts and circumstances and in accordance with the claims procedures of the Plan.

(f) The Administrator may charge a reasonable fee for processing Unforeseeable Financial Emergency distributions.

**Section 9.09. Transfer to Defined Benefit Governmental Plan.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Vested Account transferred to the defined benefit governmental plan, subject to the terms of the Investment Fund. A transfer under this Section may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under this Section only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

(c) Notwithstanding paragraph (a), no portion of the Participant's Account attributable to Roth Contributions or Roth Rollover Contributions may be transferred under this Section 9.08.

**Section 9.10. Transfers from the Plan.** The Plan shall transfer a Participant's Account to the Hybrid 457 Plan to correct an eligibility error under the following conditions: (i) the Participant whose amounts are being transferred will have a deferred amount immediately after the transfer at least equal to the deferred amount with respect to that Participant immediately before the transfer; and (ii) the transfer satisfies such other rules and policies established by the Administrator.

**ARTICLE X.**

**LOANS**

Loans are not permitted under the Plan.

**ARTICLE XI.**

**VESTING**

**Section 11.01. Vesting.** A Participant shall be 100% Vested in his or her Accounts at all times.

**Section 11.02. Felony Convictions.**

(a) Notwithstanding Section 11.01, if a Participant (i) is convicted of a felony and (ii) his or her Participating Employer determines that the felony arose from misconduct occurring on or after July 1, 2011, in any position in which the Participant was covered for retirement purposes under any retirement system administered by the Board, the Participant shall forfeit his or her Discretionary Employer Contributions, if any. Such forfeiture shall occur following the Participating Employer's notification to VRS that a felony conviction arising from such misconduct has been obtained and the administrative process as set forth in Va. Code Section 51.1-124.13 has concluded. If the Participant is or becomes a Participant in service after such forfeiture, he or she shall be entitled to the benefits based solely on his or her service after the forfeiture.

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

## **ARTICLE XII.**

### **ROLLOVERS FROM THIS PLAN**

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

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

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

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

- (1) an individual retirement account described in Code Section 408(a);
- (2) an individual retirement annuity (other than an endowment contract) described in Code Section 408(b);
- (3) any annuity plan described in Code Section 403(a);
- (4) a plan described in Code Section 403(b);
- (5) a qualified plan described in Code Section 401(a);
- (6) a Code Section 457(b) eligible deferred compensation plan which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state;
- (7) a Roth individual retirement account described in Code Section 408A(e) provided the Distributee's adjusted gross income does not exceed any limit applicable under federal law for the tax year in which the distribution occurs; and

(8) a SIMPLE IRA described in Code Section 408(p)(1), provided that the rollover contribution is made after the two year period described in Code Section 72(t)(6).

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

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

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

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

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

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

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

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

**Section 12.03. Mandatory Withholding of Eligible Rollover Distributions.**

(a) If the Distributee of an Eligible Rollover Distribution does not elect to have the Eligible Rollover Distribution paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover pursuant to Code Section 401(a)(31), the Eligible Rollover Distribution shall be subject to a mandatory 20% federal income tax withholding under Code Section 3405(c). Only that portion of the Eligible Rollover Distribution that is not paid directly from the Plan to an Eligible Retirement Plan in a Direct Rollover shall be subject to the mandatory withholding requirement under Code Section 3405(e), and only to the extent such amount would otherwise be includible in the Distributee's taxable gross income.

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

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

**Section 12.04. Explanation of Plan Distribution and Withholding Requirements.**

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

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

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

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

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

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

## ARTICLE XIII.

### PARTICIPATING EMPLOYERS

**Section 13.01.**     **Adoption of Plan by Participating Employer.**     A Political Subdivision must enter into an agreement with VRS before its Employees may become Participants in the Plan.

**Section 13.02.**     **Plan Terms.**     Each Participating Employer shall adopt the Plan on the same terms without modification. Any amendment of the Plan by VRS shall be effective and binding on each Participating Employer.

**Section 13.03.**     **Withdrawal from Plan by Participating Employer.**     A Participating Employer that is a Political Subdivision may cease making contributions to the Plan and request a trustee to trustee transfer of its Employees' Accounts to a separate Code Section 457(b) plan established by the Participating Employer, pursuant to such procedures adopted by the Board from time to time.

**Section 13.04.**     **Termination of Participation for Failure to Make Timely Contributions.**     The Board may terminate the participation of a Participating Employer that is a Political Subdivision for recurring failures by the Participating Employer to remit Contributions to the Trustee in a timely manner. Upon such termination, VRS shall transfer the Participating Employer's Employee Accounts to a separate Code Section 457(b) plan established by the Participating Employer, pursuant to such procedures adopted by the Board. If no such separate Code Section 457(b) plan is established, the Plan shall be deemed terminated with respect to that Participating Employer and Employee Accounts shall be distributed to Employees.

## ARTICLE XIV.

### ADMINISTRATION OF THE PLAN

**Section 14.01.**     **Authority of the Administrator.**     The Administrator is responsible for performing the duties required for operation of the Plan. The Administrator shall have all power necessary or convenient to enable it to exercise its authority under the Plan. In connection therewith, the Administrator may provide rules and regulations, not inconsistent with the provisions hereof, for the operation and management of the Plan, and may from time to time amend or rescind such rules or regulations. The Administrator is authorized to accept service of legal process for the Plan.

**Section 14.02.**     **Responsibility of the Participating Employer.**     The Participating Employer is responsible for notifying Participants that they are eligible to participate in the Plan, providing the Administrator complete and accurate information as needed to administer the Plan, and such other responsibilities as may be delegated to Participating Employer by the Administrator from time to time. A Participating Employer that is either a state agency that has decentralized its payroll function or a Political Subdivision is responsible for timely remitting Contributions for its Employees to the Trust. The Department of Accounts of the

Commonwealth is responsible for timely remitting Contributions to the Trust on behalf of Employees of any other Participating Employer.

**Section 14.03. Powers of the Administrator.** The Administrator shall have the power and discretion to construe and interpret the Plan, including any ambiguities, to determine all questions of fact or law arising under the Plan, and to resolve any disputes arising under and all questions concerning administration of the Plan. The Administrator may correct any defect, supply any omission or reconcile any inconsistency in the Plan in such manner and to such extent as the Administrator may deem expedient and, subject to the Plan's claims procedures, the Administrator should be the sole and final judge of such expediency. Benefits under the Plan shall be paid only if the Administrator decides in its discretion that the Participant or Beneficiary is entitled to them.

**Section 14.04. Delegation by Administrator.** The Administrator may delegate to an individual, committee, or organization to carry out its fiduciary duties or other responsibilities under the Plan. Any such individual, committee or organization delegated fiduciary duties shall be a fiduciary until the Administrator revokes such delegation. A delegation of the Administrator duties or responsibilities may be revoked without cause or advance notice. Such individual, committee, or organization shall have the same power and authority with respect to such delegated fiduciary or other responsibilities as the Administrator has under the Plan.

**Section 14.05. Employment of Consultants.** The Administrator may employ one or more persons to render advice with regard to its responsibilities under the Plan.

## **ARTICLE XV.**

### **REQUESTS FOR INFORMATION AND OTHER CLAIMS PROCEDURES**

**Section 15.01. Requests for Information Concerning Eligibility, Participation and Contributions.** Requests for information concerning eligibility, participation, contributions, or any other aspects of the operation of the Plan, and service of legal process, should be in writing and directed to the Administrator of the Plan.

**Section 15.02. Requests for Information Concerning Investment Funds.** Requests for information concerning the Investment Funds and their terms, conditions, and interpretations thereof, claims thereunder, and any requests for review of such claims, should be in writing and directed to the Administrator of the Plan.

**Section 15.03. Processing of Claims.** Claims under the Plan shall be processed in a manner consistent with the Virginia Administrative Process Act, Va. Code Section 2.2-4000 *et seq.*



## ARTICLE XVI.

### AMENDMENT AND TERMINATION

**Section 16.01.**      **Amendment and Termination.** While it is expected that the Plan shall continue indefinitely, the Commonwealth reserves the right to amend, freeze, or terminate the Plan, or to discontinue any further Contributions to the Plan at any time. The Board may, consistent with Va. Code Section 51.1-600 *et seq.*, make any amendment to the Plan, provided that no such amendment shall reduce, suspend or terminate the accrued benefits otherwise payable to a Participant or Beneficiary hereunder as of the date of such amendment. To the extent required by the exclusive benefit rule, any amendment shall not be effective to the extent that the amendment has the effect of causing any Plan assets to be diverted to or inure to the benefit of the Participating Employer, or to be used for any purpose other than providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.

Notwithstanding the foregoing, the Board hereby delegates to the VRS Director the right to modify, alter, or amend the Plan in whole or in part to make any technical modification, alteration or amendment which (i) in the opinion of VRS' counsel is necessary to comply with federal law or (ii) does not substantially increase costs, contributions, or benefits or materially affect the eligibility, vesting or benefit accrual or allocation provisions of the Plan.

**Section 16.02.**      **Adverse Effects.** Any amendment or termination of the Plan cannot adversely affect the benefits accrued by Participants prior to the date of amendment or termination. The Plan may not be amended in a manner that violates any provision of the Code.

**Section 16.03.**      **Distribution Upon Termination of the Plan.** The Commonwealth has the right to completely terminate this Plan at any time and in its sole discretion. In such a case, VRS shall arrange for suitable distribution of Plan assets, including the possibility of transfer to another 457 plan or plans. The Trustee shall not be required to pay out any asset of the Trust Fund to Participants and Beneficiaries or a successor plan upon termination of the Trust until the Trustee has received written confirmation from VRS (i) that all provisions of the law with respect to such termination have been complied with, and, (ii) after the Trustee has made a determination of the fair market value of the assets of the Plan, that the assets of the Plan are sufficient to discharge when due all obligations of the Plan required by law. The Trustee shall rely conclusively upon such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

## ARTICLE XVII.

### MISCELLANEOUS

**Section 17.01.**      **Non-Alienation.**

(a) A Participant's Account under the Plan shall not be liable for any debt, liability, contract, engagement, or tort of the Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment,

execution, alienation, or any other voluntary or involuntary alienation or other legal or equitable process, nor transferable by operation of law.

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

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

(d) Notwithstanding paragraph (a), the Administrator may pay from Participant's or Beneficiary's Account under the Plan the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary. Except in the case of an alternate payee within the meaning of Code Section 414(p)(8), under no circumstances may a payment under this paragraph (d) take place before a Participant has a Severance from Employment or reaches age 72, whichever is earlier.

(e) Notwithstanding paragraph (a), pursuant to Va. Code Section 51.1-124.4(A), the Administrator shall honor any process for a debt to the Participating Employer who has employed such person, and except for administrative actions pursuant to Chapter 19 (Section 63.2-1900 *et seq.*) of Title 63.2 of the Va. Code or any court process to enforce a child or child and spousal support obligation. Under no circumstances may a payment under this paragraph (e) take place before a Participant has a Severance from Employment or reaches age 72, whichever is earlier.

#### **Section 17.02. Military Service.**

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

(b) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service may elect to make Elective Deferrals upon resumption of employment with the Participating Employer up to the maximum Elective Deferrals that the Participant could have elected during that period if the Participant's employment

with the Participating Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Participant during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for the lesser of (i) five years following the resumption of employment or (ii) a period equal to three times the period of the interruption or leave. Such Elective Deferrals by the Participant may only be made during such period and while the Participant is reemployed by the Participating Employer.

(c) If a Participant timely resumes employment with the Participating Employer in accordance with USERRA, the Participating Employer shall make the Discretionary Employer Contributions, if any, that would have been made if the Participant had remained employed during the Participant's qualified military service. Discretionary Employer Contributions must be made no later than 90 days after the date of reemployment or when Discretionary Employer Contributions are normally due for the year in which the qualified military service was performed, if later.

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

(e) A Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the Participating Employer shall be treated as an Employee of the Participating Employer who is a Participant eligible to make Elective Deferrals during such service and the differential wage payment shall be treated as Compensation and Includible Compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

**Section 17.03. Limitation of Rights and Obligations.** Neither the establishment nor maintenance of the Plan, nor any amendment thereof, nor the purchase of any insurance contract, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

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

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

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

**Section 17.04. Federal and State Taxes.** It is intended that Discretionary Employer Contributions and Pre-Tax Contributions, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid to Participants or Beneficiaries, and that Roth Contributions and earnings thereunder are excludable from gross income for federal and state income tax purposes when paid to Participants or Beneficiaries to the extent that they are Qualified Distributions. However, the Administrator does not guarantee that any particular federal or state income, payroll, or other tax consequence will occur as a result of participation in this Plan.

**Section 17.05. Erroneous Payments.** If the Administrator or its Agent makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Administrator or Agent may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Agent, from the person to whom it was made or from any other appropriate party. For example, if any such incorrect payment is made directly to a Participant, the Administrator or Agent may deduct it when making any future payments directly to that Participant.

**Section 17.06. Payments to Minors or Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is determined to be legally incapable of giving valid receipt and discharge for such benefits by a court or by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to the Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**Section 17.07. Missing or Lost Participants.** In the event that the Administrator does not have current contact information for or is unable to identify a Participant or Beneficiary under the Plan, the Administrator shall make reasonable attempts to determine the address and identity of the Participant or Beneficiary entitled to benefits under the Plan. A reasonable attempt to locate a missing or lost Participant or Beneficiary shall include: (i) providing notice to the Participant at the Participant's last known address via certified mail; (ii) determining whether the Participating Employer's records or the records of another plan maintained by the Participating Employer has a more current address for the Participant; (iii) attempting to contact any named Beneficiary of the Participant; and (iv) searching for the missing Participant via free electronic search tools, such as Internet search engines, public record databases, obituaries, and social media. If such search methods are unsuccessful, based on the facts and circumstances, the Administrator may use other search methods, including using Internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases, and analogous services that may involve charges. The Administrator may charge missing Participants and Beneficiaries reasonable expenses for efforts to find them. In the event that the Administrator is unable to locate a Participant or Beneficiary entitled to benefits under the Plan after reasonable attempts, the Trustee shall continue to hold the benefits due to such person under the Plan except as otherwise provided in Section 17.08.

**Section 17.08. Stale Distribution Checks.** A distribution check that remains uncashed five years following its issuance shall be remitted to the State Treasurer in accordance

with the provisions of the Virginia Disposition of Unclaimed Property Act (Va. Code § 55.1-2500 et seq.).

**Section 17.09.**      **No Reversion.** Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, VRS or the Participating Employer, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, if Contributions are made by VRS or the Participating Employer by mistake of fact, these amounts and, if applicable, any interest earned therein, may be returned to VRS or Participating Employer, as applicable, within one year of the date that they were made.

**Section 17.10.**      **Claims of Other Persons.** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right against VRS or Participating Employer, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

**Section 17.11.**      **Counterparts.** The Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be evidenced by any one counterpart.

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

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

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_