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**DEFINED CONTRIBUTION RETIREMENT PLAN**

**FOR FACULTY OF**

**VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY**

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**Amended and Restated January 1, 2014**

## TABLE OF CONTENTS

	<u>Page</u>
SECTION 1 - DEFINITIONS.....	5
1.1 Accumulation Account .....	5
1.2 Administrator .....	5
1.3 Board.....	5
1.4 Code.....	5
1.5 Commonwealth.....	5
1.6 Commonwealth Hybrid Program.....	5
1.7 Compensation .....	5
1.8 Eligible Employee.....	6
1.9 Employee .....	6
1.10 Employer.....	6
1.11 Employer Contributions.....	6
1.12 Former Participant .....	6
1.13 415 Compensation .....	6
1.14 Investment Fund .....	7
1.15 Leased Employee .....	7
1.16 Leave of Absence.....	8
1.17 Limitation Year.....	8
1.18 Mandatory Employee Contribution .....	8
1.19 Participant .....	8
1.20 Plan .....	8
1.21 Plan Year.....	8
1.22 Qualified Governmental Excess Benefit Arrangement.....	8
1.23 Systematic Withdrawal .....	8
1.24 Trust.....	8
1.25 Trustees.....	9
1.26 University.....	9
1.27 USERRA.....	9
1.28 Valuation Date .....	9
1.29 VRS.....	9

SECTION 2 - PARTICIPATION .....	9
2.1 Election to Participate.....	9
2.2 Obligation of Participant.....	10
2.3 Termination of Participation.....	11
2.4 Reinstatement as an Eligible Employee.....	11
2.5 Prohibition Against Simultaneous Participation.....	11
SECTION 3 - CONTRIBUTIONS .....	11
3.1 Employer Contributions.....	11
3.2 Mandatory Employee Contributions.....	12
3.3 Transfer Contributions.....	13
3.4 Annual Limitation on Contributions.....	13
3.5 Reemployment of Returning Veterans.....	13
SECTION 4 - VESTING .....	14
SECTION 5 - INVESTMENT OPTIONS .....	15
5.1 Investment Options.....	15
5.2 Annuity Contract.....	15
5.3 Qualified Trust.....	15
5.4 Reallocation Among Annuity Contracts and the Trust.....	17
SECTION 6 - DISTRIBUTIONS .....	18
6.1 Distributions of Amounts Allocated to Annuity Contracts .....	18
6.2 Distributions of Amounts Allocated to the Trust .....	18
6.3 Minimum Distribution Requirements.....	18
6.4 Direct Rollover .....	19
6.5 Reemployment of Participant .....	20
6.6 Payments Made Pursuant to an Administrative Domestic Relations Order .....	20
SECTION 7 - AMENDMENT AND TERMINATION.....	20
7.1 Amendment.....	20
7.2 Termination, Partial Termination, or Complete Discontinuance of Contributions .....	21
7.3 Permissible Reversions.....	21
SECTION 8 - CLAIMS .....	22
8.1 Claims for Benefits Under an Annuity Contract.....	22

8.2	Claims for Benefits Under the Trust.....	22
SECTION 9 - ADMINISTRATION .....		23
9.1	Plan Administrator.....	23
9.2	Actions Conclusive.....	24
9.3	Appointment of Agents.....	24
9.4	Reliance on Opinions, Etc .....	24
9.5	Records and Accounts .....	24
9.6	Payment of Expenses .....	24
9.7	Liability.....	25
SECTION 10 - TRUST AGREEMENT .....		25
10.1	The Trust Agreement .....	25
10.2	No Diversion of Corpus or Income.....	25
SECTION 11 - MISCELLANEOUS .....		26
11.1	Limitation of Rights; Employment Relationship.....	26
11.2	Merger; Transfer of Assets .....	26
11.3	Prohibition Against Assignment.....	26
11.4	Applicable Law; Severability.....	27
11.5	Reliance Upon Copy of Plan.....	27
11.6	Gender and Number; Captions or Headings .....	27

## PREAMBLE

Virginia Polytechnic Institute and State University (the "University") originally established the Defined Contribution Retirement Plan for Faculty of Virginia Polytechnic Institute and State University (the "Plan") effective July 1, 1985 to provide retirement benefits to faculty of the University. The Plan is intended to be a qualified plan under section 401(a) of the Code, funded by annuities that qualify under Code section 403(a) and a tax-exempt trust under Code section 501(a). The Plan was amended and restated effective January 1, 2001 to reflect technical changes. The Plan is a governmental plan as described in Code section 414(d). The Plan was amended and restated effective January 1, 2010 to reflect technical changes in the Code and the establishment of a separate qualified excess benefit arrangement and to provide for mandatory employee contributions for employees hired on or after July 1, 2010. The Plan is hereby amended and restated effective January 1, 2014 to reflect changes to the Code of Virginia and technical changes.

## SECTION 1 - DEFINITIONS

### 1.1 Accumulation Account

The account of a Participant or Former Participant that is credited with Employer Contributions pursuant to Section 3.1, Mandatory Employee Contributions pursuant to Section 3.2, and transfer contributions pursuant to Section 3.2.

### 1.2 Administrator

The University or such other person or entity to whom responsibility for Plan administration has been delegated.

### 1.3 Board

The Board of Visitors of Virginia Polytechnic Institute and State University.

### 1.4 Code

The Internal Revenue Code of 1986, as amended.

### 1.5 Commonwealth

The Commonwealth of Virginia.

### 1.6 Commonwealth Hybrid Program

The hybrid retirement program established pursuant to section 51.1-169 of the Code of Virginia.

### 1.7 Compensation

#### (a) Generally

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

#### (b) Participants on Leave of Absence

Compensation for a Participant who is on a Leave of Absence shall be Compensation described in (a) when the Participant went out on leave.

(c) Limitation

In addition to other applicable limitations set forth in the Plan and notwithstanding any other provision of the Plan to the contrary, Compensation taken into account under the Plan shall not exceed the dollar limitation of Code section 401(a)(17), which is incorporated herein by reference, as adjusted from time to time. In the event Compensation exceeds the dollar limitation of Code section 401(a)(17), the amount of Compensation in excess of such amount shall be disregarded for purposes of the Plan.

**1.8 Eligible Employee**

An Employee who is designated as "Faculty" as such term is defined in the Faculty Handbook. The term "Eligible Employee" shall not include (a) any Leased Employee; (b) any person who is classified by the Employer as an independent contractor (regardless of the person's actual employment status under applicable law); or (c) any temporary employee.

**1.9 Employee**

Any individual on the payroll of the Employer whose compensation from the Employer is subject to withholding for the purposes of Federal income taxes and the Federal Insurance Contributions Act. 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 an 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.

**1.10 Employer**

The University.

**1.11 Employer Contributions**

The amount allocated to an Eligible Employee's Accumulation Account as determined pursuant to Plan Section 3.1.

**1.12 Former Participant**

Any individual who is no longer a Participant but who continues to have an Accumulation Account.

**1.13 415 Compensation**

A Participant's total annual compensation from the Employer for the Limitation Year as defined in the Treasury Regulations issued under Code section 415. 415 Compensation

includes a Participant's wages (including elective deferrals as defined in Code section 402(g)), salaries, fees for professional service and other amounts for personal services actually rendered in the course of employment with the Employer. 415 Compensation paid or made available during such Limitation Years shall also include any amount that is contributed or deferred by the Employer at the election of the Employee and that is not includible in the gross income of the Employee by reason of Code section 125 or 132(f). Effective January 1, 2008, 415 Compensation shall include amounts received after a Participant's severance from employment with the University but only to the extent such amounts received by the later of 2-1/2 months following such severance from employment or the end of the Plan Year that includes the date of the Participant's severance from employment and such amounts do not include severance pay or other amounts that would have not been paid to the Participant absent his severance. Effective January 1, 2009, 415 Compensation shall include differential wage payments described in Code section 414(u)(12)(D). 415 Compensation does not include: (a) contributions (other than elective contributions described in Code sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a deferred compensation plan which, without regard to Code section 415, are not includible in the employee's gross income for the taxable year in which contributed (e.g., employee contributions to a deferred compensation plan "picked-up" by the Employer pursuant to Code section 414(h)(2)); (b) Employer contributions made on behalf of the employee to a simplified employee pension plan described in Code section 408(k) or a simplified retirement account described in Code section 408(p) to the extent not includible in gross income for the taxable year in which contributed; (c) distributions from a deferred compensation plan and (d) other items of remuneration similar to (a) through (c).

#### **1.14 Investment Fund**

The funds referred to in Section 5 hereof for the investment and reinvestment of a Participant's share of contributions and assets held under the Plan, sometimes also referred to as "Fund" or "Funds."

#### **1.15 Leased Employee**

Any individual who provides services to the Employer if:

- (a) such services are provided pursuant to an agreement between the Employer and any other person ("leasing organization");
- (b) such services are performed under the primary direction or control of the Employer; and
- (c) the Employer classifies such person as a Leased Employee (regardless of the individual's employment status under applicable law).



**1.16 Leave of Absence**

A paid leave of absence by a Participant that is approved by the Employer, in its sole and absolute discretion.

**1.17 Limitation Year**

The Plan Year.

**1.18 Mandatory Employee Contribution**

The amount allocated to an Eligible Employee's Accumulation Account as determined pursuant to Plan Section 3.2.

**1.19 Participant**

Any Eligible Employee who has commenced participation in the Plan in accordance with the provisions of Section 2 of the Plan.

**1.20 Plan**

The Defined Contribution Retirement Plan for Faculty of Virginia Polytechnic Institute and State University as set forth in this document and as amended from time to time.

**1.21 Plan Year**

The twelve (12) month period commencing on each January 1 and ending on each December 31.

**1.22 Qualified Governmental Excess Benefit Arrangement**

The Qualified Governmental Excess Benefit Arrangement for Employees of Virginia Polytechnic Institute and State University, as effective January 1, 2010 and as amended thereafter.

**1.23 Systematic Withdrawal**

A distribution option under Section 6.2(b) whereby a Participant may elect a distribution of a portion of his or her Accumulation Account allocated to the Trust in a series of substantially equal monthly, quarterly, semi-annually or annual payments.

**1.24 Trust**

The Trust for the Defined Contribution Retirement Plan for Faculty of Virginia Polytechnic Institute and State University, created by the Trust Agreement entered into pursuant to Section 10 between the University and the Trustees.

**1.25 Trustees**

The persons and/or bank or trust company which are named as Trustees in the Trust Agreement described in Section 10.1.

**1.26 University**

Virginia Polytechnic Institute and State University.

**1.27 USERRA**

The Uniformed Services Employment and Reemployment Rights Act of 1994, as amended.

**1.28 Valuation Date**

The last day of each Plan Year and each other interim date during the Plan Year on which the portion of the assets of a Participant's or Former Participant's Accumulation Account is valued.

**1.29 VRS**

The defined benefit retirement plan established under section 51.1-124.1 et seq. of the Code of Virginia and administered by the Virginia Retirement System.

**SECTION 2 - PARTICIPATION**

**2.1 Election to Participate**

(a) New Employees

In the case of an Employee who is not a participant in the VRS or the Commonwealth Hybrid Program at the time he or she becomes an Eligible Employee and who is not subject to (c) below, such person shall choose within sixty (60) days (Employees who became Eligible Employees prior to July 1, 2001, shall choose within ninety (90) days) of becoming an Eligible Employee to participate in either the Plan or the VRS (effective on or after January 1, 2014: the Commonwealth Hybrid Program). The Employee shall make the choice by completing the corresponding application of the retirement program in which he or she elects to participate. If an Eligible Employee fails to choose a plan, pursuant to the policy of the Commonwealth he or she shall be required to participate in the VRS (effective on and after January 1, 2014: the Commonwealth Hybrid Program) and be ever precluded from participating in the Plan. An Eligible Employee who elects to participate in the Plan shall become a Participant in the Plan as of the date he or she becomes an Eligible Employee.

(b) Current Employees Who Become Eligible Employees

In the case of an Employee who is a participant in the VRS or the Commonwealth Hybrid Program at the time he or she becomes an Eligible Employee and who is not subject to (c) below, such person may make an irrevocable election to participate in the Plan within sixty (60) days after becoming an Eligible Employee by completing the Plan application form prescribed by the Administrator. If an Eligible Employee fails to choose a plan, pursuant to the policy of the Commonwealth he or she shall be required to continue to participate in either the VRS or the Commonwealth Hybrid Program and be ever precluded from participating in the Plan.

(c) Eligible Employees Transferring from other Commonwealth Institutions of Higher Education

- (i) Any Eligible Employee who is in continuous service in the performance of teaching, administrative or research duties with another Commonwealth institution of higher education when he becomes an Eligible Employee and who was most recently covered by the VRS or the Commonwealth Hybrid Program may not participate in the Plan and will continue their participation in the VRS or the Commonwealth Hybrid Program, as applicable;
- (ii) Any Eligible Employee who is in continuous service in the performance of teaching, administrative or research duties with another Commonwealth institution of higher education when he becomes an Eligible Employee and who was most recently covered by such institution's "optional retirement plan" (as defined in Virginia Code Section 51.1-126) shall become a Participant in the Plan as of the date such Employee became an Eligible Employee.

**2.2 Obligation of Participant**

When an Employee becomes eligible to participate, and thereafter from time to time, the Administrator may require the Employee to furnish such information and fill out, sign and file such forms and documents as may be reasonably required for the administration of the Plan, including beneficiary designation forms, evidence of age and marital status, etc. If a Participant does not comply with any such reasonable requirements neither the Administrator, the Trustees, nor any other person, shall be obligated to administer the Plan for such Participant until such information is properly furnished, and no such person shall incur liability to such Participant or his or her beneficiary to the extent that any intended Plan benefit has not been obtained or is not available because of the Participant's or beneficiary's failure to furnish such information and fill out, sign and file such documents.

### **2.3 Termination of Participation**

Participation in the Plan continues until a Participant is both no longer an Eligible Employee and no longer maintains a positive balance in an Accumulation Account under the Plan.

### **2.4 Reinstatement as an Eligible Employee**

A former Eligible Employee who subsequently becomes an Eligible Employee again shall have the right to elect to participate in the Plan as described in Section 2.1 above.

### **2.5 Prohibition Against Simultaneous Participation**

A Participant in this Plan may not at the same time participate in the VRS or the Commonwealth Hybrid Program or be receiving benefits from the VRS or the Commonwealth Hybrid Program.

## **SECTION 3 - CONTRIBUTIONS**

### **3.1 Employer Contributions**

#### **(a) Participants Who Commenced Participation Before July 1, 2010 and Certain Grandfathered Participants**

In the case of a Participant who commenced participation in the Plan before July 1, 2010, the Employer shall contribute to such Participant's Accumulation Account for the Plan Year an amount equal to 10.4% of such Participant's Compensation or such other rate that may be established from time to time by the Commonwealth or provided for under section 51.1-126 of the Code of Virginia.

This Section 3.1 shall also apply to a Participant who commenced participation in the Plan on or after July 1, 2010, but who either (i) immediately prior to commencing participation in the Plan had continuously been a member of a retirement plan sponsored by the Virginia Retirement System, as that term is defined in Section 51.1-124.3 of the Code of Virginia, or a member of an optional retirement plan sponsored by a college or university of the Commonwealth of Virginia, since June 30, 2010; or (ii) had entered into a written contract for employment as an Eligible Employee or in a "covered position" for retirement purposes under Title 51.1 of the Code of Virginia prior to March 15, 2010. Such Participants also shall be considered to have commenced participation in the Plan before July 1, 2010 for purposes of Section 3.2.

#### **(b) Participants Who Commenced Participation On or After July 1, 2010**

In the case of a Participant who commenced participation in the Plan on or after July 1, 2010, the Employer shall contribute to such Participant's Accumulation

Account for the Plan Year an amount equal to 8.5% of such Participant's Compensation or such other rate that may be permitted from time to time by the Commonwealth or provided for under section 51.1-126 of the Code of Virginia.

(c) Participants on Leaves of Absence

The Employer shall continue to make a contribution under this Section 3.1 on behalf of a Participant who is on a Leave of Absence subject to the limitation described in Section 3.4

(d) Participants who are receiving Long-Term Disability

A Participant who is receiving benefits under the Employer's long-term disability plan shall continue to have Employer Contributions made on his behalf into the Plan by the long-term disability plan, subject to the terms and conditions of the long-term disability plan and any related contract.

(e) Timing of Contributions

Timing of the contributions described in (a) – (c) above shall be determined by the Administrator in its sole and absolute discretion.

### **3.2 Mandatory Employee Contributions**

In the case of a Participant to whom Section 3.1(b) applies, the Employer shall make a Mandatory Employee Contribution to such Participant's Accumulation Account for the Plan Year of an amount equal to 5% of such Participant's Compensation or such other rate that may be established from time to time by the Commonwealth or provided for under section 51.1-126 of the Code of Virginia. Mandatory Employee Contributions shall be paid by the Employer in lieu of employee contributions. The source of each Mandatory Employee Contribution paid by the University shall be a corresponding reduction in the salary of the Participant on whose behalf the Employer makes a Mandatory Employee Contribution. A Participant for whom the Employer makes a Mandatory Employee Contribution shall have no cash or deferred election right (within the meaning of section 1.401(k)-1(a)(3) of the Treasury Regulations) with respect to the Mandatory Employee Contributions paid to the Plan by the Employer. The Mandatory Employee Contributions shall be treated as paid by the Employer for the purpose of Code section 414(h)(2), but shall be treated as "member contributions" paid by Participants for the purpose of section 51.1-126.F.1 of the Code of Virginia.

A Participant to whom Section 3.1(b) applies shall continue to make the Mandatory Employee Contribution while on a paid Leave of Absence. Mandatory Employee Contributions shall not be made while a Participant is on an unpaid Leave of Absence.

### **3.3 Transfer Contributions**

The Plan shall receive only transfers of accrued benefits from the VRS or the Commonwealth Hybrid Program on behalf of a Participant. It shall accept no other transfers or rollovers of any kind.

The Administrator shall allocate the transferred amounts described in the preceding paragraph among the various investment vehicles permitted under the Plan pursuant to Section 5 in accordance with the instructions of the Participant, which shall be provided in the form and manner prescribed by the Administrator.

### **3.4 Annual Limitation on Contributions**

#### **(a) Defined Contribution Limit**

In no event shall a Participant's Employer Contributions under Section 3.1 and Mandatory Employee Contributions under Section 3.2 for any Limitation Year exceed the lesser of:

- (i) \$52,000, as adjusted under Code section 415(d); or
- (ii) one hundred percent (100%) of the Participant's 415 Compensation.

#### **(b) Participation In More Than One Plan**

If the Employer maintains one or more other qualified defined contribution plans, as defined in Code section 414(i), for Employees, some or all of whom may be Participants in this Plan, then the contributions made on behalf of the Participant in such other plan(s) shall be aggregated with the contributions made on behalf of the Participant derived from this Plan prior to the end of the Limitation Year for purposes of the limitation of Section 3.4(a) above. In the event that the Participant's aggregate annual additions, as defined in Code section 415(c) and the Treasury Regulations issued thereunder, exceed the contribution limit in Section 3.4(a) for any Limitation Year, the contributions under this Plan shall be reduced to the maximum extent necessary prior to the end of the Limitation Year and reallocated in accordance with the terms found in the Qualified Governmental Excess Benefit Arrangement.

#### **(c) No Exceeding 415 Limit**

In no event shall the amount of any benefit or annuity determined under this Plan Section 3 exceed the maximum benefit permitted under Code section 415.

### **3.5 Reemployment of Returning Veterans**

#### **(a) Retroactive Contributions**

If a Participant is in qualified military service, as that term is defined under USERRA, and he returns to employment with the Employer within ninety (90) days of the end of his military leave (or such longer period of time as his reemployment rights are protected by law), the Employer shall make the contributions described in Section 3.1 above on behalf of the Participant that he otherwise would have been entitled to but for his absence due to the military leave and the Participant shall have his salary reduced to make the contributions described in Section 3.2 above that he otherwise would have been required to make but for his absence due to the military leave. Such contribution shall be paid by the Employer in lieu of the Participant making the contribution and shall be treated as paid by the Employer for the purpose of Code section 414(h)(2)..

(b) Limitations

Contributions made pursuant to (a) above shall not be counted for purposes of Section 3.4 during the Limitation Year when they are made. Rather, such contributions shall be counted for purposes of Section 3.4 in the Limitation Year to which the contributions relate.

(c) Compensation

For purposes of (a) and (b) above, the Administrator shall treat the Participant as receiving Compensation during the period of qualified military service equal to the amount of Compensation the Participant would have received from the Employer during such period, based on the rate of pay the Participant would have received from the Employer but for the absence due to military service, or, if such rate of pay is not reasonably certain, the Participant's average Compensation during (I) the twelve (12) month period immediately before the qualified military service or, (II) if shorter, the period of employment immediately before the qualified military service.

(d) Crediting of Earnings

A Participant who is entitled to a contribution pursuant to (a) above shall not be entitled to receive corresponding retroactive earnings attributable to such contribution.

#### SECTION 4 - VESTING

A Participant shall be fully vested in his or her Accumulation Account at all times under the Plan.

## SECTION 5 - INVESTMENT OPTIONS

### 5.1 Investment Options

A Participant shall have the option to allocate the Employer's contribution made pursuant to Section 3.1 between the following forms of investment:

- (a) an annuity contract that meets the requirements of Code section 403(a), or
- (b) a qualified trust as described in Code section 401(a).

When first applying to become a Participant in the Plan, as described in Section 2.1, the Eligible Employee shall also designate on the Plan application form prescribed by the Administrator whether Plan contributions should be invested in an annuity contract or the Trust. A Participant may change the investment allocation at such time or times as the Administrator may prescribe.

### 5.2 Annuity Contract

The Administrator may offer one or more annuity contracts described in Section 5.1(a) above among which a Participant may choose to allocate contributions made to his or her Accumulation Account. The nature and the quality of the investments offered under each of these contracts shall be determined by the Administrator. To the extent a Participant may choose among various investments offered under an annuity contract, any communication regarding such investment shall be between the sponsor of the annuity contract and the Participant. Once a Participant chooses an annuity contract to which to allocate Plan contributions, the Administrator shall have no further responsibility regarding such contributions.

### 5.3 Qualified Trust

#### (a) Individual Accounts

The Administrator shall establish and maintain an Accumulation Account in the name of each Participant to which there shall be credited (or debited) a Participant's contributions made in accordance with Section 3.1, 3.2 or 3.3 above that the Participant has designated are to be allocated to the Trust pursuant to Section 5.1(b) above. The Administrator shall adjust, as of each Valuation Date, the balance of each Participant's Accumulation Account to reflect the current market value of the Investment Funds in which the Accumulation Account was invested. A Participant's interest in any Investment Fund shall be determined and accounted for based on his beneficial interest in any such Fund, and no Participant shall have any interest in or rights to any specific asset of any Investment Fund.



(b) Investment of Accounts

- (i) The balance held for the benefit of each Participant in his Accumulation Account shall be invested at the direction of each Participant among one or more of the Plan's Investment Funds. The nature and the quality of the investments in each of these Funds shall be determined by the Administrator in its sole discretion. There will be at least three Investment Funds to which a Participant may allocate his Accumulation Account and each of these Funds will have a different one of the following primary objectives:
  - (A) The generation of the highest level of income consistent with the preservation of capital over the long term;
  - (B) Capital appreciation; and
  - (C) A balance between capital appreciation and preservation of capital and generation of income.
- (ii) The Administrator shall provide Participants with directions as to how to obtain information sufficient to enable Participants to make informed investment directions. Neither the Administrator nor the Trustees, however, shall provide investment advice to a Participant with respect to an investment.
- (iii) Each Participant shall be responsible for directing the investment of all contributions in his or her account. Participant investment directions shall be made in a manner prescribed by the Administrator. Investments shall be made in one (1) or more of the Investment Funds made available under subsection (i) hereof.
- (iv) Subject to the terms and limitations of the various Investment Funds, each Participant may direct at such time or times as the Administrator may prescribe that amounts held in one or more of the Investment Funds described in subsection (i) hereof, may be transferred to, from or among such Investment Funds.

(c) Allocations of Earnings and Losses

Allocations of earnings and losses to Participant accounts shall be accomplished as follows:

- (i) The dividends, capital gains distributions, and other earnings received on any share or unit of an Investment Fund that is specifically credited or earmarked to a Participant's Accumulation Account under the Plan in accordance with the directed investment provisions of this Section 5.3

shall be allocated to such account and immediately reinvested, to the extent practicable, in additional shares or units of such Investment Fund.

- (ii) To the extent not otherwise provided in paragraph (i) above, the assets of each Investment Fund shall be valued by the Trustee at their current fair market value of as each Valuation Date, and the earnings and losses of the Investment Fund since the immediately preceding Valuation Date shall be allocated to the Accumulation Accounts of all Participants with interests in that Investment Fund in the ratio that the fair market value of each such interest as of the immediately preceding Valuation Date, reduced by any distributions or withdrawals therefrom since such preceding Valuation Date, bears to the total fair market value of all such interests as of the immediately preceding Valuation Date, reduced by any distributions or withdrawals therefrom since such preceding Valuation Date.

(d) Allocation to Individual Accounts

The Accumulation Accounts of each Participant shall be adjusted as of each Valuation Date by (I) reducing such Accumulation Accounts by any payments made therefrom since the preceding Valuation Date, and then (II) increasing or reducing such Accumulation Accounts by the Participant's share of earnings and losses, determined pursuant to (c) above, and the expense of administering the Investment Funds since the preceding Valuation Date, and (III) crediting such Accumulation Accounts with any contributions allocated thereto since the preceding Valuation Date.

(e) Valuation for Withdrawal and Distribution

For purposes of paying the amounts to be withdrawn or distributed to a Participant or beneficiary pursuant to Section 6.2 below, the value of the Participant's Accumulation Account allocated to the Trust shall be determined in accordance with the provisions of this Section 5.3 as of the Valuation Date that is on or immediately preceding the date the distribution is made, except as otherwise determined in accordance with Section 6.3.

#### **5.4 Reallocation Among Annuity Contracts and the Trust**

A Participant may reallocate all or a portion of his or her Accumulation Account invested in annuity contracts to the Trust, or vice versa, to the extent permitted, if at all, by the sponsor of the annuity and the Administrator.

## SECTION 6 - DISTRIBUTIONS

### 6.1 Distributions of Amounts Allocated to Annuity Contracts

Distribution of the portion of a Participant's Accumulation Account allocated to annuity contracts shall be in accordance with the terms of the applicable annuity contract.

### 6.2 Distributions of Amounts Allocated to the Trust

Distribution of the portion of a Participant's Accumulation Account allocated to the Trust shall be distributed in the following manner:

(a) Election to Receive Benefits

A Participant who is no longer employed by the Employer or any other entity controlled by the Board may elect to receive his or her benefits any time on or after the day he or she separates from service. The amount to be distributed shall be determined based on the value of the portion of the Former Participant's Accumulation Account balance allocated to the Trust as determined pursuant to Section 5.3(e). Such request shall be made on a form prescribed or approved by the Administrator.

(b) Forms of Distribution

A Participant may elect to receive a distribution of the portion of his or her Accumulation Account allocated to the Trust in one of the following forms:

- (i) lump sum; or
- (ii) Systematic Withdrawals.

(c) Failure to Make an Election to Receive Benefits

If a Participant fails to make an election under Section 6.2(a) above before the date described Section 6.3(a) below, the Administrator shall direct the Trustee to distribute the portion of Participant's Accumulation Account allocated to the Trust in a lump sum.

### 6.3 Minimum Distribution Requirements

In no event shall distributions commence later than April 1 of the calendar year following the calendar year in which the Participant attains age seventy-and-one-half (70 1/2), except if the Participant is an Employee in the calendar year he or she attains age seventy-and-one-half (70 1/2), in which case the distribution may commence April 1 of the calendar year following the calendar year in which the Participant retires. Distributions in all cases will be made in accordance with Code section 401(a)(9) and the regulations thereunder.

## 6.4 Direct Rollover

### (a) General

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 6.4, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

### (b) Definitions

#### (i) Eligible Rollover Distributions

An eligible rollover distribution is any distribution or withdrawal of all or any portion of an Accumulation Account balance, other than (1) any payment that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; (2) any payment to the extent such payment is required under Code section 401(a)(9); (3) the portion of any payment that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (4) any other payment that is treated as ineligible for a direct rollover under Code section 401(a)(31), the related regulations, and other guidance.

#### (ii) Eligible Retirement Plan

An eligible retirement plan is (1) an individual retirement account described in Code section 408(a); (2) an individual retirement annuity described in Code section 408(b); (3) an individual retirement annuity described in Code section 403(a); (4) a qualified retirement plan described in Code section 401(a) that accepts the distributee's eligible rollover distribution; (5) an eligible deferred compensation plan described in Code section 457(b) maintained by an eligible employer described in Code section 457(e)(1)(A) that separately accounts for eligible rollover distributions; (6) an annuity contract described in Code section 403(b); or (7) effective January 1, 2008, a Roth IRA described in Code section 408A(b) (subject to the rules and provisions set forth in Code § 408A(e) and any regulations thereunder). For a non-spouse beneficiary described in the last sentence of Section 6.4(b)(iii) an eligible retirement plan shall include only an individual retirement plan or annuity described in (1), (2), or (7) above, that is treated as an inherited IRA of the beneficiary.

(iii) Distributee

A distributee includes a Participant or Former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under a administrative domestic relations order are distributees with regard to the interest of the spouse or former spouse. Effective January 1, 2010, a Participant or former Participant's non-spouse beneficiary is a distributee with respect to any otherwise eligible rollover distribution that is paid to the beneficiary.

(iv) Direct Rollover

A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

**6.5 Reemployment of Participant**

Notwithstanding anything to the contrary in the foregoing, if a Former Participant returns to the service of the Employer as an Eligible Employee after distribution of his or her benefits has begun, such distributions shall immediately cease and no benefits shall be paid until such Participant again becomes entitled to benefits under the terms of this Plan.

**6.6 Payments Made Pursuant to an Administrative Domestic Relations Order**

Notwithstanding any other provision of this Plan, the Administrator may direct the distribution of any portion of the Participant's Accumulation Account payable to an alternate payee (as defined in Code section 414(p)(8)) pursuant to an administrative domestic relations order (as determined by the Administrator in accordance with Code section 414(p)(11)) prior to the date on which the Participant attains his or her earliest retirement age (as defined in Code section 414(p)(4)), provided that the Administrator has properly notified the affected Participant and each alternate payee of the order and has determined that the order is an administrative domestic relations order. The alternate payee shall be paid his or her separate accounts or his or her percentage of the Participant's Accumulation Account in a lump sum payment unless the domestic relations order specifies a different manner of payment permitted by the Plan. The alternate payee shall not be required to consent to such lump sum payment.

**SECTION 7 - AMENDMENT AND TERMINATION**

**7.1 Amendment**

The University reserves the right to amend the Plan, through affirmative action by the Board at any time and from time to time, in whole or in part, including, without limitation, retroactive amendments necessary or advisable to qualify the Plan and Trust under the provisions of Code sections 401(a) and 403(a). However, except as set forth in

Section 7.3, no such amendment shall (1) cause any part of the assets of the Plan and Trust to revert to or be recoverable by the University or be used for or diverted to purposes other than the exclusive benefit of Participants, Former Participants, and beneficiaries; (2) deprive any Participant, Former Participant, or beneficiary of any benefit already vested; (3) alter, change, or modify the duties, powers, or liabilities of the Trustee without its written consent; or (4) permit any part of the assets of the Plan and the Trust to be used to pay premiums or contributions of the University under any other plan maintained by the University or for the benefit of its employees. No amendment to the vesting schedule shall deprive a Participant of non-forfeitable rights to benefits accrued to the date of the amendment. The Board may delegate its authority to amend the Plan to a committee or officer appointed by the Board; provided, however, that the committee's or officer's authority to amend the Plan shall be limited to amendments necessary or advisable for purposes of maintaining the Plan's qualified status under Code sections 401(a) and 403(a).

## **7.2 Termination, Partial Termination, or Complete Discontinuance of Contributions**

Although the University has established the Plan with the intention and expectation that it will make contributions indefinitely, nevertheless the University shall not be under any obligation or liability to continue its contributions or to maintain the Plan for any given length of time. The University may in its sole and absolute discretion through an affirmative action by its Board discontinue contributions or terminate the Plan in whole or in part in accordance with its provisions at any time without any liability for the discontinuance or termination. However, the Trust shall continue until the portions of Participants' Accumulation Accounts that have been allocated to the Trust have been completely distributed to or for the benefit of such Participants in accordance with the Plan.

## **7.3 Permissible Reversions**

- (a) Notwithstanding any other provision of the Plan:
  - (i) No Participant or beneficiary shall have any right or claim to any assets of the Trust or to any benefit under the Plan before the Internal Revenue Service determines that the Plan and Trust qualify under the provisions of Code section 401(a), or any statute of similar import, other than any vested rights or benefits accrued represented by any assets transferred from the VRS or the Commonwealth Hybrid Program, to the extent vested upon transfer to this Plan and Trust from the VRS or the Commonwealth Hybrid Program. Upon the distribution to the Participants of any vested amounts or benefits transferred from the VRS or the Commonwealth Hybrid Program and the return of any remaining contributions to the Employer following the denial of initial qualification of the Plan and Trust under the provisions of Code section 401(a), the Trust provided for in this Plan shall be terminated and the Trustees shall be discharged from all obligations hereunder.

- (ii) To the extent the Employer's contributions are made by reason of a mistake of fact, they may be returned to the Employer within one (1) year from the date of contribution.
- (b) The amounts that may be returned to the Employer under Section 7.3(a)(II) above shall be the excess of the amounts contributed over the amounts that would have been contributed had there not been a mistake of fact. No earnings on the mistaken contributions may be returned to the Employer and losses sustained by the Trust after the date of contribution shall proportionately reduce the amount that may be returned to the Employer.

## **SECTION 8 - CLAIMS**

### **8.1 Claims for Benefits Under an Annuity Contract**

A Participant's (or beneficiary's) claim for benefits for the portion of the Participant's Accumulation Account allocated to an annuity contract shall be resolved by the sponsor of the annuity contract based on procedures it has established.

### **8.2 Claims for Benefits Under the Trust**

A Participant's (or beneficiary's) claim for benefits for the portion of the Participant's Accumulation Account invested in the Trust may be presented in writing by the Participant to the Administrator.

If the claim for benefits is wholly or partially denied, the Administrator shall notify the Participant (or beneficiary) in writing of such denial of benefits within sixty (60) days of receipt of the claim.

Any notice of a denial of benefits shall advise the Participant (or beneficiary) of:

- (a) the specific reason or reasons for the denial;
- (b) the specific provisions of the Plan on which the denial is based;
- (c) any additional material or information necessary for the Participant (or beneficiary) to perfect the claim and an explanation of why such material or information is necessary; and
- (d) the steps which the Participant (or beneficiary) must take to have the claim reviewed.

A Participant (or beneficiary) whose claim has been denied may file a written request for a review by the Administrator of the denial of this claim. Such written request for review must be filed within sixty (60) days after receipt of written notification of the denial of this claim. The Administrator shall review the written comments and any submissions of the Participant (or beneficiary) and render its decision regarding the appeal within sixty

(60) days of receipt of such appeal. Such decision shall be in writing setting forth the specific reasons and specific Plan provisions on which the Administrator based its decision.

## **SECTION 9 - ADMINISTRATION**

### **9.1 Plan Administrator**

The Administrator shall administer the Plan. The President of the University is designated as the agent of the Plan for the service of legal process.

The Administrator's duties shall include, without limitation, powers with respect to the administration of the Trust as may be conferred upon it by the Trust. It shall have the power to take all action and to make all decisions that shall be necessary or proper in order to carry out the provisions of the Plan and, without limiting the generality of the foregoing, it shall have the following powers:

- (a) to make (and enforce by suspension or forfeiture) such rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;
- (b) to interpret or construe the Plan;
- (c) to decide questions concerning the Plan and the eligibility of any Employee to participate therein and the right of any person to receive benefits thereunder;
- (d) to decide any dispute arising under the Plan;
- (e) to compute the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan;
- (f) to authorize all disbursements by the Trustees;
- (g) to prescribe and require the use of such forms as it shall deem necessary or desirable in connection with the administration of the Plan;
- (h) to supply any remedies or corrections to omissions in the Plan;
- (i) to reconcile and correct any errors or inconsistencies in the Plan; and
- (j) to make equitable adjustments for any mistakes or errors made in the administration of the Plan.

The Administrator shall establish rules and regulations and shall take other necessary or proper action to carry out its duties and responsibilities.



## **9.2 Actions Conclusive**

Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. The decisions of the Administrator on any matter within its authority shall be made in the sole discretion of the Administrator and shall be final and binding on all parties, including without limitation, the Employer, Participants and beneficiaries.

## **9.3 Appointment of Agents**

The Administrator may employ or engage such accountants, counsel, other experts, and other persons as it deems necessary in connection with the administration of the Plan to the extent permitted by law.

## **9.4 Reliance on Opinions, Etc.**

The Administrator and each member thereof and each person to whom it may delegate any power or duty in connection with administering the Plan shall be entitled to rely conclusively upon, and shall be fully protected in any action taken by them or any of them in good faith reliance upon any valuation, certificate, opinion, or report which shall be furnished to them or any of them by the Trustees or by any accountant, counsel, other expert, or other person who shall be employed or engaged by the Trustees or the Administrator.

## **9.5 Records and Accounts**

The Administrator shall keep or cause to be kept all data, records and documents pertaining to the administration of the Plan, and shall execute all documents necessary to carry out the provisions of the Plan. The Administrator shall advise the Trustees of such facts as may be pertinent to the Trustees' administration of the Trust and shall give proper instruction to the Trustees for carrying out the purposes of the Plan.

## **9.6 Payment of Expenses**

- (a) Subject to the provisions of paragraph (b) below, expenses in connection with the administration of the Plan and Trust including commissions, taxes, and expenses of the Trustees and of any accountant or other person who shall be employed by the Administrator or Trustees in the administration thereof, shall be paid by the Trust unless paid by the University.
- (b) In the event of permanent discontinuance of contributions or termination any further payment of expenses which arise or have arisen in connection with the administration of the Plan and Trust shall be paid by the Trust unless paid by the University.

## **9.7 Liability**

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

## **SECTION 10 - TRUST AGREEMENT**

### **10.1 The Trust Agreement**

“Trust Agreement” means the “Trust for the Defined Contribution Retirement Plan for Faculty of Virginia Polytechnic Institute and State University.” The Trustees are to hold, invest, and distribute the Trust Fund in accordance with the terms and provisions of the Trust Agreement. The duties and rights of the Trustees shall be determined solely by reference to the Trust Agreement.

### **10.2 No Diversion of Corpus or Income**

In no event shall any portion of the corpus or income of the Trust Fund be used for or diverted to purposes other than the exclusive benefit of Participants and their beneficiaries.

## SECTION 11 - MISCELLANEOUS

### 11.1 Limitation of Rights; Employment Relationship

Neither the establishment of the Plan and the Trust nor any modifications of them, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as modifying or affecting in any way the terms of employment of any Employee.

### 11.2 Merger; Transfer of Assets

- (a) If the Employer merges or consolidates with or into another entity, or if substantially all the assets of the Employer are transferred to another entity, the Plan shall terminate on the effective date of the merger, consolidation, or transfer. However, if the surviving entity resulting from the merger or consolidation, or the entity to which the assets have been transferred, adopts this Plan, the Plan shall continue and the successor entity shall succeed to all rights, powers, and duties of the Employer under the Plan, and the employment of any Employee who is continued in the successor entity's employ shall not be deemed to have been terminated for any purpose under the Plan.
- (b) This Plan shall not be merged or consolidated with any other employee benefit plan, nor shall there be any transfer of assets or liabilities from this Plan to any other plan, unless, immediately after the merger, consolidation, or transfer, each Participant's benefits, if the other plan were then to terminate, are at least equal to the benefits to which the Participant would have been entitled had this Plan been terminated immediately before the merger, consolidation, or transfer.

### 11.3 Prohibition Against Assignment

- (a) Except as provided below, the benefits provided by this Plan may not be assigned or alienated. Neither the Administrator nor the Trustees shall recognize any transfer, mortgage, pledge, hypothecation, order, or assignment by any Participant or beneficiary of all or part of his or her interest under the Plan, and the interest shall not be subject in any manner to transfer by operation of law and shall be exempt from the claims of creditors or other claimants from all orders, decrees, levies, garnishment, and/or executions, and other legal or equitable process or proceedings against the Participant or beneficiary to the fullest extent that may be permitted by law.
- (b) This provision shall not apply to the extent a Participant or beneficiary is indebted to the Plan, for any reason, under any provision of this Agreement. At the time a distribution is to be made to or for a Participant's or beneficiary's benefit, such proportion of the amount distributed as shall equal such indebtedness, shall be paid by the Trustees to the Trustees or the Administrator, at the direction of the Administrator, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or beneficiary must be given written notice by

the Administrator that such indebtedness is to be so paid in whole or in part from his account. If the Participant or beneficiary does not agree that the indebtedness is a valid claim against his vested Accounts, he shall be entitled to a review of the validity of the claim in accordance with procedures provided in Section 8.

- (c) This provision shall not apply to an administrative domestic relations order, and those other domestic relations orders permitted to be so treated by the Administrator. To the extent provided under an administrative domestic relations order, a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

#### **11.4 Applicable Law; Severability**

This Plan shall be construed, administered, and governed in all respects in accordance with the laws of the Commonwealth, provided, however, that if any provision is susceptible to more than one interpretation, it shall be interpreted in a manner consistent with the Plan's being a qualified plan within the meaning of the Code. If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

#### **11.5 Reliance Upon Copy of Plan**

Any person dealing with the Trustees may rely upon copies of the Plan and the Trust Agreement, and any amendments thereto, certified by the Administrator to be true and correct copies.

#### **11.6 Gender and Number; Captions or Headings**

Wherever appropriate to the meaning or interpretation of this Plan, the masculine gender shall include the feminine, and the singular number shall include the plural and vice versa. Captions or headings are inserted and intended for organizational format and convenience of reference only; they are not to be given independent substantive meaning or effect.

**[SIGNATURE PAGE IMMEDIATELY FOLLOWS]**

IN WITNESS WHEREOF, the undersigned, being an authorized officer of the University, has caused this Plan to be executed on behalf of the University this 27<sup>th</sup> day of January, 2014.

VIRGINIA POLYTECHNIC INSTITUTE AND  
STATE UNIVERSITY

By:



M. Dwight Shelton, Jr.  
Vice President for Finance and  
Chief Financial Officer