

COMPOSITE COPY

CASH MATCH PLAN
FOR EMPLOYEES OF

VIRGINIA COMMONWEALTH UNIVERSITY

(Originally Effective April 1, 2000)

Including:

1. First Amendment dated January 18, 2001
2. Second Amendment dated April 16, 2002
3. Third Amendment dated December 17, 2002

TABLE OF CONTENTS

Page

ARTICLE I **Definition of Terms**

1.1	"Administrator"	1
1.2	"Accrued Benefit"	1
1.3	"Agent"	2
1.4	"Alternate Payee"	2
1.5	"Approved Domestic Relations Order"	2
1.6	"Beneficiary"	2
1.7	"Code"	2
1.8	"Compensation Limit"	2
1.9	"Contract"	3
1.10	"Deferred Compensation Contribution"	3
1.11	"Effective Date"	3
1.12	"Employee"	3
1.13	"Eligible Employee"	3
1.14	"Employer"	3
1.15	"Enabling Statute"	3
1.16	"Fund"	3
1.17	"Funding Agent"	4
1.18	"Governing Body"	4
1.19	"Insurer"	4
1.20	"Participant"	4
1.21	"Plan"	4
1.22	"Plan Year"	4
1.23	"Policy"	4
1.24	"Trustee"	4
1.25	"Valuation Date"	4

ARTICLE II **Eligibility and Participation**

2.1	Eligibility	4
2.2	Length of Participation	5

ARTICLE III **Contributions**

3.1	Amount and Timing of Employer Contributions	5
3.2	No Duty to Enforce Contribution	5

ARTICLE IV
Participant Accounts and Adjustments

4.1	Accounts and Vesting	6
4.2	Allocation of Contributions	6
4.3	415 Limitations on Annual Additions	6
4.4	Additional Limitations Where Employer Maintains More Than One Plan	8
4.5	Reallocating Excess Contributions	8
4.6	Special Rules for Reemployed Veterans	9

ARTICLE V
Accounts and Investments

5.1	Investment Direction.....	10
5.2	Authority to Act.....	10
5.3	Investment Direction Must be in Writing	11
5.4	Earnings or Loss to Accrued Benefit.....	11
5.5	Failure to Give Investment Direction	11
5.6	Investment Direction During a Domestic Relations Matter	11
5.7	Expenses	12
5.8	Relief from Fiduciary Responsibility	12
5.9	Statement of Accrued Benefit.....	12
5.10	Equitable Adjustment in Case of Error or Omission	12

ARTICLE VI
Payment of Benefits

6.1	Time of Payment	12
6.2	Form of Payment When Participant Is the Initial Recipient	12
6.3	Form of Payment When Beneficiary Is the Initial Recipient	13
6.4	Plan to Plan Direct Rollover as a Distribution Option.....	13
6.5	Benefit Determination and Payment Procedure	14
6.6	Payments to Minors and Incompetents	15
6.7	Distribution of Benefit When Distributee Cannot Be Located	15
6.8	Minimum Distribution	16

ARTICLE VII
Beneficiary Designation

7.1	Beneficiary Designation	21
-----	-------------------------------	----

ARTICLE VIII
Withdrawals and Loans

8.1	Not Available	22
-----	---------------------	----

ARTICLE IX
Trust Fund

9.1 The Trust Fund.....22

ARTICLE X
Administrator

10.1 Administrator23
10.2 Responsibilities of Administrator23
10.3 Information from Employer23
10.4 Administrator May Delegate or Contract23
10.5 Plan Services23

ARTICLE XI
Amendment and Termination of Plan

11.1 Termination of the Plan23
11.2 Amendment of the Plan24

ARTICLE XII
Miscellaneous

12.1 Non-assignability24
12.2 Binding Effect24
12.3 Construction25
12.4 Gender and Number25
12.5 Governing Law25
12.6 No Rights Created by Allocation25
12.7 Service of Legal Process25
12.8 Severability25
12.9 Signatures and Broad Acceptance of Writings25
12.10 Statute of Limitations26
12.11 Conclusiveness of Employer Records27
12.12 Right to Require Information and Reliance Thereon27
12.13 Titles and Captions27

WITNESSETH:

WHEREAS, pursuant to the Section 51.1-600 et seq. of the Code of Virginia (1950), as amended, this Cash Match Plan For Employees of Virginia Commonwealth University (VCU) is implemented by Virginia Commonwealth University (VCU) (the "Plan").

The Governing Body of the Employer intends to maintain the Plan as a qualified defined contribution plan within the meaning of Internal Revenue Code Section 401(a) as applicable to governmental plans as defined in Section 414(d) of the Code. The purpose of the Plan is to provide a matching contribution pursuant to the terms of the Plan as incentive for eligible employees to make contributions to the Virginia Commonwealth University Tax-Deferred Annuity Program or to other similar pre-tax savings plans sponsored by or offered through the Employer.

The Plan shall exist in addition to all other retirement, pension or other benefits available to the Participants, including the benefits established pursuant to the Virginia Retirement Act, Section 51.1-100 et seq. of the Code of Virginia (1950) as amended or the optional retirement plans established in lieu of benefits under the Virginia Retirement Act, Section 51.1-100 et seq. of the Code of Virginia (1950) as amended.

To comply with the requirements of Internal Revenue Code Section 401(a), the Governing Body has established a related fund ("Fund") pursuant to an insurance contract or trust agreement in which all contributions to the Plan and the income thereon shall be held for the exclusive benefit of Participants and their Beneficiaries.

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

ARTICLE I
Definition of Terms

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

1.1 **"Administrator"**: The Administrator appointed by the Governing Body to carry out the duties and responsibilities described herein.

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

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

1.3 **"Agent"**: The plan service agent to be appointed by and serve at the pleasure of the Administrator.

1.4 **"Alternate Payee"**: The person who is or was the spouse or child of the Participant to the extent that such person is entitled to any or all of a Participant's Accrued Benefit under a court order that the Administrator has determined to be an Approved Domestic Relations Order.

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

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

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

1.8 **"Compensation Limit"**:

1.8(a) \$200,000 for Plan Years beginning on or after January 1, 2002 (as adjusted in \$5,000 increments by the applicable Adjustment Factor on the basis of a base period of the calendar quarter beginning July 1, 2001); \$150,000 for Plan Years beginning before January 1, 2002 (as adjusted in \$10,000 increments by the applicable Adjustment Factor determined on the basis of a base period of the calendar quarter beginning October 1, 1993).

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

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

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

Plan Year (or other stated computation period) by a fraction, the numerator of which is the number of months in such Plan Year (or other stated computation period) and the denominator of which is twelve (12).

1.9 **"Contract"**: A group annuity contract, deposit administration contract, immediate participation guarantee contract, or other investment oriented or funding contract or agreement issued by the Insurer to hold the assets of the Plan.

1.10 **"Deferred Compensation Contribution"**: That portion of a Participant's compensation that is contributed each payroll period to the plan or program established under Code section 403(b) and offered through the Employer or to other similar pre-tax savings plans offered through the Employer. In determining Deferred Compensation Contributions, no contribution related to compensation in excess of the Compensation Limit shall be taken into account.

Notwithstanding the foregoing, Deferred Compensation Contribution shall not include any amount deferred to the Deferred Compensation Plan of the Commonwealth of Virginia from the bonus paid pursuant to House Bill 30, the Budget Bill - Appropriations for 2002-04 biennium - as finally approved and signed by the Governor of the Commonwealth of Virginia.

1.11 **"Effective Date"**: March 25, 2000, which is the first day of the payroll period covered by the pay check to be issued April 14, 2000.

1.12 **"Employee"**: A natural person, who is employed by the Employer on a salaried basis as a full- or part-time common law employee. If a person is engaged in an independent contractor or similar capacity and is subsequently reclassified by the Employer, the Internal Revenue Service, or a court as a common law employee, such person, for purposes of this Plan, shall be deemed an Employee from the actual (and not the effective) date of such reclassification, unless expressly provided otherwise by the Employer.

1.13 **"Eligible Employee"**: An Employee who is making continuous Deferred Compensation Contributions of at least ten dollars (\$10.00) per pay period.

1.14 **"Employer"** Virginia Commonwealth University (VCU), an agency or instrumentality of the Commonwealth of Virginia.

1.15 **"Enabling Statute"**: Chapter 6.1 of Title 51.1-1 of the Code of Virginia (1950) as amended (Section 51.1-607 through 613).

1.16 **"Fund"**: The insurance contract(s) issued by the Insurer to hold the assets of the Plan for so long as such assets are held in whole or in part under an insurance contract without the use of a trust fund and or the trust fund created in conjunction with and subject to the terms of the Plan if the Governing Body determines that all or part of the assets should be held in a trust fund.

1.17 **"Funding Agent"**: The Insurer for so long as any assets of the Plan are held under an insurance contract without the use of a trust fund and/or the Trustee if the Governing Body determines that any of the assets of the Plan should be held in trust.

1.18 **"Governing Body"**: The board of visitors or other governing body of the Employer vested pursuant to the Code of Virginia with the power and authority to establish rules and regulations for the employment and compensation of Employees.

1.19 **"Insurer"**: Any insurance company which issues a Contract to hold assets of the Plan or a Policy to provide for the payment of benefits under the Plan.

1.20 **"Participant"**: An Eligible Employee (or former Eligible Employee) who is entitled to benefits under the Plan for so long as he is considered a Participant as provided in ARTICLE II.

1.21 **"Plan"**: This document as contained herein or duly amended. The plan maintained pursuant hereto shall be known as the "Cash Match Plan for Employees of Virginia Commonwealth University (VCU)".

1.22 **"Plan Year"**: The twelve month period beginning on the first day of January.

1.23 **"Policy"**: A group or individual policy, contract or other agreement (including a certificate) issued by an Insurer which is not a Contract and which is obtained to provide for the accumulation and/or payment of benefits under the Plan.

1.24 **"Trustee"**: The trustee or trustees, if any, of the Fund duly appointed and currently serving in accordance with the Trust Agreement, if any.

1.25 **"Valuation Date"**: The last day of each calendar quarter of the Plan Year and such other date(s) as the Administrator may designate.

ARTICLE II

Eligibility and Participation

2.1 Eligibility.

2.1(a) Each Employee who is an Eligible Employee shall become a Participant in the Plan on the Effective Date of the Plan, provided he has completed at least twelve (12) consecutive months of continuous service as an Employee with the Employer.

2.1(b) For periods prior to July 1, 2002, each Eligible Employee who does not become a Participant under subparagraph 2.1(a) shall become a Participant in the Plan on

the first day of the first payroll period following completion of twelve (12) consecutive months of continuous service.

2.1(c) Each Eligible Employee who does not become a Participant under subparagraphs 2.1(a) and 2.1(b) shall become a Participant on the later of July 1, 2002 or the first day of the first payroll period following his becoming an Eligible Employee.

2.2 **Length of Participation.** An Employee who becomes a Participant shall be or remain a Participant for so long as he is an Eligible Employee or he is entitled to future benefits under the terms of the Plan.

ARTICLE III **Contributions**

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

- (i) The Employer shall contribute to the Plan an amount equal to the dollar amount or percentage, as determined in accordance with the Enabling Statute prior to the beginning of the Plan Year, of the Participant's Deferred Compensation Contribution for such payroll period.
- (ii) The Employer may contribute to the Plan an amount equal to such additional dollar amount or percentage, as determined by the Governing Body (or its designee), of the Participant's Deferred Compensation Contribution for such payroll period.
- (iii) Contributions made pursuant to clause (i) shall be made as soon as reasonable practical following the payday for such payroll period. Contributions made pursuant to clause (ii) shall be made as soon as reasonable practical following the payday for such payroll period or at such other date designated by the Governing Body (or its designee).

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

ARTICLE IV
Participant Accounts and Adjustments

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

4.2 **Allocation of Contributions.** Subject to the applicable limitations contained herein, the Employer's Matching Contribution shall be allocated as of the date on which such contribution is made, to the Matching Account of the Participant on whose behalf such contribution is made.

4.3 **415 Limitations on Annual Additions.**

4.3(a) For Limitation Years beginning before January 1, 2002, notwithstanding any other provision of the Plan, the sum of all Annual Additions (as defined in subparagraph 4.3(d)) allocated to the accounts of any Participant for any Limitation Year may not exceed the lesser of:

- (i) \$30,000 (referred to herein as the "Dollar Limitation"), or
- (ii) Twenty-five percent (25%) of such Participant's Total Compensation not in excess of the Compensation Limit for such Limitation Year,

which limitations are jointly referred to herein as the "415 Limitations". The compensation limit referred to in clause (ii) of this subparagraph shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

4.3(b) For Limitation Years beginning on or after January 1, 2002, notwithstanding any other provision of the Plan, the sum of all Annual Additions (as defined in subparagraph 4.3(d)) allocated to the accounts of any Participant for any Limitation Year may not exceed the lesser of:

- (i) \$40,000 (referred to herein as the "Dollar Limitation"), or
- (ii) One hundred percent (100%) of such Participant's Total Compensation not in excess of the Compensation Limit for such Limitation Year,

which limitations are jointly referred to herein as the "415 Limitations". The compensation limit referred to in clause (ii) of this subparagraph shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

4.3(c) In determining the Dollar Limitation:

(i) The Dollar Limitation shall be automatically adjusted by the Adjustment Factor, from time to time, to reflect any annual cost of living adjustments and any such adjustment (which with the original Dollar Limitation is sometimes referred to herein as the "adjusted Dollar Limitation") shall be effective for the Limitation Year which ends with or within the calendar year for which such increase is effective. For purposes hereof, the term "Adjustment Factor" shall mean the cost of living adjustment factor prescribed by the Secretary of the Treasury or his delegate under Section 415(d) of the Code, applied to such items and in such manner as the Secretary of the Treasury or his delegate shall prescribe. For Limitation Years beginning after December 31, 2002, the adjustment shall be in \$1,000 increments on the basis of a base period of the calendar quarter beginning July 1, 2001.

(ii) If any Limitation Year is a period of less than twelve (12) months, then the Dollar Limitation for such Limitation Year shall be prorated by multiplying then the Dollar Limitation for such Limitation Year by a fraction, the numerator of which is the number of months in such Limitation Year and the denominator of which is twelve (12).

4.3(d) The term "Annual Additions" shall mean the sum of the following amounts allocated to a Participant's account under the Plan for a Limitation Year:

(i) All contributions by the Employer to this or any other defined contribution plan maintained by the Employer including any other plan qualified under Section 401(a) of the Code; and

(ii) Any other amounts defined as "annual additions" under Section 415 of the Code.

Notwithstanding anything to the contrary herein, catch-up contributions under Section 414(v) of the Code, contributions to a plan maintained pursuant to Section 457 of the Code and amounts which are excluded from being "annual additions" under Section 415 of the Code shall not be considered Annual Additions for purposes hereof.

4.3(e) For purposes hereof, the term "Limitation Year" means the calendar year.

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

(i) Including, but not limited to, wages, salary, earned income (in the case of self-employed individuals), vacation pay, sick pay, overtime pay, bonuses

and commissions, and as reportable to the Internal Revenue Service on Form W-2 (or its successor), where applicable, for federal income tax purposes, but

(ii) Including employee elective salary reduction or similar deferral contributions excluded from W-2 compensation by reason of Section 125, 132(f)(4) (for Plan Years beginning on or after January 1, 2001), 402(g)(3) or 457(b) of the Code (and elective deferrals or contributions under any other sections of the Code covered by Section 415(c)(3)(D) of the Code), and

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

4.3(g) For purposes hereof, the rules of Section 415 of the Code are incorporated by reference for purposes of determining "Annual Additions" and applying the "415 Limitations".

4.4 **Additional Limitations Where Employer Maintains More Than One Plan.**

4.4(a) If any Participant is or has been a participant in another Qualified Defined Contribution Plan, the limitations contained in paragraph 4.3 shall be administered in the aggregate in accordance with the terms found in the Optional Retirement Plan for Employees of Virginia Commonwealth University, including the provisions in said plan regarding the Qualified Governmental Excess Benefit Arrangement.

4.4(b) [Reserved].

4.4(c) Solely for purposes of paragraphs 4.3, 4.4 and 4.5, the term "Qualified Defined Contribution Plan" means any plan maintained by the Employer or portion thereof described or treated as a defined contribution plan within the meaning of Sections 414(i) of the Code.

4.5 **Reallocating Excess Contributions.**

4.5(a) If the limitation in Section 4.3(a) is exceeded, the excess amounts in the Participant's Matching Account shall be used to reduce the Employer Matching Contribution for the next Limitation Year (and succeeding Limitation Years, as necessary)

for that Participant. However, if that Participant is not covered by the Plan as of the end of a Limitation Year, then the excess amounts must be held unallocated in a suspense account for the Limitation Year and allocated and reallocated in the next Limitation Year to all of the remaining Participants in the Plan in proportion to what each Participant's Total Compensation for the Plan Year bears to the Total Compensation for all such participants of the Plan Year. In no case may excess amounts be distributed to Participants or former Participants.

4.5(b) In no event shall the amount of any contribution determined under paragraphs 4.3, 4.4 and 4.5 exceed the maximum benefit permitted under Section 415 of the Code.

4.6 **Special Rules for Reemployed Veterans.**

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

(i) Make-up Contributions shall be made to the Plan by the Employer on behalf of a Reemployed Veteran, and allocated to the appropriate account of the affected Participant's Accrued Benefit, in such amount and at such time or times as is required by the USERRA.

(ii) Make-up Contributions with respect to a Reemployed Veteran shall not be subject to any otherwise applicable contribution limits under Sections 402(g), 402(h), 403(b), 408, 415, or 457 of the Code as applied with respect to the Plan Year or taxable year, as applicable to the relevant section of the Code, in which the contribution is made. A Make-up Contribution shall not be taken into account in applying the contribution limits to any other contribution made during the Plan Year or taxable year, as applicable to the relevant section of the Code. Make-up Contributions shall not exceed the aggregate amount of contributions that would have been permitted under the Plan contribution limits for the Plan Year or taxable year, as applicable to the relevant section of the Code, to which the contribution relates had the Reemployed Veteran continued to be employed by the Employer during the period of his Qualified Military Service.

(iii) Qualified Military Service of a Reemployed Veteran shall be counted as service for benefit accrual under the Plan.

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

(i) "Make-up Contributions" means the contributions which are required to be made to the Plan for a Reemployed Veteran pursuant to the USERRA and Section 414(u) of the Code. These contributions generally are the contributions by the Employer that would have accrued to the Reemployed Veteran under the Plan, but for his absence due to his Qualified Military Service.

Neither the Make-up Contribution obligation nor this paragraph requires that any earnings be credited to the account of a Reemployed Veteran with respect to any Make-up Contribution before such contribution is actually made.

(ii) "Qualified Military Service" means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service and to the Employer.

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

(iv) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994.

ARTICLE V

Accounts and Investments

5.1 **Investment Direction.** At the time an Employee becomes a Participant and at such other times as the Administrator may determine, the Participant shall choose among the various investment vehicles provided for the investment of his Accrued Benefit.

5.1(a) Thereafter, and with respect to any existing Accrued Benefit, the Participant (and, when applicable, each Beneficiary or Alternate Payee) may, subject to the consent of the Administrator, direct any prior investment of his Accrued Benefit be liquidated, sold, or otherwise disposed of with the proceeds reinvested in such manner as the Participant may designate in accordance with the foregoing provisions of this subparagraph.

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

5.2 **Authority to Act.** During the Participant's life, the Participant shall direct the investment of his Accrued Benefit. If an Approved Domestic Relations Order is in place, the Alternate Payee shall direct the investment of that portion of the Participant's Accrued Benefit assigned to such Alternate Payee pursuant to the order. During the Participant's disability or incompetence, the person who has authority to act for the Participant under a power-of-attorney accepted by the Administrator or the person that is duly appointed and currently serving conservator or guardian of the estate of the Participant shall direct investment of the Participant's Accrued Benefit. After the

Participant's death, the Beneficiary shall direct the investment of his Accrued Benefit or each Beneficiary shall direct the investment of his segregated account.

5.3 **Investment Direction Must be in Writing.** Each investment direction must be in writing and shall not be proper unless the writing is signed by the Participant (and, when applicable, each Beneficiary or Alternate Payee). Except as otherwise specified by the Agent's investment direction procedure, "writing" and "signed" shall be construed according to paragraph 12.9, subject to any security procedures required by the Agent. Without limiting the comprehensive effect of the above, a signed writing includes, to the extent permitted by the applicable investment, a proper communication made in a manner prescribed by the Agent.

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

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

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

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

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

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

5.6(b) If such court order provides for an Alternate Payee (or any person other than the Participant) to have the right of investment direction under the Plan, the Administrator may give effect to that court order even contrary to the Plan if the Administrator does not challenge, contest, or appeal the court order.

5.7 **Expenses.** All costs and expenses incurred by the Employer in connection with investments shall be borne by the appropriate account and appropriately reflected in the balance thereof.

5.8 **Relief from Fiduciary Responsibility.** Neither the Administrator or the Governing Body of the Employer, nor any employee of the Employer shall incur any liability to any Participant, Beneficiary, or other party with respect to the investment of, or return on, any funds to which a Participant or any Beneficiary may at any time become entitled.

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

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

ARTICLE VI **Payment of Benefits**

6.1 Time of Payment.

6.1(a) The Accrued Benefit of a Participant shall be paid to the Participant, if then alive, or otherwise to his Beneficiary, no earlier than his cessation of employment with the Employer and as soon as possible after the Participant retires or otherwise terminates employment with the Employer for reasons other than death.

6.1(b) The Accrued Benefit of a Participant who is deceased before such Accrued Benefit commences to be paid to him shall be paid to his Beneficiary as soon as possible after the date of the Participant's death.

6.1(c) Notwithstanding any other provision of this Plan, the Administrator may direct to the distribution of any portion of the Participants' Accrued Benefit payable to an Alternate Payee under an Approved Domestic Relations Order prior to the date on which the Participant would otherwise be entitled to receive a distribution under the Plan. The Alternate Payee shall be paid his or her separate account or his or her percentage of the Participant's Accrued Benefit in a lump sum payment, subject to paragraph 6.4.

6.2 **Form of Payment When Participant Is the Initial Recipient.** The Participant shall receive a cash lump sum of the amount or the cash value of the Participant's Accrued Benefit, subject to paragraph 6.4.

6.3 **Form of Payment When Beneficiary Is the Initial Recipient.** The Beneficiary shall receive a cash lump sum of the amount or the cash value of the Participant's Accrued Benefit, subject to paragraph 6.4.

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

6.4(a) Notwithstanding any contrary provision of the Plan, but subject to any de minimis or other exceptions or limitations provided for under Section 401(a)(31) of the Code, any prospective recipient (whether a Participant, a surviving spouse, a current or former spouse who is an Alternate Payee under a Approved Domestic Relations Order or any other person eligible to make a rollover) of a distribution from the Plan which constitutes an "eligible rollover distribution" (to the extent otherwise includible in the recipient's gross income) may direct the Funding Agent to pay the distribution directly to an "eligible retirement plan".

6.4(b) For purposes hereof, the following terms have the meanings assigned to them in Section 401(a)(31) of the Code and, to the extent not inconsistent therewith, shall have the following meanings:

(i) The term "eligible retirement plan" means a defined contribution plan which is either an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract) or an annuity contract described in Section 403(b) of the Code, that accepts the prospective recipient's eligible rollover distribution. For distributions made before January 1, 2002; in the case of an eligible rollover distribution payable to a Participant's surviving spouse, an "eligible retirement plan" means only an individual retirement account or individual retirement annuity. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity plan described in Section 403(a) of the Code, a qualified trust described in Section 401(a) of the Code, and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. Effective for distributions made after December 31, 2001, the definition of eligible retirement plan applicable to a Participant shall also apply in the case of a distribution to a Participant's surviving spouse and to a Participant's spouse or former spouse who is the alternate payee under a QDRO.

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

(A) A distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made either for the life (or life expectancy) of the recipient or the joint lives (or joint life

expectancies) of the recipient and his beneficiary who is an individual or for a specified period of ten (10) or more years,

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

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

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

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

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

6.4(d) The Funding Agent shall make payment as directed only if the proposed transferee plan will accept the payment.

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

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

6.4(g) Within a reasonable time (generally not more than ninety (90) nor less than thirty (30) days) before the benefit payment date of a prospective recipient of an eligible rollover distribution from the Plan, the Administrator (or the Funding Agent, if delegated by the Administrator to the Funding Agent) shall provide the prospective recipient with a written explanation of the rollover and tax rules required by Section 402(f) of the Code.

6.5 **Benefit Determination and Payment Procedure.**

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

6.5(b) In making the determinations described in subparagraph 6.5(a), the Administrator shall take into account the terms of any Approved Domestic Relations Order received with respect to the Accrued Benefit of the Participant or any Death Benefit with respect to the Participant. The time and form of payment with respect to the Approved Domestic Relations Order and the time and form of payment chosen by the Participant or his Beneficiary or required by the Plan shall not be altered by the terms of the Approved Domestic Relations Order. The Administrator (or the Funding Agent, if delegated by the Administrator to the Funding Agent) shall make all determinations regarding benefit payments to be made pursuant to an Approved Domestic Relations Order. Any benefit payments which may be subject to the terms of a domestic relations order received by the Administrator (or the Funding Agent, if delegated by the Administrator to the Funding Agent) shall be suspended during the period the Administrator (or the Funding Agent, if delegated by the Administrator to the Funding Agent) is considering whether the order is an Approved Domestic Relations Order. In the event that benefits are in pay status at the time that a domestic relations order is received, unless the Funding Agent has been delegated the responsibility to make the determination, the Administrator shall promptly notify the Funding Agent of the amount, if any, of the benefit payments that must be suspended for the period required by the Administrator (or the Funding Agent, if delegated by the Administrator to the Funding Agent) to determine the status of the order. Unless the Funding Agent has been delegated the responsibility to make the determination, upon the completion of the Administrator's review or other determination of the status of the order, the Administrator shall promptly notify the Funding Agent of the time benefit payments are to commence and of the identity of, and the amount and form of benefits to be paid to, the person or persons to whom payment is to be made.

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

6.7 **Distribution of Benefit When Distributee Cannot Be Located.** The Administrator (or the Funding Agent, if delegated by the Administrator to the Funding Agent) shall make all reasonable attempts to determine the identity and/or whereabouts of a Participant or Participant's spouse or a Participant's Beneficiary entitled to benefits under

the Plan, including the mailing by certified mail of a notice to the last known address shown on the Employer's, the Administrator's, the Funding Agent's records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Funding Agent shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

6.8 **Minimum Distribution.**

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

(i) The entire Deferred Benefit will be distributed over the lives or over a period not extending beyond the life expectancy of the Participant and his designated Beneficiary, and

(ii) the amounts payable with respect to the Participant will be paid at times which are not later than the times required by Sections 401(a)(9)(G) of the Code [relating to incidental death benefits], and

(iii) any remaining payments after the death of the Participant shall be made at least as rapidly as under the form of distribution being used as of the date of the Participant's death, and

(iv) the life expectancy or joint and last survivor life expectancy shall be computed using the expected return multiples in [IRS] Table V or Table VI under Treasury Reg. 1.72-9 or under any other method as permitted by Treasury Regulations under Section 401(a)(9) of the Code and shall not be redetermined.

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

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

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

(i) General Rules.

(A) Effective Date. The provisions of this paragraph will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(B) Precedence. The requirements of this Paragraph will take precedence over any inconsistent provisions of the Plan.

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

(ii) Time and Manner of Distribution.

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

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

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

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

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

(4) If the Participant's surviving spouse is the Participant's sole Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this clause (ii)(B) of subparagraph 6.8(b), other than clause (ii)(B)(1), will apply as if the surviving spouse were the Participant.

For purposes of this clause (ii)(B) and clause (iv) of subparagraph 6.8(b), unless clause (ii)(B)(4) of subparagraph 6.8(b) applies, distributions are considered to begin on the Participant's Required Beginning Date. If clause (ii)(B)(4) of subparagraph 6.8(b) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under clause (ii)(B)(1) of subparagraph 6.8(b). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under clause (ii)(B)(1) of subparagraph 6.8(b)), the date distributions are considered to begin is the date distributions actually commence.

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

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

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

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

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

(B) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions

will be determined under this clause (iii) of subparagraph 6.8(b) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

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

(A) Death On or After Date Distributions Begin.

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

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

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

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

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

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

(B) Death Before Date Distributions Begin.

(1) Participant Survived by Beneficiary. If the Participant dies before the date distributions begin and there is a Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Beneficiary, determined as provided in clause (iv)(A) of subparagraph 6.8(b).

(2) No Beneficiary. If the Participant dies before the date distributions begin and there is no Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under clause (ii)(B)(1) of subparagraph 6.8(b), this clause (iv)(B) will apply as if the surviving spouse were the Participant.

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

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

(B) "Distribution Calendar Year" shall mean a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under clause (ii)(B) of subparagraph 6.8(b). The required minimum distribution for the

Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

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

(D) "Participant's Account Balance" shall mean the account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

(E) "Required Beginning Date" shall mean the date specified in subparagraph 6.8(a) of the Plan.

ARTICLE VII

Beneficiary Designation

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

7.1(a) Any Beneficiary designation may included multiple, contingent or successive Beneficiaries, a trust, and may specify the proportionate distribution to each Beneficiary. The Participant shall designate each Beneficiary by name. If multiple beneficiaries are designated, absent any other provision by the Participant, those named or the survivors of them shall share equally in any amounts payable hereunder. Notwithstanding the rule that a Participant shall designate each Beneficiary by name, if

the Administrator (or the Funding Agent, if delegated by the Administrator to the Funding Agent), in its sole discretion, finds that a Beneficiary Designation sufficiently describes a trust, that Beneficiary Designation will be construed as naming the duly appointed and currently acting trustee of that trust.

7.1(b) A Beneficiary designation may be changed by the Participant at any time, or from time to time, by filing a new designation in writing with the Administrator (or the Funding Agent, if delegated by the Administrator to the Funding Agent).

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

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

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

ARTICLE VIII **Withdrawals and Loans**

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

ARTICLE IX **Trust Fund**

9.1 **The Trust Fund.** All assets of the Plan shall be held and invested in the Fund in accordance with this Plan and the Contract or Policy or, if applicable, the Trust Agreement.

ARTICLE X
Administrator

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

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

10.3 **Information from Employer.** To enable the Administrator to perform its responsibilities, the Employer(s) shall promptly provide to the Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Plan. The Administrator shall rely upon this information as supplied by the Employer, and shall have no duty or responsibility to verify this information.

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

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

ARTICLE XI
Amendment and Termination of Plan

11.1 **Termination of the Plan.** To the extent permitted by the Enabling Statute, the Employer reserves the right to terminate this Plan at any time, provided that no such termination shall reduce, suspend or terminate the Accrued Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such termination. To the extent required by the exclusive benefit, any termination of the Plan shall not be effective to the extent that the amendment has the effect of causing any Plan assets to be

diverted to or inure to the benefit of the Employer, or to be used for any purpose other than providing Accrued Benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.

11.2 **Amendment of the Plan.** The Governing Body of the Employer may amend the Plan at any time, consistent with the Enabling Statute, provided that no such amendment shall reduce, suspend or terminate the Accrued Benefit otherwise payable to a Participant or Beneficiary hereunder as of the date of such amendment. To the extent required by the exclusive benefit, any amendment of the Plan shall not be effective to the extent that the amendment has the effect of causing any Plan assets to be diverted to or inure to the benefit of the Employer, or to be used for any purpose other than providing Accrued Benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.

ARTICLE XII **Miscellaneous**

12.1 **Non-assignability.**

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

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

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

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

12.3 **Construction.** The Plan is intended to be a profit sharing, defined contribution plan within the meaning of Section 401(a) of the Code and maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state and the provisions of the Plan shall be interpreted and administered as such. Additionally, the plan is established and maintained with the intent that the Plan conform to the applicable requirements of the Enabling Statute. The provisions of the Plan shall be interpreted whenever possible to conform to the applicable requirements of the Enabling Statute. When the Enabling Statute is amended or interpreted through subsequent legislation or regulations or an attorney general opinion, the Plan should be construed as consistent with such amendment or interpretation of the applicable law.

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

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

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

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

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

12.9 **Signatures and Broad Acceptance of Writings.** An instruction (but not any request for a distribution) is considered to be written or in writing and signed according to the following broad provisions, except as otherwise specified by a uniform procedure adopted by the Administrator.

Written or "writing" or "in writing" includes any intentional reduction to tangible form. Without limiting the comprehensive effect of the first sentence of this paragraph, any of the following is a writing and all of the following rules of construction apply in determining what is a writing and who made the writing. "Written" or "writing" or "in writing" includes handwriting, typewriting, printing. "Writing" includes any copy or reproduction, including (but not limited to) a photocopy, of an original writing. "Writing" includes a telefacsimile transmission. "Writing" includes a videotape or audiotape

recording, including a recording of a conversation; and a person's commencement or continuation of a conversation after the person is informed that the conversation is or may be recorded shall be deemed such person's intent to reduce the conversation to writing. "Writing" or "written" includes anything that is recognized as such by the *Restatement of Contracts* or the *Uniform Commercial Code* as then-currently published or adopted by the American Law Institute or the National Conference of Commissioners on Uniform State Laws. "Writing" or "written" includes anything that is recognized as such under 2(9) of the federal *Securities Act of 1933*, as amended [15 U.S.C. 77b(9)] or any rule or regulation thereunder. A writing made by a person who appears to be an agent or attorney-in-fact is the writing of the apparent principal, unless the Administrator has actual knowledge that no agency exists. The Administrator in its sole discretion may construe any writing(s), and may combine separate writings, including writings that are not contemporaneous, so as to establish one integrated writing or instruction.

"Signed" or "signature" includes any symbol executed or adopted by a person with present intention to authenticate a writing. Without limiting the comprehensive effect of the first sentence of this paragraph, any of the following is a signature and all of the following rules of construction apply in determining what is a signature and who signed. Authentication may be handwritten, typed, printed, stamped, or otherwise written. A signature need not consist of the person's legal name. A signature need not consist of the person's entire name. A signature may be on any part of a writing (except as expressly limited below). A person who fills-out a form in his own handwriting or typewriting has signed that form or writing. Anything that is the subject of a written confirmation is deemed to be signed if the recipient of the confirmation does not promptly object to the confirmation. For a conversation, a person's use of his voice is a signature. For a conversation, a person's compliance with the authentication procedure specified by the Administrator or its Agent is a signature. "Signed" or "signature" includes anything that is recognized as such for any purposes by the *Restatement of Contracts* or the *Uniform Commercial Code* as then-currently published or adopted by the American Law Institute or the National Conference of Commissioners on Uniform State Laws. A signature need not be contemporaneous to the writing that it authenticates. A signature made by a person who appears to be an agent or attorney-in-fact is the signature of the apparent principal, unless the Administrator has actual knowledge that no agency exists. A writing that includes a forgery at the place where a signature customarily would be made is not signed by any person other than the forger.

Upon receiving anything that appears to be a writing, or anything that appears to be a signature or signed, the Administrator shall not be liable or responsible to anyone to the extent that it acted without actual knowledge that the writing was false or that the signature was a forgery.

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

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

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

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

IN WITNESS WHEREOF, the undersigned has executed this Plan this 1st
day of April, 2000.

VIRGINIA COMMONWEALTH UNIVERSITY

By: /S/ Paul W. Timmrick