

**OPTIONAL RETIREMENT PLAN FOR EMPLOYEES OF THE  
UNIVERSITY OF VIRGINIA**

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**OPTIONAL RETIREMENT PLAN FOR EMPLOYEES OF THE  
UNIVERSITY OF VIRGINIA**

**ARTICLE I**  
**ESTABLISHMENT AND RESTATEMENT OF PLAN**

**Section 1.01. Plan Establishment and History.**

(a) The University of Virginia ("University") is a public university under Virginia law and an educational organization described in Section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended ("Code"). The University established the Optional Retirement Plan for Employees of the University of Virginia ("Plan"), formerly named the Defined Contribution Plan for the General Faculty of the University of Virginia, effective July 1, 1989, to provide retirement benefits for eligible employees. The Plan was most recently amended and restated effective January 1, 2010.

(b) The Plan was, and is intended to remain, a defined contribution plan qualified under Code Section 401(a). The Plan was established as a money purchase pension plan. Effective April 1, 2016, the Plan shall be a profit-sharing plan within the meaning of Code Section 401(a)(27), with contributions made without regard to profits; provided, however, that Participant Account balances as of March 31, 2016, shall remain subject to any rules under the Code that apply to money purchase pension plans.

(c) The Plan is a governmental plan within the meaning of Code Section 414(d) and Section 3(32) of the Employee Retirement Income Security Act of 1974 ("ERISA"). As a governmental plan, ERISA does not apply.

(d) The University separately maintains the "Qualified Governmental Excess Benefit Arrangement for Employees of the University of Virginia," effective January 1, 2010, as amended from time to time, which is a portion of this Plan that is intended to be a qualified governmental excess benefit arrangement pursuant to Code Section 415(m).

**Section 1.02. Plan Restatement.**

(a) The Plan is now being amended and restated effective January 1, 2016.

(b) Except as otherwise specifically provided herein, the Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2016, and to transactions under the Plan on and after January 1, 2016. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2016, shall be determined in accordance with the terms and provisions of the Plan that was in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

**Section 1.03. Plan Funding.** The Plan is funded exclusively through the purchase of Funding Vehicles from the Vendor(s) identified in Appendix A attached hereto, as may be amended from time to time. The terms and conditions of the Funding Vehicles shall be considered part of, and shall be construed as having been incorporated into, this Plan. To the

extent there is any conflict between the terms of any such Funding Vehicles and the terms of the Plan, however, the terms of the Plan shall govern, except as otherwise expressly provided herein.

## **ARTICLE II**

### **RULES OF CONSTRUCTION AND DEFINITIONS**

#### **Section 2.01. Rules of 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 laws of the Commonwealth of Virginia without regard to conflict of law principles.

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

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

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

(e) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that causes the Plan to (i) constitute a qualified plan under the provisions of Code Section 401 with the earnings of the Trust exempt from income tax under Code Section 501, (ii) 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 separate accounts maintained for each Participant under a Funding Vehicle, reflecting his or her interest in such Funding Vehicle as follows:

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

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

(3) "Transfer Contribution Account" means the account maintained to reflect the Participant's interest attributable to his or her Transfer Contributions pursuant to Section 4.03.

(b) "Administrator" means the University.

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

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

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

(3) forfeitures;

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

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

Annual Additions shall not include Transfer Contributions or rollover contributions.

(d) "Applicable Form" means the appropriate form as designated and furnished by the Vendor or Administrator 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 Vendor may prescribe an electronic or telephonic form in lieu of or in addition to a written form.

(e) "Beneficiary" means the 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. A designation of an individual as a Beneficiary shall remain in effect until affirmatively revoked by the Participant on a subsequent Applicable Form. Unless otherwise provided in the applicable Funding Vehicle, if the designated Beneficiary does not survive the Participant or there is no Beneficiary designated, the Participant's Spouse shall be the Beneficiary, or if no surviving Spouse, the Participant's estate. Beneficiary also means an alternate payee within the meaning of Code Section 414(p)(8).

(f) "Board" means the Rector and Visitors of the University.

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

(h) "Commonwealth" means the Commonwealth of Virginia.

(i) "Commonwealth Hybrid Program" means the hybrid retirement program established pursuant to section 51.1-169 of the Code of Virginia.

(j) "Compensation" means base salary paid to the Participant during the Plan Year (i.e., the nine (9) month salary for those Participants with academic year assignments or the twelve (12) month salary for those Participants with twelve (12) month assignments). Compensation does not include any other form of compensation a Participant may receive during the Plan Year (even if includible in gross income) including, but not limited to, overtime, summer wages, special payments, reimbursements or other expense allowances, moving expenses, cash and non-cash fringe benefits, deferred compensation, and welfare benefits. Notwithstanding the preceding, "Compensation" shall mean:

(1) for a Participant on an Educational Leave of Absence, the Participant's Compensation at the time the Participant went on leave; and

(2) for a Disabled Participant, the Participant's Compensation at the time the Participant became disabled, subject to the terms of the University's long term disability plan, as amended from time to time.

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

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

(m) "Disabled Participant" means a Participant who is an Eligible Employee who becomes permanently and totally disabled with the meaning of Code Section 22(e)(3) and is receiving long term disability benefits under the University's long term disability plan.

(n) "Educational Leave of Absence" means a leave of absence by a Participant that the Employer determines, in its sole discretion, to have an educational purpose.

(o) "Eligible Employee" means a salaried Employee who is designated by the Employer as:

(1) Faculty;

(2) Managerial and Professional Staff;

(3) Executive and Senior Administrative Staff; or

(4) An employee of the Medical Center who was a Participant in the Plan on December 31, 1998, and who was grandfathered under this Plan.

provided, however, that an Eligible Employee shall not include: (i) a visiting faculty member, as that designation is determined by the Employer at the commencement of employment; (ii) an Employee regularly scheduled to work less than twenty (20) hours per week; (iii) a faculty member with an appointment of less than six (6) months; (iv) an Employee who is eligible to participate in the Optional Retirement Plan for Employees of the University of Virginia Medical Center; or (v) a leased employee under Code Section 414(n)(2). Notwithstanding the preceding, an Eligible Employee

(p) "Employee" means a common law employee of the Employer, and shall not include an individual who is designated in good faith as an independent contractor, as determined by the Employer in its sole discretion, regardless of whether such individual is later determined to be a common law employee for tax purposes.

(q) "Employer" means the University.

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

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

(t) "Executive and Senior Administrative Staff" means an Employee on the University staff on a Limited Term Appointment having significant administrative responsibilities and duties and exercising considerable independent discretion, and having the ability to commit the University to a long term course of action. Executive and Senior Administrative Staff include the following categories of Employees:

(1) University executive officers, including the Vice Presidents and the Athletic Director, but excluding academic administrators (whose primary responsibility is administrative but who oversee an academic or academic support unit of the University) such as the Provost, Deans, University Librarian, and VP Research;

(2) members of the President's professional staff (such as the Chief of Staff, Chief Audit Executive, and the Director, Equal Opportunity Programs); and

(3) senior administrative officers with a direct reporting line to any of the Employees named in subparagraph (1) and (2) above; academic administrators; or Presidential professional staff, for example, Associate or Assistant Vice Presidents, Associate or Assistant Deans with administrative responsibilities, Vice Provosts with administrative responsibilities, Executive Directors, Directors, or other key senior staff.

(u) "Faculty" means an Employee who:

(1) is a member of the "General Faculty of the University" as that term is described in the Faculty Handbook of the University;

(2) is a "Senior Scientist" or "Principal Scientist" as determined by the University in its sole and absolute discretion;

(3) works for Agency 209 of the University of Virginia Medical Center and was a Participant in this Plan as of December 31, 1998; or

(4) effective September 1, 1998, is a member of the faculty of the University of Virginia's College at Wise.



(v) "Former Vendor" means any vendor that was approved by the Board to receive Contributions under the Plan, but is no longer approved under the Plan to receive Contributions, until such time as the vendor no longer continues to hold Plan assets.

(w) "Funding Vehicle" means one or more qualified trusts under Code Section 501(a), custodial accounts treated as qualified trusts under Code Section 401(f), and/or annuity contracts treated as qualified trusts under Code Section 401(f), all in accordance with the qualification requirements of the Code.

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

(y) "Investment Options" mean the investment funds available under the Funding Vehicles provided by the Vendor(s) and specifically approved by the Administrator in its sole and absolute discretion, for use under this Plan in accordance with Article VIII.

(z) "Limitation Year" means the Plan Year.

(aa) "Limited Term Appointment" means a position having a defined term reviewable for successive terms, usually ranging from one (1) to three (3) years.

(bb) "Managerial and Professional Staff" means an Employee on the University staff who manages a division or subdivision of a major academic or administrative unit and/or exercises significant knowledge, discretion, and independent judgment gained through advanced education or experience. Managerial and Professional Staff includes coaches and assistant coaches on individually negotiated contracts. Managerial and Professional Staff are typically exempt employees under the provisions of the Fair Labor Standards Act.

(cc) "Mandatory Employee Contributions" mean the contributions required to be made by a Participant to the Plan in accordance with Section 4.02.

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

(ee) "Plan" means the "Optional Retirement Plan for Employees of the University of Virginia," as amended from time to time.

(ff) "Plan Compensation" means all compensation as defined in Code Section 415(c)(3). In general, Code Section 415(c)(3) defines compensation as all of an Employee's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, Plan Compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the Employer at election of the Employee and which is not includible in the gross income of the Employee by reason of Code

Section 125, 403(b), 132(f)(4), 401(k), or 457(b). Plan Compensation for a Plan Year includes compensation paid by the later of (i) two and one-half (2½) months after an Employee's Severance from Employment, or (ii) the end of the Plan Year that includes the date of the Employee's Severance from Employment, if:

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

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

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

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

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

(ii) "Section" means, when not preceded by the word Code or followed by the Code of Virginia, a section of the Plan.

(jj) "Severance from Employment" means the complete termination of the employment relationship between the Employee and the Employer and any Related Employer for any reason.

(kk) "Spouse" means the person to whom the Eligible Employee is legally married under state law.

(ll) "Transfer Contributions" mean the contributions made to the Plan pursuant to Section 4.03.

(mm) "Trust" means the "Optional Retirement Plan for Employees of the University of Virginia Trust," a custodial account treated as a qualified trust under Code Section 401(f), and/or an annuity contract treated as a qualified trust under Code Section 401(f), established under the Plan to hold Plan assets.

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

(oo) "Trustee" means the trustee or any successor trustee designated and appointed by the Employer, and includes the entity or person(s) holding the assets of a custodial account or holding an annuity contract in accordance with Code Section 401(f).

(pp) "University" means the University of Virginia.

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

(rr) "Vendor" means a service provider that has been approved by the Administrator to serve as third party administrator and/or recordkeeper for the Plan and/or to offer Investment Options to Participants under the Plan. The Vendor(s) is set forth in Appendix A hereto, as amended from time to time. The Administrator, in its sole and absolute discretion, shall select the Vendor(s) and may add or delete Vendor(s).

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

(tt) "VRS" means the defined benefit retirement plan established under section 51.1-124.1 et seq. of the Code of Virginia and administered by the Virginia Retirement System.

(uu) "Year of Participation" means a twelve (12) month period of continuous participation in the Plan that begins on the date that an Eligible Employee becomes a Participant in the Plan, and on each anniversary thereof.

### **ARTICLE III** **ELIGIBILITY AND PARTICIPATION**

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

(a) An Employee (i) who is not a participant in the VRS or, effective July 1, 2014, the Commonwealth Hybrid Program at the time he or she becomes an Eligible Employee and (ii) who is not subject to paragraph (c) below, shall make an irrevocable election within sixty (60) days of becoming an Eligible Employee to participate in either the Plan or the Commonwealth Hybrid Program. The Employee shall make this election by following the enrollment procedures prescribed by the Administrator. Effective July 1, 2014, if an Eligible Employee fails to make a timely election, he or she shall be deemed to have elected to participate in the Commonwealth Hybrid Program and shall not again be eligible to participate in the Plan. An Eligible Employee who elects to participate in the Plan shall become a Participant in the Plan on the date he or she becomes an Eligible Employee.

(b) An Employee (i) who is a participant in the VRS or the Commonwealth Hybrid Program at the time he or she becomes an Eligible Employee and (ii) who is not subject to paragraph (c) below, may make an irrevocable election within sixty (60) days of becoming an Eligible Employee to participate in the Plan. The Employee shall make this election by following the enrollment procedures prescribed by the Administrator. If an Eligible Employee fails to make a timely election, he or she shall continue to participate in either the VRS or the Commonwealth Hybrid Program, as applicable, and shall not again be eligible to participate in

the Plan. An Eligible Employee who elects to participate in the Plan shall become a Participant in the Plan on the first day of the month on or immediately following the date of receipt by the Administrator of such election.

(c) An individual who is in continuous service in the performance of teaching, administrative, or research duties with another Commonwealth institution of higher education when he or she becomes an Eligible Employee, and who was most recently covered by:

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

(2) such institution's optional retirement plan, as defined in section 51.1-126 of the Code of Virginia, shall become a Participant in the Plan on the date such Employee becomes an Eligible Employee.

(d) The Employer shall notify an Eligible Employee when he or she is eligible to participate in the Plan. To become a Participant under the Plan, an Eligible Employee must complete the Applicable Form(s), which may include enrollment and investment election forms, and return them to the Administrator or Vendor, as applicable.

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

**Section 3.03. Prohibition Against Simultaneous Participation.** A Participant in this Plan may not at the same time either (i) participate in the VRS, the Commonwealth Hybrid Program, or the Optional Retirement Plan for Employees of the University of Virginia Medical Center or (ii) receive benefits from the VRS, the Commonwealth Hybrid Program, or the Optional Retirement Plan for Employees of the University of Virginia Medical Center.

**Section 3.04. Cessation of Contributions.** Subject to the following, a Participant shall cease to be eligible for Contributions under the Plan when he or she is no longer an Eligible Employee.

(a) Any Participant in the Plan on December 31, 1998, who might not otherwise have met the definition of Eligible Employee at that time, shall continue to participate in the Plan until he or she has a Severance from Employment.

(b) A Disabled Participant shall continue to participate in the Plan until he or she ceases to receive benefits from the University's long term disability plan.

**ARTICLE IV**  
**CONTRIBUTIONS**

**Section 4.01. Employer Contributions.**

(a) The Employer shall make an Employer Contribution to the Plan on behalf of each Participant as follows:

(1) A Participant who commenced participation in the Plan before January 1, 1991, and who has had continuous participation in the Plan since January 1, 1991, shall receive an Employer Contribution for the Plan Year equal to the greater of:

(A) ten and four-tenths percent (10.4%) of his or her Compensation; or

(B) eleven and one-half percent (11.5%) of his or her Compensation, but taking into account no more than One Hundred Thousand Dollars (\$100,000) of Compensation.

(2) A Participant who commenced participation in the Plan on or after January 1, 1991, but before July 1, 2010, shall receive an Employer Contribution equal to ten and four-tenths percent (10.4%) of his or her Compensation or such other rate for optional retirement plans sponsored by institutions of higher education that may be established from time to time by the Commonwealth or provided for under section 51.1-126 of the Code of Virginia.

(3) A Participant who commenced participation in the Plan on or after July 1, 2010, but who either:

(A) immediately prior to commencing participation in the Plan had continuously been a member of a retirement plan administered by the VRS, as that term is defined in section 51.1-124.3 of the Code of Virginia, since June 30, 2010; or

(B) had entered into a written contract for employment as an Eligible Employee or in a "covered position" for retirement purposes under Title 51.1 of the Code of Virginia prior to March 15, 2010;

shall receive an Employer Contribution equal to ten and four-tenths percent (10.4%) of his or her Compensation or such other rate for optional retirement plans sponsored by institutions of higher education that may be established from time to time by the Commonwealth or provided for under section 51.1-126 of the Code of Virginia.

(4) Except as provided under subparagraph (3), a Participant who commenced participation in the Plan on or after July 1, 2010, shall receive an Employer Contribution equal to eight and nine-tenths percent (8.9%) of his or her Compensation or such other rate for optional retirement plans sponsored by institutions of higher education that may be established from time to time by the Commonwealth or provided for under section 51.1-126 of the Code of Virginia.

(b) Subject to Article V, the Employer shall continue to make Employer Contributions on behalf of a Participant who is on either an unpaid or paid Educational Leave of Absence.

(c) Subject to Article V, the University's long term disability plan shall make Employer Contributions to the Plan on behalf of a Disabled Participant, but only to the extent provided under such long term disability plan, as amended from time to time.

(d) Employer Contributions shall be paid to the Plan by the Employer within the time required by law for the Plan Year during which they are being made. Employer Contributions shall be allocated to each Participant's Employer Contribution Account as of the date made to the Plan, but no later than the last day of the Plan Year.

#### **Section 4.02. Mandatory Employee Contributions.**

(a) Each Participant to whom Section 4.01(a)(4) applies is required as a condition of employment to make a Mandatory Employee Contribution to the Plan each Plan Year equal to five percent (5%) of his or her Compensation or such other rate for optional retirement plans sponsored by institutions of higher education that may be established from time to time by the Commonwealth or provided for under section 51.1-126 of the Code of Virginia.

(b) Mandatory Employee Contributions shall be picked up by the Employer and treated as paid by the Employer pursuant to Code Section 414(h)(2); provided, however, that Mandatory Employee Contributions shall be treated as "member contributions" paid by the Participant for purposes of section 51.1-126.F.1 of the Code of Virginia. The Employer shall remit the picked up Mandatory Employee Contributions directly to the Vendor, instead of paying such amounts to the Participant. A Participant may not elect to receive such Mandatory Employee Contributions directly instead of having them paid by the Employer to the Plan.

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

(d) Subject to Article V, a Participant to whom Section 4.01(a)(4) applies shall continue to make Mandatory Employee Contributions while on a paid Educational Leave of Absence. A Participant to whom Section 4.01(a)(4) applies shall not make Mandatory Employee Contributions while on an unpaid Educational Leave of Absence.

#### **Section 4.03. Transfer Contributions.**

(a) The Plan shall accept as a Transfer Contribution a transfer of accrued benefits from the VRS or the Commonwealth Hybrid Program on behalf of a Participant. The Plan shall not accept a transfer from any other plan.

(b) A Transfer Contribution shall be allocated to the Transfer Contribution Account of the Participant as of the date of the contribution. Before a Transfer Contribution is made, the Participant shall designate on the Applicable Form the Investment Options in which the Vendor should invest the Participant's Transfer Contribution.

**Section 4.04. Rollover Contributions.** The Plan shall not accept rollover contributions of any kind.

**Section 4.05. 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 Employer during the leave. No Contributions shall be made during an unpaid leave of absence.

**Section 4.06. Expenses of Plan.** All reasonable expenses of administering the Plan shall be charged against and paid from the Participant's Accounts, subject to the terms of the applicable Funding Vehicles, unless paid by the Employer. The Administrator shall have the right to allocate expenses associated with maintaining the Accounts of terminated Employees to such Accounts, even if no expenses are allocated to the Accounts of active Employees, in accordance with rules promulgated by the Internal Revenue Service.

## **ARTICLE V** **LIMITATIONS ON CONTRIBUTIONS**

### **Section 5.01. Code Section 415(c) Limits.**

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

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

(1) Fifty Three Thousand Dollars (\$53,000) for 2016, increased by the Cost of Living Adjustment thereafter; or

(2) One Hundred Percent (100%) of the Participant's Plan Compensation for the Plan Year.

**Section 5.02. Excess Annual Additions.** If a Participant has Excess Annual Additions for a Plan Year, an adjustment to comply with this Article shall be made as soon as administratively possible, but no later than the time permitted under Internal Revenue Service guidance: (i) first, to any plan of a Related Employer (other than the Employer) required to be aggregated with this Plan; (ii) second, to any other plan of the Employer that is required to be aggregated with this Plan except VRS or the Commonwealth Hybrid Program; and (iii) third, to this Plan.

## **ARTICLE VI** **NONDISCRIMINATION**

### **Section 6.01. Compensation Limitation.**

(a) For Plan Years beginning on or after January 1, 1996, Compensation and Plan Compensation during any Plan Year shall not exceed the Code Section 401(a)(17) limit (as increased by the Cost of Living Adjustment for the year). Notwithstanding anything in the Plan

to the contrary, Compensation and Plan Compensation during a Plan Year shall be limited as follows:

(1) Effective for Plan Years beginning before January 1, 1996, the limitation on Compensation and Plan Compensation under Code Section 401(a)(17) shall be deemed to be satisfied in accordance with the applicable rules and regulations prescribed by the Secretary of Treasury for governmental plans.

(2) For Plan Years beginning on or after January 1, 1996, if and to the extent, required by Code Section 401(a)(17) for a governmental plan, Compensation and Plan Compensation taken into account under the Plan for any Plan Year for a Participant who was not a Participant on or before December 31, 1995, shall not exceed (i) for Plan Years beginning after 1995 and before 2002, One Hundred Fifty Thousand Dollars (\$150,000) (as increased by the Cost of Living Adjustment for the year) and (ii) for Plan Years beginning after December 31, 2001, Two Hundred Thousand Dollars (\$200,000) (as increased by the Cost of Living Adjustment for the year).

(3) For Plan Years beginning on or after January 1, 1996, as provided in the transitional rule of P.L. 103-66, § 13212(d)(3), Compensation and Plan Compensation taken into account under the Plan for any Plan Year for an individual who became a Participant on or before December 31, 1995 (an eligible participant within the meaning of P.L. 103-66, § 13212(d)(3)(B)) shall be limited to the greater of (i) the maximum amount of Compensation or Plan Compensation permitted to be taken into account under the Plan as in effect on July 1, 1993, or (ii), (A) for Plan Years beginning after 1995 and before 2002, One Hundred Fifty Thousand Dollars (\$150,000) (as increased by the Cost of Living Adjustment for the year), or, (B) for Plan Years beginning after December 31, 2001, Two Hundred Thousand Dollars (\$200,000) (as increased by the Cost of Living Adjustment for the year). If the terms of the Plan as in effect on July 1, 1993, did not impose a limitation on the maximum amount of Compensation that could be taken into account under the Plan, there shall be no limitation on the maximum amount of Compensation that Participants can make as described in this subparagraph.

## **ARTICLE VII** **ACCOUNTING**

**Section 7.01. Participant Accounts.** The Vendor(s) 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 Funding Vehicle. The maintenance of individual Accounts is for accounting purposes only, and a segregation of Plan assets to each Account shall not be required.

**Section 7.02. Participant Statements.** The Vendor(s) 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 7.03. 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 Vendor. The valuation



date shall be the last day of the Plan Year and each other date designated by the Administrator or Vendor in a uniform and nondiscriminatory manner. All transactions and Account records shall be based on fair market value.

## **ARTICLE VIII** **INVESTMENT OF CONTRIBUTIONS**

### **Section 8.01. Vendors and Investment Options.**

(a) All Contributions under the Plan shall be transferred to the Vendor(s) to be held, managed, invested, and distributed in accordance with the provisions of the Plan and the Funding Vehicles as applicable. All benefits under the Plan shall be distributed solely from the Funding Vehicles, and the Employer shall have no liability for any such benefits other than the obligation to make Contributions as provided in the Plan.

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

(c) A Participant shall have the right to direct the investment of his or her Accounts by filing the Applicable Form with the Vendor(s). A Participant may change his or her investment election as often as determined by the Vendor(s). A Participant may elect to transfer all or any portion of his or her Accounts invested in any one Investment Option to another Investment Option, regardless of whether offered by the same or a different Vendor, subject to the limitations of the Funding Vehicle(s), by filing a request on the Applicable Form with the Vendor(s) or by such other means that may be provided for by the Vendor(s). A Participant may also elect to transfer all or any portion of his or her Accounts invested in an Investment Option with a Former Vendor to an Investment Option with a Vendor, subject to the terms of the Funding Vehicles.

(d) An investment change that includes an investment with a Former Vendor or other vendor that is not eligible to receive Contributions under the Plan is not permitted.

**Section 8.02. Default Investments.** If a Participant does not have a valid and complete investment direction on file with the Vendor on the Applicable Form, Contributions will be invested in a default fund selected by the Administrator in its sole and absolute discretion, until the Participant makes an affirmative election regarding the investment of his or her Account.

## **ARTICLE IX** **TRUST**

**Section 9.01. 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 Funding Vehicles, 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 the Employer shall have no liability for any such benefits other than the obligation to make Contributions as provided in the Plan.

**Section 9.02. Trust Status.** The Trust Fund shall be held in Trust for the exclusive benefit of Participants and Beneficiaries under the Plan in accordance with Code Section 501(a). No part of the Trust Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries, and for defraying the reasonable expenses of the Plan and Trust. The Trust is exempt from tax pursuant to Code Sections 401(a) and 501(a).

## **ARTICLE X** **DISTRIBUTIONS**

### **Section 10.01. Commencement of Distributions.**

(a) Effective May 20, 2013, subject to the terms of the Funding Vehicles, a Participant or, if applicable, a Beneficiary, is eligible to receive a distribution from the Plan upon the Participant's Severance from Employment.

(b) The Participant or Beneficiary may submit a request for a distribution to the Vendor on the Applicable Form. The Employer shall certify that the Participant has had a Severance from Employment.

**Section 10.02. Form of Distribution.** A Participant who is eligible to receive a distribution under Section 10.01 may elect to receive a distribution under any payment option available under the Funding Vehicle. Subject to the terms of the Funding Vehicles, these include, but are not necessarily limited to, a single lump sum, annuity payments, and installment payments. All forms of payment shall be subject to the limitations of the applicable Funding Vehicles.

**Section 10.03. Reemployment.** If a Participant who is a former Employee subsequently becomes an 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 Employee shall not receive any benefits under the Plan until the Employee is entitled to a distribution under Section 10.01.

**Section 10.04. Death Benefits.** If a Participant dies before distribution of his or her entire Account, his or her Accounts shall be payable to his or her Beneficiary(ies) under the distribution options available under the Funding Vehicle(s), subject to Code Section 401(a)(9).

**Section 10.05. Required Distribution Rules.** The provisions of this Section 10.05 take precedence over any inconsistent provisions of the Plan or of any Funding Vehicle. 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 shall comply with the following rules.

(a) 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 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 Beneficiary.

(b) A Participant's Accounts shall be distributed to the Participant beginning no later than April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70½) or, if later, April 1 of the calendar year following the calendar year that the Participant has a Severance from Employment.

(c) Upon the death of the Participant, the following distribution provisions shall take effect:

(1) If the Participant dies after distribution of his or her Account(s) begins, any remaining portion of the Account(s) shall continue to be distributed at least as rapidly as under the method of distribution in effect at the time of the Participant's death.

(2) If the Participant dies before distributions of his or her Account(s) begins and the Participant has no designated Beneficiary(ies), the Participant's Account(s) under the Plan shall be distributed by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death.

(3) If the Participant dies before distributions of his or her Account(s) begins and any portion of his or her Account(s) are payable to a designated Beneficiary, the designated Beneficiary may elect for the Participant's Account(s) to be distributed (i) by December 31 of the calendar year containing the fifth (5<sup>th</sup>) anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. If the designated Beneficiary is the surviving Spouse, the Beneficiary may elect to delay payment under item (ii) until December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70½). If the designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (i).

(4) Any distribution required under the incidental death benefit requirements of Code Section 401(a) shall be treated as distributions required under this Section 10.05(c).

(d) Each Vendor shall be separately and solely responsible for complying with the provisions of this Section 10.05 with respect to its Funding Vehicles under the Plan. The Vendor(s) shall calculate the amounts required to be distributed to a Participant under this Section and notify such Participant of such distributions at least sixty (60) days prior to the date distributions must begin.

(e) For 2009, unless otherwise provided in the Funding Vehicles, the minimum required distribution requirements set forth in Section 10.05 shall be satisfied as provided in either subparagraph (1) or (2) below, as determined by the Vendor responsible for the Participant's required minimum distribution and in accordance with the Funding Vehicles:

(1) A Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least ten (10) years ("extended 2009 RMDs") will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such 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.

(2) A Participant or Beneficiary who would have been required to receive 2009 RMDs, and who would have satisfied that requirement by receiving distributions that are (i) equal to the 2009 RMDs or (ii) Extended 2009 RMDs, will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such 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.

Further, subject to the Funding Vehicles, the 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions in 2009.

#### **Section 10.06. Additional Tax on Early Withdrawals.**

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

(b) The penalty described in paragraph (a) generally does not apply to any distribution (i) made on or after the date on which the Participant attains age fifty-nine and one half (59½), (ii) made on or after the death of the Participant, (iii) attributable to the Participant

becoming disabled within the meaning of Code Section 72(m)(7), (iv) which is part of a series of substantially equal periodic payments made (not less frequently than annually) for the life or life expectancy of the Participant or the joint lives (or joint life expectancies) of such Participant and his or her designated Beneficiary, (v) made to a Participant after Severance from Employment following the attainment of age fifty-five (55), (vi) which is a qualified reservist distribution within the meaning of Code Section 72(t)(2)(G)(iii), or (vii) any other circumstance permitted by the Code or the Internal Revenue Service.

## **ARTICLE XI**

### **LOANS**

Loans are not permitted from the Plan.

## **ARTICLE XII**

### **VESTING**

**Section 12.01. Mandatory Employee Contributions.** A Participant shall be one hundred percent (100%) Vested in his or her Mandatory Employee Contribution Account at all times.

**Section 12.02. Transfer Contributions.** A Participant shall be one hundred percent (100%) Vested in his or her Transfer Contribution Account at all times.

### **Section 12.03. Employer Contributions.**

(a) A Participant hired before July 1, 2014, shall be one hundred percent (100%) Vested in his or her Employer Contribution Account at all times.

(b) A Participant hired on or after July 1, 2014, shall be one hundred percent (100%) Vested in his or her Employer Contribution Account upon the earlier of (i) completion of two (2) continuous Years of Participation, (ii) the Participant's death, or (iii) involuntary Severance from Employment for a cause other than job performance or misconduct, as determined by the University in its sole discretion.

(c) Notwithstanding Section 12.02(b), a Participant hired on or after July 1, 2014, shall be one hundred percent (100%) Vested in his or her Employer Contribution Account if the Participant (i) transferred to the Employer from another state agency without a break in service and (ii) was enrolled in an optional retirement plan, as defined in section 51.1-126 of the Code of Virginia, prior to July 1, 2003, and maintained continuous enrollment in the optional retirement plan thereafter.

### **Section 12.04. Forfeitures.**

(a) Any portion of a Participant's Employer Contribution Account in which he or she is not Vested upon his or her Severance from Employment shall be forfeited.

(b) Amounts forfeited during a Plan Year shall be held unallocated until they are used as follows:

(1) Forfeited amounts shall first be used to pay for Plan expenses and then used to reduce the Employer Contributions under Section 4.01 for the Plan Year in which the forfeiture occurs.

(2) Any remaining forfeited amounts shall be used to reduce the Employer Contributions under Section 4.01 in the following Plan Year.

### **ARTICLE XIII** **ROLLOVERS FROM THIS PLAN**

**Section 13.01. 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, the Participant's former Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p), and, effective January 1, 2008, 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; and
- (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.

Effective January 1, 2008, in the case of a distribution to a Participant's non-Spouse Beneficiary, an Eligible Retirement Plan shall mean 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 this Plan, excluding the following:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made over 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 ten (10) years or more;

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

(3) effective January 1, 2009, 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 13.02. 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 Vendor. 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 13.03. 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 twenty percent (20%) federal income tax withholding under Code Section 3405(e). 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).

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

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

**Section 13.04. Explanation of Plan Distribution and Withholding Requirements.** Not fewer than thirty (30) days nor more than one hundred eighty (180) days before an Eligible Rollover Distribution, the Vendor shall provide each Distributee a written explanation as required under Code Section 402(f), which explains the rules:

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

(b) 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;

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

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

Notwithstanding the above, a distribution may begin fewer than thirty (30) days after the notice discussed in the preceding sentence is given, provided that the Vendor clearly informs the Participant that he or she has a right to a period of at least thirty (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 XIV** **ADMINISTRATION OF THE PLAN**

**Section 14.01. Authority of the Administrator.** The Administrator is responsible for enrolling Participants in the Plan, sending Contributions for each Participant to the selected Vendor(s), and 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 General Counsel of the University is authorized to accept service of legal process for the Plan.

**Section 14.02. 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 14.03. Delegation by Administrator.** The Administrator may, through action of the Board, 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 14.04. Action of the Employer.** Any act authorized, permitted, or required to be taken by the Employer under the Plan, which has not been delegated in accordance with Section 14.03, may be taken by a majority of the members of the Board, either by vote at a meeting, or in writing without a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Employer under the Plan will be in writing and signed by either (a) a majority of the members of the Board, or by any member or members as may be designated by an instrument in writing signed by all members, as having authority to execute the documents on its behalf, or (b) a person who becomes authorized to act for the Employer in accordance with the provisions of Section 14.03. Any action taken by the Employer that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Employer, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Employer.

**Section 14.05. Employment of Consultants.** The Administrator may employ one (1) or more persons to render advice with regard to its responsibilities under the Plan.

## **ARTICLE XV** **CLAIMS PROCEDURES**

**Section 15.01. Claim for Benefits.** If a Participant makes a written claim for benefits under the Plan to the Administrator or Vendor, as applicable, and the written request is denied in whole or part, the Administrator or Vendor, as applicable, shall within sixty (60) days provide a written denial to the Participant. It shall include the specific reasons for denial, the provisions of the Plan and/or Funding Vehicles on which the denial is based, and how to apply for a review of the denied claim. Where appropriate, it shall also include a description of any material which is needed to complete or perfect a claim and why such material is necessary.

**Section 15.02. Review of Denial.** Within sixty (60) days after the Participant receives notification of the denial, a Participant may request in writing a review of a claim denied by the Administrator or Vendor, as applicable, and review pertinent documents and submit issues and comments in writing to the Administrator or Vendor, as applicable. The Participant shall receive a written decision upon such request for review of a denied claim within sixty (60) days

following receipt of the request. The decision shall set forth the specific reasons and specific Plan provisions on which the Administrator based its decision.

## **ARTICLE XVI** **AMENDMENT AND TERMINATION**

### **Section 16.01. Amendment and Termination.**

(a) While it is expected that the Plan shall continue indefinitely, the University reserves the right to amend, freeze, or terminate the Plan, or to discontinue any further Contributions to the Plan at any time through affirmative action of the Board. Upon termination of the Plan or complete discontinuance of Employer Contributions to the Plan, the Accounts of all Participants shall become fully Vested to the extent then funded.

(b) It is the intent of the University that the Plan shall be and remain qualified for tax purposes under the Code. Effective November 11, 2011, the Executive Vice President and Chief Operating Officer of the University, with prior notification to the Rector and Vice Rector, may make any modifications, alterations, or amendments to the Plan necessary to obtain and retain approval of the Secretary of the Treasury as may be necessary to establish and maintain the status of the Plan as qualified under the provisions of the Code, as now in effect or hereafter enacted, and the regulations issues thereunder. Any modification, alteration, or amendment of the Plan, made in accordance with this Section, may be made retroactively, if necessary or appropriate. Any such amendment shall be effective as of the date set forth in such amendment, and the Participants, Beneficiaries, and all others having any interest in the Plan shall be bound thereby.

**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 University, through affirmative action of the Board, shall have the right to completely terminate this Plan, subject to any statutory requirements, at any time and in its sole discretion. In such a case, the University shall arrange for suitable distribution of Plan assets, including the possibility of transfer to another 401(a) plan or plans. The Trustee shall not be required to pay out any asset of the Trust Fund to Participants and Beneficiaries or a successor plan upon termination of the Trust until the Trustee has received written confirmation from the University (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 voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.

(b) Paragraph (a) does not apply to the extent a Participant or Beneficiary is indebted to the Plan, for any reason, under any provision of the Plan. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such proportion of the amount distributed as shall equal such indebtedness, shall be paid by the Trustees to the Trustees or the Administrator, at the direction of the Administrator, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given written notice by the Administrator that such indebtedness is to be so paid in whole or in part from his or her Accounts. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against his or her Accounts, he or she shall be entitled to a review of the validity of the claim in accordance with procedures provided in Article XV.

(c) 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 or the Vendor 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.

(d) 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).

**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) If a Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service under Code Section 414(u), timely

resumes employment with the Employer in accordance with USERRA as an Eligible Employee, the Participant may elect to make the Mandatory Employee Contributions upon resumption of employment with the Employer that would have been required (at the same level of Compensation) without the interruption of leave. Except to the extent provided under Code Section 414(u), this right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave). Such Mandatory Employee Contributions may only be made during such period and while the Participant is reemployed by the Employer. Such Mandatory Employee Contributions shall be picked up by the Employer and treated as paid by the Employer pursuant to Code Section 414(h)(2).

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

(d) Effective January 1, 2007, 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) Effective January 1, 2009, differential wage payments within the meaning of Code Section 414(u)(12)(D) shall be treated as Plan Compensation under the Plan.

**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 a right or claim against the Trust, Administrator, or Employer, 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 the Employer and any Participant or other person; or

(c) as an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the 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 Contributions under this Plan, plus any earnings thereunder, are excludable from gross income for federal and state

income tax purposes until paid to Participants or Beneficiaries. However, the Administrator does not guarantee that any particular federal or state income, payroll or other tax consequence will occur as a result of participation in this Plan.

**Section 17.05. Erroneous Payments.** If the Administrator or Vendor makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Vendor, 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 Vendor may deduct it when making any future payments directly to that Participant.

**Section 17.06. Liability and Indemnification.** The Administrator shall incur no liability for any action taken or not taken in good faith reliance on advice of counsel, who may be counsel for the Employer or taken or not taken in good faith reliance on a determination as to a matter of fact which has been represented or certified by a person reasonably believed to have knowledge of the fact so represented or certified, or taken or not taken in good faith reliance on a recommendation or opinion expressed by a person reasonably believed to be qualified or expert as to any matter where it is reasonable or customary to seek or rely on such recommendations or opinions. Nor shall any employee of the Administrator be liable for the wrongful or negligent conduct of any other or any person having fiduciary responsibilities with respect to the Plan unless the employee (i) knowingly participates in or undertakes to conceal an act or omission of such other person knowing the act or omission is a breach of fiduciary duty, (ii) by failing to act solely in the interests of Participants and Beneficiaries or to exercise the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would exercise, has enabled the other fiduciary to commit a breach, or (iii) has knowledge of a breach by the other fiduciary and does not make reasonable efforts under the circumstances to remedy it. The Employer shall indemnify any employee and hold him or her harmless from loss, liability, and expense in respect of the Plan for actions taken within the scope of his or her duties, including the legal cost of defending claims and amounts paid in satisfaction or settlement thereof provided only that no indemnification is intended that would be void as against public policy or the laws of the Commonwealth.

**Section 17.07. No Reversion.** Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of, directly or indirectly, the Employer, but shall be held for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. However, if Contributions are made by the Employer by mistake of fact, these amounts and, if applicable, any interest earned therein, may be returned to the Employer within one (1) year of the date that they were made.

**Section 17.08. Merger; Transfer of Assets.**

(a) If the Employer merges or consolidates with or into another entity, or if substantially all the assets of the Employer are transferred to another entity, the Plan shall terminate on the effective date of the merger, consolidation, or transfer. However, if the surviving entity resulting from the merger or consolidation, or the entity to which the assets have been transferred, adopts this Plan, the Plan shall continue and the successor entity shall succeed

to all rights, powers, and duties of the Employer under the Plan, and the employment of any Employee who is continued in the successor entity's employ shall not be deemed to have been terminated for any purpose under the Plan.

(b) This Plan shall not be merged or consolidated with any other employee benefit plan, nor shall there be any transfer of assets or liabilities from this Plan to any other plan, unless, immediately after the merger, consolidation, or transfer, each Participant's benefits, if the other plan were then to terminate, are at least equal to the benefits to which the Participant would have been entitled had this Plan been terminated immediately before the merger, consolidation, or transfer.

**Section 17.09. Finality of Determination.** All determinations with respect to crediting of service under the Plan are made on the basis of the records of the Employer, and all determinations made are final and conclusive upon Employees, former Employees, Eligible Employees, former Eligible Employees, and all other persons claiming a benefit under the Plan.

**Section 17.10. 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.

UNIVERSITY OF VIRGINIA

By: 

Printed Name: PATRICK D. HOGAN

Title: Executive VP + COO

Date: 1-21-16

## APPENDIX A

### OPTIONAL RETIREMENT PLAN FOR EMPLOYEES OF THE UNIVERSITY OF VIRGINIA

#### APPROVED VENDORS

The current selection of Vendor(s) is not intended to limit future additions or deletions of Vendor(s). The Administrator from time to time may add or delete Vendor(s) which shall be effective on the date adopted by the Administrator and shall be reflected in a revised Appendix A.

#### A. Approved Vendors

As of January 1, 2016, the Vendors under the Plan are:

- (1) Fidelity
- (2) Teachers Insurance and Annuity Association – College Retirement Equities Fund ("TIAA-CREF")

#### B. Former Vendors

As of January 1, 2016, there are no Former Vendors under the Plan.

UNIVERSITY OF VIRGINIA

By: 

Printed Name: Patrick D. Hogan

Title: Executive VP + COO

Date: 1-21-16

**FIRST AMENDMENT  
TO THE  
OPTIONAL RETIREMENT PLAN FOR EMPLOYEES OF  
THE UNIVERSITY OF VIRGINIA**

(As Amended and Restated January 1, 2016)

**W I T N E S S E T H**

**WHEREAS,** The Optional Retirement Plan for Employees of the University of Virginia (the "Plan") was established effective July 1, 1989 by the University of Virginia (the "University");

**WHEREAS,** the Plan was amended and restated effective January 1, 2016;

**WHEREAS,** the University wishes to amend the Plan to extend eligibility to a participant who is involuntarily reclassified as or transferred to an otherwise ineligible position; and

**WHEREAS,** Section 16.01 permits the University to amend the Plan at any time;

**NOW, THEREFORE,** in accordance with the foregoing, the Plan is hereby amended as follows effective January 1, 2018:

1. Subsection 2.02(o) is hereby amended to read as follows:

"Eligible Employee" means a salaried Employee who is designated by the Employer as:

- (1) Faculty;
- (2) Managerial and Professional Staff;
- (3) Executive and Senior Administrative Staff;
- (4) A former Faculty Employee, Managerial and Professional Staff Employee, or Executive and Senior Administrative Staff employee who has been involuntarily:  
(i) reclassified as an Operational and Administrative Staff Employee or (ii) transferred to a position classified as an Operational and Administrative Staff Employee position; or
- (5) An employee of the Medical Center who was a Participant in the Plan on December 31, 1998, and who was grandfathered under this Plan;



provided, however, that an Eligible Employee shall not include: (i) a visiting faculty member, as that designation is determined by the Employer at the Commencement of employment; (ii) an Employee regularly scheduled to work fewer than twenty (20) hours per week; (iii) a faculty member with an appointment of less than six (6) months in duration; (iv) an Employee who is eligible to participate in the Optional Retirement Plan for Employees of the University of Virginia Medical Center; or (v) a leased employee under Code Section 414(11)(2). Notwithstanding the preceding, an Eligible Employee shall not include any individual (i) designated by the University as an independent contractor and not as an employee at the time of any determination, (ii) being paid by or through an employee leasing company or other third party agency, (iii) designated by the University as a freelance worker and not as an employee at the time of any determination, (iv) classified by the University as a seasonal, occasional, limited duration, or temporary employee, during the period the individual is so paid or designated, or (v) designated by the University as a leased employee, during the period the individual is so paid or designated. Any such individual shall not be an Employee even if he or she is later retroactively reclassified as a common-law employee of the University during all or any part of such period pursuant to applicable law or otherwise.

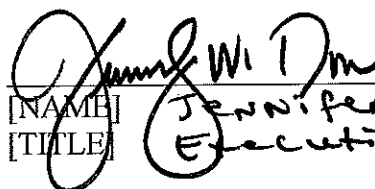
2. The following Subsection 2.02(bb) is hereby added and all remaining subsections are renumbered accordingly:

"Operational and Administrative Staff" means an Employee on the University Staff who performs office, laboratory, student and library support; building construction and maintenance; equipment services; public safety and other operational responsibilities. Operational and Administrative Staff are typically non-exempt employees under the provisions of the Fair Labor Standards Act, and therefore are subject to the Fair Labor Standards Act provisions governing the payment of overtime.

**IN WITNESS WHEREOF**, the undersigned being an authorized officer of the University has caused this Amendment to be executed on behalf of the University this \_\_\_\_ day of December, 2018.

**UNIVERSITY OF VIRGINIA**

By:

  
[NAME] JENNIFER W. DAVIS  
[TITLE] Executive VP + COO

**SECOND AMENDMENT  
TO THE  
OPTIONAL RETIREMENT PLAN FOR EMPLOYEES OF  
THE UNIVERSITY OF VIRGINIA**

(As Amended and Restated January 1, 2016)

**W I T N E S S E T H**

**WHEREAS**, the Optional Retirement Plan for Employees of the University of Virginia (the "Plan") was established effective July 1, 1989 by the University of Virginia (the "University"), and most recently amended and restated effective January 1, 2016;

**WHEREAS**, the University wishes to amend the Plan to allow in-service distributions upon attainment of age 59 ½, and to amend the Plan in accordance with provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the "SECURE Act") and the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"); and

**WHEREAS**, Section 16.01 permits the University to amend the Plan at any time;

**NOW, THEREFORE**, in accordance with the foregoing, the Plan is hereby amended effective January 1, 2020, unless otherwise noted below:

1. A new Section 10.01(c) is hereby added to the Plan to read as follows:

(c) Notwithstanding the foregoing and subject to the terms of the Funding Vehicles, effective January 1, 2021, a Participant may request an in-service distribution of the Vested portion of his or her Accounts upon attainment of age 59 ½. The Participant may submit a request for distribution to the Vendor on the Applicable Form.

2. Section 10.05(b) is hereby amended to read as follows:

(b) A Participant's Accounts shall be distributed to the Participant beginning no later than April 1 of the calendar year following the calendar year in which the Participant attains age seventy two (72) or, if later, April 1 of the calendar year following the calendar year that the Participant has a Severance from Employment. Notwithstanding the foregoing, a Participant who attained age seventy and one-half (70½) on or prior to December 31, 2019, shall begin distributions of his or her Accounts no later than April 1 of the calendar year following the calendar year in which the Participant attained age seventy and one-half (70½) or, if later April 1 of the calendar year following the calendar year that the Participant has a Severance from Employment.

3. Section 10.05(c)(3) is hereby amended to read as follows:

(3) If the Participant dies before distributions of his or her Account(s) begins and any portion of his or her Account(s) are payable to a designated Beneficiary, the designated Beneficiary may elect for the Participant Account(s) to be distributed (i) by December 31 of the calendar year containing the fifth (5th) anniversary of the Participant's death, or (ii) beginning no later than December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the designated Beneficiary or over a period not exceeding the life expectancy of the designated Beneficiary. Notwithstanding the

foregoing, if the Participant dies on or after January 1, 2020, and the designated Beneficiary is not an Eligible Designated Beneficiary, the Participant's remaining Account balance will be distributed within 10 years after the death of the Participant. If the designated Beneficiary is the surviving Spouse, the Beneficiary may elect to delay payment under item (ii) until December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70½) (or age seventy two (72) if the Participant would not have attained age seventy and one-half (70½) prior to January 1, 2020). If the designated Beneficiary does not elect a method of distribution as provided above, the Participant's Account(s) shall be distributed in accordance with item (i).


For purposes of this subsection (3), an "Eligible Designated Beneficiary" means a designated Beneficiary who is: (i) the surviving Spouse of the Participant; (ii) the Participant's minor child; (iii) a disabled individual within the meaning of Code Section 72(m)(7); (iv) a chronically ill individual as defined in Code Section 401(a)(9)(E)(ii)(IV); and (v) any other individual who is not more than ten years younger than the Participant. Notwithstanding the foregoing, an Eligible Designated Beneficiary under (ii) above shall cease to be an Eligible Designated Beneficiary as of the date such individual reaches the age of majority and the remaining portion of such individual's interest shall be distributed as if such individual is no longer an Eligible Designated Beneficiary.

4. A new Section 10.05(f) is hereby added to the Plan to read as follows:

(f) Unless otherwise provided in the Funding Vehicles, 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 otherwise be required to satisfy Code Section 401(a)(9) by receiving distributions that are (1) equal to 2020 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2020 RMDs) 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 participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2020 RMDs"), will be permitted to request a suspension of those distributions. Any 2020 RMDs and Extended 2020 RMDs paid to a Participant in 2020 or 2021 will be eligible for rollover in accordance with the Plan's administrative procedures and pursuant to Internal Revenue Service Notice 2020-51 and any additional guidance.

**IN WITNESS WHEREOF**, the undersigned being an authorized officer of the University has caused this SECOND AMENDMENT OPTIONAL RETIREMENT PLAN FOR EMPLOYEES OF THE UNIVERSITY OF VIRGINIA to be executed on behalf of the University.

**UNIVERSITY OF VIRGINIA**

By:   
Name: Jennifer W. Davis  
Title: Executive Vice President & COO  
Date: 11/24/2020