

**VIRGINIA COMMONWEALTH UNIVERSITY  
TAX DEFERRED SAVINGS PLAN**

**Effective January 1, 2008**

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## **ARTICLE I DEFINITIONS**

**1.1 Account.** The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.

**1.2 Account Balance.** The bookkeeping account maintained for each Participant that reflects the aggregate amount credited to the Participant's Account under all Accounts, including the Participant's Elective Deferrals and other contributions on Participant's behalf, the earnings or losses of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. The Account Balance includes any account established under Section 7 for rollover contributions and plan-to-plan transfers made for a Participant, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).

**1.3 Administrator.** The University or such other person or entity as to whom responsibility for Plan administration has been delegated. In this regard, except as expressly set forth herein or as otherwise agreed upon in writing by the University, the Vendors shall be solely responsible for, and shall make all "discretionary determinations" with respect to, matters of Plan administration within the meaning of U.S. Department of Labor Field Assistance Bulletin 2007-02.

**1.4 Annuity Contract.** A nontransferable contract as defined in section 403(b)(1) of the Code, established on a group basis for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in the Commonwealth of Virginia and that includes payment in the form of an annuity.

**1.5 Beneficiary.** The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.

**1.6 Custodial Account.** The group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

**1.7 Code.** The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

**1.8 Compensation.** All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election under Section 2 made to reduce compensation to have Elective Deferrals under the Plan).

**1.9 Disabled.** The definition of disability provided in the applicable Individual Agreement.

**1.10 Elective Deferral.** The Employer contributions made to the Plan at the election of the Participant (or deemed to have been elected by such Participant pursuant to Section 2.2(b)) in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.

**1.11 Employee.** Each individual, whether appointed or elected, who is a common law employee of the Employer performing services for the University as an employee of the Employer. This definition is not applicable unless the employee's compensation for performing services for the University is paid by the Employer. Notwithstanding anything in the Plan to the contrary, Employee shall not include any individual who is (a) a nonresident alien with no U.S. source income, (b) a Leased Employee, or (c) any individual whom the

Employer classifies as an independent contractor (regardless of the individual's employment status under applicable law).

**1.12 Employer.** The University.

**1.13 Funding Vehicles.** The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the Employer for use under the Plan.

**1.14 Includible Compensation.** An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). The amount of Includible Compensation is determined without regard to any community property laws.

**1.15 Individual Agreement.** The agreements between a Vendor and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

**1.16 Leased Employee.** Any individual who provides services to the Employer if such services are provided pursuant to an agreement between the Employer and any other person ("leasing organization"), such services are performed under the primary direction or control of the Employer, such services are provided to the Employer on a substantially full-time basis for a period of at least one year, and the Employer classifies such person as a Leased Employee (regardless of the individual's employment status under applicable law).

**1.17 Participant.** An individual for whom Elective Deferrals are currently being made, or for whom Elective Deferrals have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

**1.18 Plan.** Virginia Commonwealth University Tax Deferred Savings Plan.

**1.19 Plan Year.** The calendar year.

**1.20 Severance from Employment.** For purpose of the Plan, Severance from Employment means termination of employment for any reason (other than an authorized leave of absence), or in the case of failure to return to employment with the Employer at or before the expiration of an authorized leave of absence, the earlier of the first anniversary date on which the authorized leave of absence began or the date on which the authorized leave of absence ended without the employee returning to employment with the Employer.

**1.21 University.** Virginia Commonwealth University.

**1.22 Valuation Date.** Each business day.

**1.23 Vendor.** The provider of an Annuity Contract or Custodial Account.



## ARTICLE II

### PARTICIPATION AND CONTRIBUTIONS

**2.1 Eligibility.** Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the Employer.

**2.2 Compensation Reduction Election.**

- (a) **General Rule.** An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed to the Plan as an Elective Deferral on his or her behalf) and filing it with the Administrator. This Compensation reduction election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount and may change such minimum from time to time. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. All Elective Deferrals shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the Employee's election.
- (b) **Special Rule for New Employees.**
- (i) **Automatic Enrollment for New Employees.** For purposes of applying this Section 2.2, an Employee hired on or after January 1, 2008 is deemed to have elected to become a Participant and to have his or her Compensation reduced by \$20 per pay period (and have that amount contributed as an Elective Deferral on his or her behalf), effective as soon as administratively feasible after the 60th day following

the Employee's date of hire, and to have agreed to be bound by all the terms and conditions of the Plan. Contributions made under this automatic participation provision shall be made to the Funding Vehicle or Vehicles selected for this purpose for all new Employees by the Administrator. Any Employee who automatically becomes a Participant under this Section 2.2(b) shall file a designation of Beneficiary with the Funding Vehicle or Vehicles to which contributions are made.

- (ii) **Right to File a Different Election; Notice to Employee.** This Section 2.2(b) shall not apply to the extent an Employee files an election for a dollar amount reduction or elects to have no Compensation reduction, or designates a different Funding Vehicle to receive contributions made on his or her behalf. Any Employee hired on or after January 1, 2008 shall receive a statement at the time he or she is hired that describes the Employee's rights and obligations under this Section 2.2(b) (including the information in this Section 2.2(b) and identification of how the Employee can file an election or make a designation as described in the preceding sentence, and the refund right under Section 2.2(b)(iii), including the specific name and location of the person to whom any such election or designation may be filed), and how the contributions under this Section 2.2(b) will be invested.
- (iii) **Refund of Contributions.** An Employee for whom contributions have been automatically made under Section 2.2(b)(i) may elect to withdraw all of the contributions made on his or her behalf under Section 2.2(b)(i), including earnings thereon to the date of the withdrawal. This withdrawal right is available only if the withdrawal election is made within 60 days after the date of the first contribution made under Section 2.2(b)(1).

**2.3 Information Provided by the Employee.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any

changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

**2.4 Change in Elective Deferrals Election.** Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals, his or her investment direction, and his or her designated Beneficiary. A change in the investment direction shall take effect as of the date provided by the Vendor, as applicable, on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

**2.5 Contributions Made Promptly.** Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

**2.6 Leave of Absence.** Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.

### ARTICLE III

#### LIMITATIONS ON AMOUNTS DEFERRED

**3.1 Basic Annual Limitation.** Except as provided in Sections 3.2 and 3.3, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the applicable dollar amount, or (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under section 402(g)(1)(B) of the Code, which is \$15,500 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under section 415(d) of the Code.

**3.2 Special Section 403(b) Catch-up Limitation for Employees with 15 Years of Service.** Because the Employer is a qualified organization (within the meaning of § 1.403(b)-4(c)(3)(ii) of the Income Tax Regulations), the applicable dollar amount under Section 3.1(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:

- (a) \$3,000;
- (b) The excess of:
  - (i) \$15,000, over
  - (ii) The total special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or
- (c) The excess of:
  - (i) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over

- (ii) The total Elective Deferrals made for the employee by the qualified organization for prior years.

For purposes of this Section 3.2, a "qualified employee" means an Employee who has completed at least 15 years of service taking into account only employment with the Employer.

**3.3 Age 50 Catch-up Elective Deferral Contributions.** An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5,000 for 2008, and is adjusted for cost-of-living after 2008 to the extent provided under the Code.

**3.4 Coordination.** Amounts in excess of the limitation set forth in Section 3.1 shall be allocated first to the special 403(b) catch-up under Section 3.2 and next as an age 50 catch-up contribution under Section 3.3. However, in no event can the amount of the Elective Deferrals for a year be more than the Participant's Compensation for the year.

**3.5 Special Rule for a Participant Covered by Another Section 403(b) Plan.** For purposes of this Article III, if the Participant is or has been a participant in one or more other plans under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Article III. For this purpose, the Administrator shall take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

**3.6 Correction of Excess Elective Deferrals.** If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of

the Employer under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code for which the Participant provides sufficient information), then the Elective Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

**3.7 Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

**ARTICLE IV****VESTING**

**4.1    Vesting.** A Participant shall be 100% vested in his or her Account Balance at all times under the Plan.

## ARTICLE V

### LOANS

**5.1 Loans.** Loans shall be permitted under the Plan, through vendors selected by the University, to the extent permitted by the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured. The Vendor shall be responsible for determining whether the loan request satisfies the requirements of the Plan and applicable law.

**5.2 Information Coordination Concerning Loans.** Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Vendor processing any Participant loan request shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 5.3, including the collection of information from the Employer and other Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to such Participant under the Plan or any other plan of the Employer. The Administrator or Vendor, as applicable, shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer. For purposes of satisfying the obligations under this Section 5.2, Vendors will utilize the services of the third party designated by the Administrator to provide such information coordination and transmission services.

**5.3 Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of:



- (a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made, or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved (not taking into account any payments made during such one-year period); or
- (b) one half of the value of the Participant's vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved).

For purposes of this Section 5.3, any loan from any other plan maintained by the Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

## ARTICLE VI

### BENEFIT DISTRIBUTIONS

#### **6.1 Benefit Distributions at Severance from Employment or Other Distribution**

**Event.** Except as permitted under Section 3.6 (relating to excess Elective Deferrals), Section 6.4 (relating to withdrawals of amounts rolled over into the Plan), Section 6.5 (relating to hardship), or Section 9.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

**6.2 Small Account Balances.** The terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant (or Beneficiary, if applicable), but no such payment may be made without the consent of the Participant (or Beneficiary, if applicable) unless the Account Balance does not exceed \$5,000 (determined without regard to any separate account that holds rollover contributions under Section 7.1) and any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

**6.3 Minimum Distributions.** Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of § 1.408-8 of the Income Tax Regulations, except as provided in § 1.403(b)-6(e) of the Income Tax Regulations.

**6.4 In-Service Distributions from Rollover Account.** If a Participant has a separate account attributable to rollover contributions to the Plan, to the extent permitted by the

applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

**6.5 Hardship Withdrawals.**

- (a) Hardship withdrawals shall be permitted under the Plan to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship. If applicable under an Individual Agreement, no Elective Deferrals shall be allowed under the Plan during the six-month period beginning on the date the Participant receives a distribution on account of hardship. The Vendor will be responsible for determining whether the hardship withdrawal request satisfies the requirements of the Individual Agreement and applicable law. For purposes of satisfying the obligations under this Section 6.5(a), the Vendor will utilize the services of the third party designated by the Administrator to provide information coordination and transmission services. In addition, the Vendor will be responsible for updating the third party with such new information that may be pertinent.
- (b) The Individual Agreements shall provide for the exchange of information among the Employer and the Vendors to the extent necessary to implement the Individual Agreements, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Participant's financial need (pursuant to § 1.401(k)-1(d)(3)(iv)(E) of the Income Tax Regulations), the Vendor notifying the Employer of the withdrawal in order for the Employer to implement the resulting six-month suspension of the Participant's right to make Elective Deferrals under the Plan. In addition, in the case of a hardship withdrawal that is not automatically deemed to be necessary to satisfy the financial need (pursuant to § 1.401(k)-1(d)(3)(iii)(B) of the Income Tax Regulations), the Vendor shall obtain information from the Employer or other Vendors to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need. For purposes of satisfying the obligations under

this Section 6.5(b), the Vendor will utilize the services of the third party designated by the Administrator to provide information coordination and transmission services.

#### **6.6 Rollover Distributions.**

- (a) A Participant or the Beneficiary of a deceased Participant (or a Participant's spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary, who at the time of the Participant's death was neither the spouse of the Participant nor the spouse or former spouse of the participant, who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).
- (b) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

## ARTICLE VII

### ROLLOVERS TO THE PLAN AND TRANSFERS

#### **7.1 Eligible Rollover Contributions to the Plan.**

- (a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. However, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code or a Roth IRA described in section 408A of the Code.
- (b) **Eligible Rollover Distribution.** For purposes of Section 7.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (i) any installment payment for a period of 10 years or more, (ii) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (iii) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

- (c) **Separate Accounts.** The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

**7.2 Plan-to-Plan Transfers to the Plan.**

- (a) For a class of Employees who are participants or beneficiaries in another plan under section 403(b) of the Code, the Administrator may permit a transfer of assets to the Plan as provided in this Section 7.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an employee or former employee of the Employer. The Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Vendor accepting such transferred amounts shall be responsible for determining whether such transfer complies with the Plan and applicable law. Accordingly, such Vendor may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with § 1.403(b)-10(b)(3) of the Income Tax Regulations and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.
- (b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.
- (c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that (i) the Individual Agreement that holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are

not less stringent than those imposed on the transferor plan, and (ii) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Article III.

### **7.3 Plan-to-Plan Transfers from the Plan.**

- (a) The Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another plan that satisfies section 403(b) of the Code in accordance with § 1.403(b)-10(b)(3) of the Income Tax Regulations. A transfer is permitted under this Section 7.3(a) only if the Participants or Beneficiaries are employees or former employees of the employer (or the business of the employer) under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.
- (b) The other plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the other plan shall impose restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).
- (c) Upon the transfer of assets under this Section 7.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Vendor processing such transfer shall be responsible for determining whether the transfer complies with the Plan

and applicable law. Accordingly, the Vendor may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 7.3 (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to § 1.403(b)-10(b)(3) of the Income Tax Regulations.

#### **7.4 Contract and Custodial Account Exchanges.**

- (a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Vendors under the Plan, subject to the terms of the Individual Agreements. However, an investment change that includes an investment with a Vendor that is not eligible to receive contributions under Article II (typically referred to as an exchange) is not permitted.
- (b) If any Vendor ceases to be eligible to receive contributions under the Plan, the Employer and such Vendor will enter into an information sharing agreement as described in Section 8.3.

#### **7.5 Permissive Service Credit Transfers.**

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 7.5(a) may be made before the Participant has had a Severance from Employment.
- (b) A transfer may be made under Section 7.5(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.



- (c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (c.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

## ARTICLE VIII

### INVESTMENT OF CONTRIBUTIONS

**8.1 Manner of Investment.** All Elective Deferrals or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

**8.2 Investment of Contributions.** Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations. Employer's responsibility for the selection and monitoring of investment options shall be strictly limited to the selection of approved Vendors and the Plan's default investment option. Each Vendor shall be solely responsible for determining the investment options that it will offer to Participants and Beneficiaries under the applicable Individual Agreement. In the absence of Participant direction, the Account of the Participant shall be invested in the Funding Vehicle that is designated as the default investment by the Employer. Participants and Beneficiaries shall be solely responsible for earnings and losses resulting from their exercise of control over the investment of their Plan Accounts.

**8.3 Current and Former Vendors.** The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor that is

not eligible to receive Elective Deferrals or other contributions under the Plan (including a Vendor that has ceased to be a Vendor eligible to receive Elective Deferrals or other contributions under the Plan and a Vendor holding assets under the Plan in accordance with Section 7.2 or 7.4), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

## ARTICLE IX

### AMENDMENT AND PLAN TERMINATION

**9.1 Termination of Contributions.** The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

**9.2 Amendment and Termination.** The Employer reserves the authority to amend or terminate this Plan at any time.

**9.3 Distribution upon Termination of the Plan.** The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the Employer does not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Income Tax Regulations.

**ARTICLE X****CLAIMS**

**10.1 Claims.** A Participant's or Beneficiary's claim for benefits under an Annuity Contract or Custodial Agreement shall be resolved by the Vendor of the Annuity Contract or Custodial Agreement based on the procedures it has established.

## ARTICLE XI

### MISCELLANEOUS

**11.1 Tax Withholding.** Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Employment Tax Regulations thereunder). A payee shall provide such information as the Vendor making such payment may need to satisfy income tax withholding obligations.

**11.2 Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Vendor, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Vendor, to the Employer.

**11.3 Limitation of Rights; Employment Relationship.** The establishment of the Plan or any modifications of it or the creation of any fund or account, or the payment of any benefits shall not be construed as modifying or affecting in any way the terms of employment of any Employee.

**11.4 Incorporation of Individual Agreements.** The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code.

**11.5 Governing Law.** The Plan will be construed, administered and enforced according to the Code and the laws of the Commonwealth of Virginia.

**11.6 Headings.** Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

**11.7 Gender.** Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

**11.8 No Employer Liability.** Employer shall have no liability for the payment of benefits under the Plan. Participants and Beneficiaries shall look solely to the Vendor(s) issuing the applicable Individual Agreement(s) for the payment of any benefits to which they may be entitled under the Plan.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Plan to be executed on behalf of Virginia Commonwealth University this 7th day of November, 2008.

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

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

John M. Bennett  
Senior Vice President  
for Finance and Administration

**FIRST AMENDMENT  
TO THE  
VIRGINIA COMMONWEALTH UNIVERSITY TAX DEFERRED SAVINGS PLAN**

**(As Effective January 1, 2008)**

**WITNESSETH**

**WHEREAS**, the Virginia Commonwealth University Tax Deferred Savings Plan (the “Plan”) was most recently restated effective January 1, 2008;

**WHEREAS**, Virginia Commonwealth University (the “University”) desires to amend the Plan to incorporate a Roth contribution feature; and

**WHEREAS**, Section 9.2 of the Plan permits the University to amend the Plan.

**NOW, THEREFORE**, in accordance with the foregoing, the Plan is hereby amended as follows effective October 1, 2010:

**1. Section 1.1 is hereby amended to add the following sentence to the end of the Section:**

“A separate Account will be maintained for any Roth 403(b) Contributions.”

**2. Section 1.2 is hereby amended to add the following sentence to the end of the Section:**

“In addition to the Account Balance reflecting the aggregate amount credited to all of a Participant’s Accounts, Account Balances also will be maintained separately for pre-tax Elective Deferrals and after-tax Roth 403(b) Contribution Elective Deferrals.”

**3. Section 1.10 is hereby amended to delete the last sentence of the Section and replace it with the following:**

“Elective Deferrals are limited to pre-tax salary reduction contributions and, effective October 1, 2010], after-tax Roth 403(b) Contributions.”

**4. Article I is hereby amended to insert a new Section 1.20 after Section 1.19 (and to renumber all subsequent Sections accordingly); the new Section 1.20 shall read in its entirety as follows:**

**“1.20 Roth 403(b) Contribution.** The portion of a Participant’s after-tax cash compensation that is reduced in consideration for a contribution to the Plan by the Employer as provided in Section 2.2(a).”



**5. Paragraph (a) of Section 2.2 is hereby deleted and replaced with the following:**

“(a) **General Rule.** An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed to the Plan as an Elective Deferral on his or her behalf) and filing it with the Administrator. Effective October 1, 2010, a Participant may, in executing an election to reduce his or her Compensation, irrevocably designate all or any portion of an Elective Deferral as a Roth 403(b) Contribution, and a contribution of that amount shall be made by the Employer to the Participant’s Account designated for Roth 403(b) Contributions. The Compensation reduction election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount and may change such minimum from time to time. Participants inform their selected vendor on the election shall designation of the Funding Vehicles and Accounts therein which Elective Deferrals are to be made and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the Employee’s election.”

**6. Section 3.6 is hereby amended to add the following sentence to the end of the Section:**

“To the extent an Elective Deferral that exceeds the limitations described above is comprised of both pre-tax salary reduction contributions and after-tax Roth 403(b) Contributions, the excess distribution shall be determined first to the Roth 403b and to extent there remains an excess distribution, allocated pre-tax salary reduction contributions.”

**7. Section 5.1 is hereby amended to add the following sentence to the end of the Section:**

“However, Loans shall not be permitted from a Participant’s Roth 403(b) Account.”

**8. The paragraph numbered “(b)” in Section 5.3 is hereby amended in its entirety to read as follows:**

“(b) one half of the value of the Participant’s vested pre-tax Elective Deferral Account Balance (as of the valuation date immediately preceding the date on which such loan is approved).”

**9. Section 6.5(a) is hereby amended by adding a new sentence between the first and second sentence of the paragraph to read as follows:**

“However, no hardship withdrawals shall be permitted from a Participant’s Roth 403(b) Account.”

**10. Section 6.6(a) is hereby amended to add the following sentence to the end of the Section:**

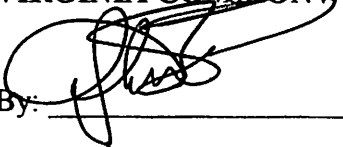
“Notwithstanding any provision of this Plan to the contrary, a rollover distribution from a Participant’s Roth 403(b) Contribution Account shall only be made to another Roth elective deferral account under an eligible retirement plan described in section 402A(e)(1) of the Code or to a Roth IRA described in section 408A of the Code, and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.”

**11. Section 11.8 is hereby amended to add the following sentence to the end of the Section:**

“Nothing in this Plan shall be construed as a waiver of the sovereign immunity of the Commonwealth of Virginia, Virginia Commonwealth University, its employees and agents.”

**IN WITNESS WHEREOF**, the undersigned, being an authorized officer of the University, has caused this **FIRST AMENDMENT TO THE VIRGINIA COMMONWEALTH UNIVERSITY TAX DEFERRED SAVINGS PLAN** to be executed on behalf of the University this 15 day of September, 2010.

**VIRGINIA COMMONWEALTH UNIVERSITY**

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

Name: .

Title: \_\_

**John M. Bennett  
Senior Vice President for  
Finance and Administration**

**SECOND AMENDMENT  
TO THE  
VIRGINIA COMMONWEALTH UNIVERSITY TAX DEFERRED SAVINGS PLAN  
(As Effective January 1, 2008)**

**WITNESSETH**

**WHEREAS**, the Virginia Commonwealth University Tax Deferred Savings Plan (the “Plan”) was most recently restated effective January 1, 2008;

**WHEREAS**, Virginia Commonwealth University (the “University”) desires to amend the Plan to provide details on the administration of hardship withdrawals from the Plan; and

**WHEREAS**, Section 9.2 of the Plan permits the University to amend the Plan.

**NOW, THEREFORE**, in accordance with the foregoing, the Plan is hereby amended as follows effective January 1, 2019:

1. Section 6.5 of the Plan is hereby amended in its entirety to read as follows:

**6.5     Hardship Withdrawals.** The portion of a Participant’s Account attributable to pre-tax Elective Deferrals shall be available for distribution upon such Participant’s hardship in accordance with this Section 6.5. Elective Deferrals made as Roth 403(b) Contributions are not eligible for hardship withdrawal.

- (a) Hardship withdrawals shall be approved only if the Administrator (or its delegate) determines that the Participant has an immediate and heavy financial need and the distribution is necessary to satisfy such need.
- (b) In making determinations under this Section 6.5, the Administrator (or its delegate) shall follow uniform and nondiscriminatory practices and its determination shall be final and binding.

- (c) The following are deemed to be immediate and heavy financial needs of the Participant for the purpose of this Section 6.5:
- (i) Medical expenses described in Code section 213(d) incurred by the Participant, his spouse, his children, his dependents, or the primary beneficiary under the Plan, or necessary for these persons to obtain such medical care;
  - (ii) Purchase (excluding mortgage payments) of a principal residence for the Participant;
  - (iii) Payment of tuition and related educational fees and room and board expenses for the next 12 months of post-secondary education for the Participant, his spouse, his children, his dependents, or the primary beneficiary under the Plan;
  - (iv) Payment of amounts necessary to prevent the eviction of the Participant from his principal residence or the foreclosure on the mortgage of his principal residence;
  - (v) Pay for expenses related to the burial or funeral for the Participant's deceased parent, spouse, children, dependents, or the primary beneficiary under the Plan;
  - (vi) Pay for expenses attributable to the repair of damage to the Participant's principal residence that would qualify for the federal income tax casualty deduction under Code section 165, but without regard to whether the loss exceeds 10% of adjusted gross income;
  - (vii) Expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency ("FEMA") under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-107, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster; or

- (viii) Such other circumstances as may be specified in Treasury regulation section 1.401(k)-1(d)(2)(iii)(B) or subsequent promulgations.
- (d) A distribution shall not exceed the amount necessary to satisfy the immediate and heavy financial need, but may include any amount necessary to pay federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution. A Participant must first obtain all distributions, other than hardship withdrawals, currently available under the Plan or any other plans maintained by the Employer.
- (e) A Participant may apply for a hardship withdrawal by making a request in a manner prescribed or approved by the Administrator (or its delegate).  
Distribution shall occur as soon as reasonably practicable following the receipt of the request and determination by the Administrator (or its delegate) that the request meets the requirements of this Section 6.5.
- (f) Suspension of contributions.
  - (i) For hardship withdrawals requested before January 1, 2019, the Participant will not be permitted to make contributions to this Plan or any other plan maintained by the Employer (other than a cafeteria plan to which salary reduction contributions are used to purchase health and welfare benefits) nor will Elective Deferrals be made on the Participant's behalf under the automatic enrollment provision of Section 2.2(b)(i) until the earlier of the date six (6) months following receipt of the hardship withdrawal or December 31, 2018. After such date, the Participant shall be permitted to resume making contributions to this Plan or any other plan maintained by the Employer, and, if applicable, Elective Deferrals in effect before the suspension period shall resume, unless, prior to such resumption, the Participant elects to change the rate of, or suspend such contributions in accordance with Section 2.4.
  - (ii) For hardship withdrawals requested on or after January 1, 2019, the Participant will be permitted to make contributions to this Plan or any

other plan maintained by the Employer after receipt of the hardship withdrawal without regard to the six-month suspension period described in this subsection.

- (g) Notwithstanding the foregoing, hardship withdrawals shall be permitted under the Plan to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the immediate and heavy financial need. The Vendor shall be responsible for determining whether the hardship withdrawal request satisfies the requirements of the Individual Agreement.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this SECOND AMENDMENT to the VIRGINIA COMMONWEALTH UNIVERSITY TAX DEFERRED SAVINGS PLAN to be executed on behalf of the University this 23 day of ~~December~~<sup>January</sup>, 2018.

VIRGINIA COMMONWEALTH UNIVERSITY

By: Meredith L. Weiss

Name: Meredith L. Weiss

Title: Vice President for Administration

**THIRD AMENDMENT  
TO THE  
VIRGINIA COMMONWEALTH UNIVERSITY TAX DEFERRED SAVINGS PLAN**

**(As Effective January 1, 2008)**

**WITNESSETH:**

**WHEREAS**, Virginia Commonwealth University (the "University") sponsors the the Virginia Commonwealth University Tax Deferred Savings Plan (the "Plan"), originally effective January 1, 2008, and thereafter amended;

**WHEREAS**, the University desires to amend the Plan to clarify the definition of compensation and permit deferrals from payments for unused accrued leave paid either during employment or upon termination of employment;

**WHEREAS**, Section 9.2 of the Plan permits the University to amend the Plan at any time; and

**NOW, THEREFORE**, the Plan is hereby amended as follows effective January 1, 2020:

1. Section 1.8 shall be deleted in its entirety, and shall be replaced as follows:

**1.8 Compensation.** All cash compensation for services to the Employer, including but not limited to salary, wages, fees, commissions, bonuses, overtime pay, and unused accrued leave payments (whether paid during employment or upon termination of employment), that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election under Section 2 made to reduce compensation to have Elective Deferrals under the Plan). Compensation shall include amounts described above that are paid after an Employee's Severance from Employment if paid by the later of 2 ½ months after the Employee's Severance of Employment or the end of the Plan Year that includes the Employee's Severance from Employment, and (except for unused accrued leave payments) if the amounts would have been paid to the Employee if the Employee had continued in employment. Unused accrued leave payments paid after an Employee's Severance from Employment are only includible in Compensation if the Employee would have been able to use the leave if employment had continued.

2. Paragraph (a) of Section 2.2 shall be deleted in its entirety, and shall be replaced as follows:

**(a) General Rule.** An Employee elects to become a Participant by executing an election to reduce Compensation and filing it with the Administrator. Effective October 1, 2010, a Participant may, in executing an election to reduce his or her Compensation, irrevocably designate all or any portion of an Elective Deferral as a Roth 403(b)

Contribution, and a contribution of that amount shall be made by the Employer to the Participant's Account designated for Roth 403(b) Contributions. The Compensation reduction election shall be made on a form(s) provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may provide separate elections for deferral of different types of Compensation. The Administrator may establish an annual minimum deferral amount and may change such minimum from time to time. Participants shall make an election designating the Funding Vehicles to which his or her Elective Deferrals are to be allocated and a designation of Beneficiary. All elections pertaining to a particular type of compensation shall remain in effect until a new election pertaining to the same type of compensation is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. An Employee shall become a Participant as soon as administratively practicable following the date of the Employee's election.

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this THIRD AMENDMENT to the VIRGINIA COMMONWEALTH UNIVERSITY TAX DEFERRED SAVINGS PLAN to be executed on behalf of the University this 10 day of Jan, 2020.

**VIRGINIA COMMONWEALTH UNIVERSITY**

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

Name: Cathleen C. Burke

Title: Assistant Vice President for Human Resources



**FOURTH AMENDMENT  
TO THE  
VIRGINIA COMMONWEALTH UNIVERSITY TAX DEFERRED SAVINGS PLAN**

**(As Effective January 1, 2008)**

**WITNESSETH:**

**WHEREAS**, Virginia Commonwealth University (the “University”) sponsors the Virginia Commonwealth University Tax Deferred Savings Plan (the “Plan”), originally effective January 1, 2008, and thereafter amended;

**WHEREAS**, the University desires to amend the Plan to permit in-plan Roth rollovers, to allow distributions upon the birth or adoption of a child as permitted by the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”), and to allow coronavirus-related distributions and expanded loans consistent with the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”);

**WHEREAS**, Section 9.2 of the Plan permits the University to amend the Plan at any time; and

**NOW, THEREFORE**, the Plan is hereby amended as follows effective January 1, 2022, unless otherwise noted below:

1. Section 1.1 is amended in its entirety to read as follows:

**1.1 Account.** The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account. Separate Accounts will be maintained for pre-tax Elective Deferrals, Roth 403(b) Contributions and Roth Conversion Contributions.

2. The last sentence of Section 1.2 is amended to read as follows: “Separate Account Balances will be maintained separately for pre-tax Elective Deferrals, Roth 403(b) Contributions and Roth Conversion Contributions.”

3. A new Section 1.21 is added to read as follows and all subsequent sections renumbered accordingly:

**1.21 Roth Conversion Contribution.** The portion of a Participant’s Account attributable to amounts that are converted to Roth contributions in accordance with Section 6.7 of the Plan.

4. The last sentence of Section 5.1 is amended to read as follows: “Loans shall not be permitted from a Participant’s Roth 403(b) Account or a Roth Conversion Account.”

5. Section 5.3 is amended in its entirety to read as follows:

**5.3 Maximum Loan Amount.** No loan to a Participant under the Plan may exceed the lesser of: (a) \$50,000, or (b) 50% of the Participant's total vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved). Notwithstanding the foregoing, effective from March 27, 2020 through September 22, 2020, a Participant who is a "Qualified Individual" as that term is defined in the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and set forth in Section 6.8, may borrow up to the lesser of (i) \$100,000 or (ii) 100% of the Participant's total vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved). In all cases, the loan will be reduced by the greater of the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or the highest outstanding balances on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Vendor (not taking into account any payments made during such one-year period).

For purposes of this Section 5.3, any loan from any other plan maintained by the Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any other such plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

6. Section 6.1 shall be deleted in its entirety, and shall be replaced as follows:

**6.1 Benefit Distributions at Severance from Employment or Other Distribution Event.** Except as permitted under Section 3.6 (relating to excess Elective Deferrals), Section 6.4 (relating to withdrawals of amounts rolled over into the Plan), Section 6.5 (relating to hardship), Section 6.8 (relating to birth/adoption distributions), Section 6.9 (relating to coronavirus-related distributions), or Section 9.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59 ½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

7. A new Section 6.7 shall be added to the Plan as follows:

**6.7 Roth Conversion Contributions.** In accordance with Code section 402A(c)(4) and the regulations and rulings promulgated thereunder and the requirements set forth in this section, a Participant may irrevocably elect to convert all or a portion of the Participant's Account attributable to pre-tax Elective Deferrals, rollover contributions, or transfer contributions to a Roth Conversion Contribution Account in accordance with this section, without regard to whether the Participant satisfies the requirements for distribution set forth in Article VI of the Plan. Converted amounts shall be held in a Participant's Roth Conversion Contribution Account. Solely for purposes of determining eligibility for Roth Conversion Contributions, the Plan will treat a Participant's surviving spouse or alternate payee who is a spouse or former spouse as a Participant. Neither a non-spouse beneficiary nor a non-spouse alternate payee may make a Roth Conversion Contribution. There is no limit to the number of Roth Conversion Contributions a

Participant may make in any Plan Year. Amounts maintained in a Participant's Roth Conversion Contribution Account shall be subject to the same distribution provisions that were applicable to the amounts prior to the conversion.

8. A new Section 6.8 shall be added to the Plan as follows:

**6.8 In-Service Distribution for Birth/Adoption.** Effective January 1, 2020, and as permitted under Treasury regulations promulgated under section 72(t)(2)(H) of the Code and to the extent provided in an Annuity Contract or Custodial Account established under the Plan a Participant may take a distribution during a one-year period commencing with the birth or legal adoption of an eligible child. Such distribution may not exceed the lesser of the Participant's Account balance or a total of \$5,000 from the Plan combined with all other plans maintained by the University and must occur within the one-year period beginning on the date the Participant's child is born or on which the legal adoption is finalized. The adopted child must (i) not be a child of the Participant's spouse and (ii) either be under age 18 or physically or mentally incapable of self-support. The Vendor may rely on reasonable representation from an individual that they are eligible to receive a distribution under this section unless the Plan Vendor has actual knowledge to the contrary. In the event that the Vendor determines that the Participant's certification is fraudulent for any reason, the Vendor shall take any actions that it deems appropriate in its sole discretion to recover the overpayment. The Participant may, but is not required to, repay to the Plan an amount up to the total distribution from the Plan pursuant to this Section 6.8 in accordance with rules established by the Vendor.

9. The following Section 6.9 shall be added to the Plan as follows:

**6.9 Coronavirus-Related Distributions.** As permitted under the CARES Act and any procedures implemented by the Vendor in accordance with applicable guidance, a Qualified Individual shall be permitted to take a Coronavirus-Related Distribution from the Plan from January 1, 2020, to December 30, 2020, in accordance with the following rules:

(a) A "Coronavirus-Related Distribution" is a distribution of up to \$100,000 (in the aggregate), or the total of the Participant's Account balance, if less, reduced by the amount of any prior Coronavirus-Related Distribution(s) that the Participant has received on or after January 1, 2020, from the Plan and/or from any other qualified plan(s) within the controlled group of the Employer in which the Participant participates. The \$100,000 limit shall be further reduced by the amount of any Coronavirus-Related Distribution received by the Participant from any eligible retirement plan, as defined in Code section 402(8)(B), that is not part of the controlled group of the Employer. The Participant shall be responsible for notifying the Vendor if this provision applies.

(b) A "Qualified Individual" means a Participant who has self-certified that he or she satisfies one of the following conditions, absent the Vendor's actual knowledge to the contrary:

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

(2) Whose spouse or dependent (as defined in Code Section 152) is diagnosed COVID-19 by a CDC-approved test; or

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

(i) being quarantined, furloughed or laid off or having work hours reduced due to COVID-19;

(ii) being unable to work due to lack of child care due to COVID-19;

(iii) the closing or reducing hours of a business owned or operated by the individual due to COVID-19;

(iv) having a reduction in pay (or self-employment income) or having a job offer rescinded or start date delayed, due to COVID-19;

(v) the individual's spouse or a member of the individual's household being quarantined, furloughed or laid off, or having work hours reduced, being unable to work due to lack of childcare, having a reduction in pay (or self-employment income), or having a job offer rescinded or start date for a job delayed, all due to COVID-19; or

(vi) the closing or reducing of hours of a business owned or operated by the individual's spouse or a member of the individual's household, due to COVID-19.

For purposes of this section, "a member of the individual's household" is someone who shares the individual's principal residence. A Qualified Individual may take a Coronavirus-Related Distribution from the Plan while employed by the Employer or after separation from service if such Qualified Individual retains an Account balance in the Plan.

(c) A Participant's Coronavirus-Related Distribution will be exempt from application of the 10% tax under Code section 72(t), and subject to federal income tax applied ratably over a three-year period beginning on the date of the distribution, unless the Participant elects otherwise. A Coronavirus-Related Distribution to a Participant from the Plan may be recontributed by the Participant to the Plan at any time during the 3-year period beginning on the day after the date on which the Participant received the Coronavirus-Related Distribution. This recontribution may be made in one or more installments, in aggregate not to exceed the amount of the Coronavirus-Related Distribution received, and the repayment shall be treated as a 60-day rollover in a direct plan-to-plan transfer.

(d) The Administrator shall rely on the Participant's certification that he meets the eligibility requirements to be considered a Qualified Individual under the Plan. In the event that the Administrator determines that the Participant's certification is fraudulent for any reason, the Administrator shall take any actions that it deems appropriate in its sole discretion to recover the overpayment from the Participant.

**IN WITNESS WHEREOF**, the undersigned, being an authorized officer of the University, has caused this FOURTH AMENDMENT to the VIRGINIA COMMONWEALTH UNIVERSITY TAX DEFERRED SAVINGS PLAN to be executed on behalf of the University.

**VIRGINIA COMMONWEALTH UNIVERSITY**

By: Cathleen C. Burke

Name: Cathleen C. Burke

Title: Assistant Vice President for Human Resources

Date: 3/3/2022