



**The Educational Employees' Supplementary  
Retirement System of *Fairfax County***

***ERFC***  
Benefit Plan Structure

As restated effective July 1, 2017





THE EDUCATIONAL EMPLOYEES OF FAIRFAX COUNTY
DEFINED BENEFIT PLAN
ERFC BENEFIT STRUCTURE

As Restated Effective July 1, 2017

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**THE EDUCATIONAL EMPLOYEES OF FAIRFAX COUNTY  
DEFINED BENEFIT PLAN**

**ERFC BENEFIT STRUCTURE**

**As Restated Effective July 1, 2017**

**ARTICLE I  
Definitions**

When used in this Plan Document, the words and phrases hereinafter shall have the following meaning, unless a different meaning is clearly required by the context of the Plan Document.

**1.01 “Accumulated Contributions”** shall mean the Member's contributions to ERFC under Section 3.02, amounts paid as Member contributions under Section 3.03, the cost paid by the Member for any purchase of service credit, and interest on all such amounts as provided by this Section. Interest shall be credited at the beginning of each Fiscal Year, and up to the first day of the month in which a refund is processed, on all amounts that have been on deposit for a full fiscal year. Interest accrued through June 30, 2017, will be credited at an annual rate of 5% (five percent). For subsequent periods, interest will be credited at an annual rate of 4% (four percent) unless the Board of Trustees adopts a lower rate for a particular Fiscal Year. No interest shall accrue after the earlier of the Effective Retirement Date or the date provided in Section 16.12 for the commencement of benefits.

**1.02 “Actuarial Equivalent”** shall mean a benefit of equal Reserve Value.

**1.03 “Age”** shall mean attained age.

**1.04 [Reserved]**

**1.05** **“Board of Trustees or Trustees”** shall mean the body of officials having purview over the operation of the System pursuant to the Enabling Ordinance.

**1.06** **“Creditable Virginia Service”** shall mean the total of:

- (a) service that is credited to a Member under VRS, including service credit that has been purchased under that system;
- (b) service credit that a Member previously earned under VRS (or under its predecessor, the Virginia Supplemental Retirement Act) but that was forfeited as the result of withdrawing the Member contributions or that was relinquished pursuant to the Virginia Code § 51.1-124.13 as the result of a felony conviction;
- (c) service with which the Member would have been credited under VRS if the Member had elected membership in that system when he or she was first eligible, or if he or she had applied for such credit; and
- (d) Purchased Service Credit as provided in Section 11.06.

Creditable Virginia Service will be determined as of the date that the Member terminates Eligible Employment, or if earlier, the Effective Retirement Date.

**1.07** **“Credited Service”** shall mean the following:

- (a) contributory membership service pursuant to Section 3.02;
- (b) Eligible Employment by the Employer prior to July 1, 1973, but only if
  - (1) the Member was Employed by the Employer (or was on leave of absence from such employment) on July 2, 1973, and during part or all of the fiscal year July 1, 1972, through June 30, 1973; and
  - (2) either the Member was in Eligible Employment on July 1, 1973, or the Member accrued one year of Eligible Employment before July 1, 1975; except that both of these alternative subsection (2) requirements shall be waived for any Member (A) who was on approved leave without pay or employed part-time by the Employer for all or part of the period from July 1, 1973, to



June 30, 1975; (B) who accrued one year of Eligible Employment immediately following that leave of absence or part-time employment; and (C) whose Effective Retirement Date is on or after November 1, 1989;

- (c) periods of Purchased Service Credit;
- (d) Military Service Credit;
- (e) Service for which contributions are made pursuant to Section 3.03;
- (f) Unused Sick Leave, subject to the provisions of Section 1.35; and
- (g) periods of up to two years for any involuntary leave of absence without pay that was required by the Employer's policies related to pregnancy or childbirth, provided:
  - (1) the Member is in Eligible Employment or on approved leave without pay on or after June 25, 1988;
  - (2) the Member has received credit for Eligible Employment prior to July 1, 1973, pursuant to Section 1.07(b) or has purchased that credit pursuant to Article XI; and
  - (3) the Member has received or is eligible to receive the same credit from VRS.

The Trustees shall adopt uniform and non-discriminatory regulations for the purpose of determining how Credited Service shall be calculated. In no event will a Member receive more than one year of Credited Service for any Fiscal Year. All Credited Service shall be forfeited upon refund of Member contributions pursuant to Section 12.01.

**1.08** **"Disabled"** shall mean being totally and permanently physically or mentally incapacitated for the performance of the Member's duty as an employee as the result of the Member's injury or illness.

**1.09** **"Effective Retirement Date"** shall mean the first day of the month coinciding with or following:

- (a) in the case of a disability retirement where the Member applies for benefits prior to termination of employment, the last day for which a Member receives compensation from the Employer;

- (b) in the case of a death in service, the Member's death;
- (c) in the case of a Member who elects, pursuant to Section 16.14(e), to receive benefits while working after the Service Retirement Date, the later of
  - (1) the Service Retirement Date; or
  - (2) the date on which the System receives the application for benefits;
- (d) in the case of a Member age 65 or older who elects, pursuant to Section 16.14(g), to receive benefits while working for the Employer in a position that is part-time and not Eligible Employment, the later of
  - (1) the Member's 65<sup>th</sup> birthday; or
  - (2) the date on which the System receives the application for benefits;
- (e) in the case of a Member who is entitled under the terms of Section 16.12 to receive benefits commencing prior to the date of application for benefits, the date on which the System receives that application;
- (f) in all other cases, the latest of:
  - (1) the date on which the Member becomes eligible for benefits;
  - (2) the date on which the Member's employment with the Employer terminates; or
  - (3) some later date selected by the Member or beneficiary.

**1.10 Eligible Employment**" shall mean any employment by the Employer (or approved leave with pay) in positions classified as teacher, instructional assistant, technical, clerical, or administrative, but shall not include (a) employment that is seasonal, part-time, or casual, as defined by the Employer, or (b) employment following an election pursuant to Section 16.14(e).

Eligible Employment shall not include leave without pay other than approved leave without pay, for such periods as School Board policy or regulation may permit, to serve an employee organization in a full-time capacity.

**1.11 "Employed by the Employer"** shall mean any employment for the School Board of Fairfax County, Virginia, and shall include periods of approved leave without pay.

- 1.12 **“Employer”** shall mean the School Board of Fairfax County, Virginia.
- 1.13 **“Enabling Ordinance”** shall mean Sections 3-4-1 through 3-4-7 of the Fairfax County Code, as it may be amended from time to time.
- 1.14 **“ERFC”** shall mean the benefit structure of the Educational Employees of Fairfax County Defined Benefit Plan that has been in effect (with various amendments) beginning July 1, 1973. The ERFC benefit structure in effect as of July 1, 2001, is described in this Plan Document.
- 1.15 **“ERFC 2001”** shall mean the benefit structure under the Educational Employees of Fairfax County Defined Benefit Plan, which is effective for certain employees after June 30, 2001, as provided in Article II. It is described in a separate plan document.
- 1.16 **“Final Annual Salary”** shall mean the Salary of the Member for the 12 months immediately preceding termination of Eligible Employment.
- 1.17 **“Final Average Compensation”** shall mean the average of the Member’s three highest years of Salary during Eligible Employment, as defined by the Board of Trustees in uniform and nondiscriminatory regulations.
- 1.18 **“Fiscal Year” or “Plan Year”** shall mean the 12-month period ending any June 30<sup>th</sup>.
- 1.19 **“Full Social Security Age”** shall mean the earliest age at which a Member can receive unreduced Social Security benefits under the federal Old Age Insurance Program, i.e., the Member’s “retirement age” as defined in 42 U.S.C. § 416(l).
- 1.20 **“Medical Examining Board”** shall mean the Board so designated by the Trustees. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required for retirement under this System and to investigate all essential statement and certificates by or on behalf of a Member in

connection with application for disability retirement or proof of continuing disability. The members of the Medical Examining Board shall report in writing to the Trustees their conclusions and recommendations upon all matters referred to it.

**1.21** “**Member**” shall mean any employee who satisfies membership requirements pursuant to Section 3.01.

**1.22** “**Military Service Credit**” shall mean the sum of (a) and (b):

(a) Up to three years of active service in the military service of the United States with respect to which the Member neither:

(1) will be entitled to receive United States military retired pay nor

(2) has previously received credit in any civilian pension or retirement system (except VRS or Social Security) from which the Member will be entitled to receive a benefit.

Exception (1) does not apply to periods of military service that are credited toward military reserve retired pay pursuant to chapter 1223 of title 10 of the U.S. Code.

(b) Such periods of time for which the Member is entitled to credit under federal law, including section 414(u) of the Internal Revenue Code, but Member contributions are not required as a condition of receiving such credit.

**1.23** “**Named Beneficiary**” shall mean the person designated by a Member to receive a return of Accumulated Contributions or a Pension following the Member's death, pursuant to Article VIII, IX or X. The designation of Named Beneficiary shall be made in accordance with uniform and nondiscriminatory regulations adopted by the Trustees, and shall be effective upon receipt by the System.

**1.24** “**Nominated Beneficiary**” shall mean a person who has been nominated by a Member to receive payments following the Member's death, pursuant to an optional method of payment described in Section 4.06. The designation of

Nominated Beneficiary shall be in writing and notarized, and shall be effective upon receipt by the Trustees.

- 1.25** “**Pension**” shall mean a monthly amount payable throughout the life of a person or for a temporary period.
- 1.26** “**Plan**” shall mean the Educational Employees of Fairfax County Defined Benefit Plan. It comprises both *ERFC* and *ERFC 2001*.
- 1.27** “**Plan Document**” shall mean this document, which describes *ERFC*. *ERFC 2001* is described in a separate document.
- 1.28** “**Purchased Service Credit**” shall mean credit purchased pursuant to Article XI:
- (a) for any years of full-time service as an educational employee in the Fairfax County public school system that are not otherwise creditable;
  - (b) for years of full-time service as an educational employee in a public school system other than Fairfax County or in any private school;
  - (c) for years of full-time service in any other employment in a capacity which, pursuant to uniform and non-discriminatory rules adopted by the Trustees, is deemed to have favorably impacted on the employee's experience to address his or her subsequent employment by the Employer;
  - (d) for up to five years of full-time service in any other employment;
  - (e) for periods spent on leave of absence from the Fairfax County public school system if such periods of leave qualify for a purchase of credit from VRS; and
  - (f) for periods during which the employee was employed part-time by the Employer or by Fairfax County and was a member of the Fairfax County Employees' Retirement System.
- 1.29** “**Reserve Value**” shall mean the present value of all payments to be made on account of any benefit, using such reasonable rates of interest and tables of experience as the Board of Trustees shall adopt from time to time after consulting

with the actuary. The applicable rates and assumptions will be stated in regulations adopted by the Trustees.

**1.30** **“Retirement Fund” or “Fund”** shall mean the trust fund held by the Trustees for the benefit of System Members. Such Fund shall be part of the System.

**1.31** **“Salary”** shall mean, in the case of a Member whose salary is established by contract with the Employer, the Member's contractual salary. In the case of a Member whose annual salary is not established by contract, "Salary" shall mean the Member's base compensation. In either case, effective July 1, 2009, "Salary" shall also include any amounts paid by the Employer as differential wage payments to Members in the uniformed services, as defined in section 3401(h) of the Internal Revenue Code.

**1.32** **“Service Retirement Date”** shall mean the first day of the calendar month coinciding with or next following the earlier of:

- (a) the Member's 65th birthday and the completion of five years of Vesting Service; or
- (b) the Member's 55th birthday and the completion of 25 years of Credited Service.

**1.33** **“Spouse”** shall mean the person legally married to the Member, according to the law of the Commonwealth of Virginia.

**1.34** **“System”** shall mean the Educational Employees' Supplementary Retirement System of Fairfax County. It includes defined benefit retirement plans that are maintained by the Employer for the benefit of members of *ERFC* and *ERFC 2001*.

**1.35** **“Unused Sick Leave”** shall mean sick leave earned by the Member prior to the Effective Retirement Date for which the Member has received neither sick pay during employment with the Employer nor payment following termination of employment and which is not transferred to another Virginia school district pursuant to applicable provisions of the Virginia Code and regulations of the

Employer. Unused Sick Leave shall be converted to Credited Service for all Members who have at least five years of Vesting Service at the time they terminate their employment with the Employer. Unused Sick Leave shall not be counted as Credited Service for the purpose of determining whether a Member is eligible to retire, but only for the purpose of increasing the amount of the Member's benefit. The amount of service that will be credited will be calculated pursuant to uniform and nondiscriminatory regulations established by the Trustees. Members who have fewer than five years of Vesting Service when they terminate their employment will not be eligible for conversion of their Unused Sick Leave.

**1.36** **“Vesting Service”** shall mean the total of:

- (a) contributory membership service pursuant to Section 3.02;
- (b) Eligible Employment by the Employer prior to July 1, 1973, to the extent that it is defined as Credited Service under Section 1.07(b);
- (c) Military Service Credit under Section 1.22(b);
- (d) Service in the Department of Adult and Community Education, if that service was (i) full-time, (ii) earned prior to July 1, 1999 by an ACE employee who became a Member of the System on or after that date, and (iii) purchased by that Member on or before June 30, 2002; and
- (e) Periods of leave without pay described in Section 3.03, provided that the contributions required by that section have been made to the System.

**1.37** **“VRS”** shall mean the Virginia Retirement System.

**1.38** **“VRS Average Final Compensation”** shall mean the "average final compensation" used in calculating the Member's VRS benefits pursuant to applicable provisions of the Virginia Code.

**ARTICLE II**  
**Name, Effective Date and Purpose**

**2.01 Name.** The name of the Plan is the "EDUCATIONAL EMPLOYEES OF FAIRFAX COUNTY DEFINED BENEFIT PLAN." This Plan Document describes the benefit structure within the Plan that is known as "ERFC," and that has been in effect, with periodic amendments, since 1973.

**2.02 Effective Date.** The original effective date of the System was July 1, 1973. The Plan was amended and restated as of July 1, 1988, as of July 1, 2001, as of January 1, 2011, and as of January 1, 2016. The Plan is now being amended and restated again as of July 1, 2017. Except where a specific provision of this Plan Document provides otherwise, the successive versions of the ERFC plan document apply as follows:

- (a) This Plan Document restated as of July 1, 2017, applies to
  - (1) all Members who were in Eligible Employment or on leave from Eligible Employment on June 30, 2001, and
  - (2) all Members who earned Credited Service for periods prior to July 1, 2001, and return to Eligible Employment after June 30, 2001, without having received a refund of their Accumulated Contributions.
- (b) The plan document as restated July 1, 1988, (and as amended at various times thereafter) applies (except as it specifically provides otherwise) to all other Members who earned Credited Service for Eligible Employment on or after July 1, 1988.
- (c) The plan document that was in effect on June 30, 1987, continues to apply to all Members who earned no Credited Service for Eligible Employment on or after July 1, 1988, except where a specific provision of the plan document as restated July 1, 1988, provides otherwise.
- (d) The separate benefit structure of *ERFC 2001* covers
  - (1) all employees who first enter Eligible Employment after June 30, 2001, and



- (2) all employees who earned Credited Service under *ERFC* for periods prior to July 1, 2001, and return to Eligible Employment after June 30, 2001, after having received a refund of Accumulated Contributions.

**2.03 Purpose.** The purpose of *ERFC* is to provide a systematic plan for retirement benefits for its Members, and under the conditions set forth herein, to provide a Pension upon retirement, the amount of which takes into account the Member's Credited Service, compensation from the Employer, and benefits that are provided by the VRS and Social Security.

**ARTICLE III**  
**Membership in ERFC**

**3.01 Eligibility.** Each employee who was in Eligible Employment (or was on leave from such employment) both on July 1, 1973, and during the period July 1, 1972, through June 30, 1973, and who did not waive the right to participate in the System became a Member of ERFC. Any other employee automatically became a Member of ERFC upon entering into Eligible Employment between July 1, 1973, and June 30, 2001, unless the employee was covered by Virginia Code Section 51.1-125A(3) and pursuant to that section elected to remain a member of the Fairfax County Employees' Retirement System. Employees who first enter Eligible Employment after June 30, 2001, shall not become Members of ERFC.

**3.02 Member Contributions.**

- (a) Except as provided in Section 3.04, each Member of ERFC shall contribute a percentage of his or her Salary for each month during which he or she receives pay for Eligible Employment, in accordance with uniform and nondiscriminatory regulations adopted by the Trustees.
- (b) The Employer shall make Member contributions, and such contributions shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code. Such contributions are being made by the Employer in lieu of Member contributions.
- (c) Member contributions made under subsection (b) shall be paid from the same source of funds as are used in paying wages to Members.
- (d) Member contributions made by the Employer under subsection (b) shall be treated for all purposes other than taxation in the same manner and to the same extent as Member contributions made prior to July 1, 1985.
- (e) No provision in this section shall be construed so as to permit or extend an option to Members to directly receive the contributions made by the Employer pursuant to subsection (b) instead of having them paid to the Plan.
- (f) Notwithstanding any contractual or other provisions, the wages of Members shall be reduced by the amount of Member contributions made by the Employer pursuant to this section.

**3.03 Contributions by Members on Leave Without Pay While Serving an Employee**

**Organization.** Each Member on approved leave without pay for purposes of serving an employee organization in a full-time capacity shall contribute to ERFC the sum of the required Member contributions pursuant to Section 3.02 and the required Employer contributions pursuant to Section 3.05. The Salary on which contributions and benefits shall be based for the period of approved leave without pay shall be the Salary that the Member would have been paid by the Employer if the Member had not been on leave.

**3.04 No Contributions for Certain Retired Members While Re-employed.**

No Member contributions and no Employer contributions shall be made on behalf of:

- (a) A Member who made an election complying with Section 16.14(e) to receive benefits while working in Eligible Employment after the Service Retirement date; or
- (b) Any other retired Member who returns to Eligible Employment and qualifies pursuant to regulations of the Employer for an exception to the suspension of ERFC benefits.

**3.05 Employer Contributions.**

The Employer shall contribute a percentage of each Member's Salary for each month during which the Member receives pay for Eligible Employment, at a rate to be determined by the actuary in accordance with the funding policy set forth in Section 16.03, and in accordance with uniform and nondiscriminatory regulations adopted by the Trustees.

**ARTICLE IV**  
**Service Retirement**

**4.01 When Payable.** A service Pension shall be granted to each Member who retires on or after the Service Retirement Date.

**4.02 Amount.** The Member shall receive a service Pension benefit calculated in accordance with subsection (a), (b), or (c). All benefits are subject to the limitations of Article XVII.

(a) **Standard Benefit.** For payment periods during the Member's lifetime, (1) minus (2) below, where:

(1) means 1.85 percent of Final Average Compensation multiplied by years of Credited Service at retirement; and

(2) means 1.65 percent of the portion of VRS Average Final Compensation in excess of \$1,200, multiplied by years of Creditable Virginia Service, but not to exceed Credited Service; provided, if the Member is younger than Age 65 and if Creditable Virginia Service is less than 30 years at retirement, the result of such multiplication shall be reduced for each month before the earlier of (A) attainment of Age 65, and (B) the date when 30 years of Creditable Virginia Service would have been completed had Eligible Employment continued without interruption, where such reduction shall be one-half of one percent for each of the first 60 such months and four-tenths of one percent for each of the next 60 such months, if any.

For payment periods, if any, before Full Social Security Age, an additional temporary benefit equal to 1.00 percent of Final Average Compensation multiplied by years of Credited Service at retirement.

The standard benefit shall be adjusted as described in Section 16.15 and then shall be adjusted, if necessary, pursuant to Section 4.02(d).

(b) **Alternative "Guarantee" Benefit.** A Member who as of July 1, 1988, had Credited Service for Eligible Employment before that date and who was Employed by the Employer on July 1, 1988, may make an election before

the Effective Retirement Date, to receive in place of the benefits provided in subsection (a) for payment periods on and after Full Social Security Age, a benefit equal to (1) plus (2) below, where (1) and (2) are calculated using the Member's service record and Salary record to time of retirement:

- (1) the amount provided by benefit formulas in effect June 30, 1987, for payment periods on and after the Member's 65th birthday, plus;
- (2) if the Member is younger than Age 65 at retirement, and Creditable Virginia Service is less than 30 years, 1.65 percent of the portion of VRS Average Final Compensation in excess of \$1,200, multiplied by years of Creditable Virginia Service, but not to exceed Credited Service; and further multiplied by a certain percent based upon the number of months that retirement is before the earlier of (A) attainment of Age 65 and (B) the date when 30 years of Creditable Virginia Service would have been completed had Eligible Employment continued without interruption; such percent shall be one-half of one percent for each of the first 60 such months and four-tenths of one percent for each of the next 60 such months, if any.

The alternative "guarantee" benefit shall be adjusted as described in Section 16.15 and then shall be adjusted, if necessary, pursuant to Section 4.02(d).

- (c) **Optional Level Lifetime Benefit.** Any Member with an Effective Retirement Date on or after July 1, 2004, may elect to receive a level lifetime benefit that is the Actuarial Equivalent of:

- (1) the standard benefit described in Section 4.02(a); or
- (2) if the Member meets the qualifications described in Section 4.02(b), the higher of the standard benefit described in Section 4.02(a) or the alternative "guarantee" benefit described in Section 4.02(b).

The resulting level lifetime benefit shall be increased, if necessary, to make the Reserve Value of the Pension equal to the Member's Accumulated Contributions as of the Effective Retirement Date. The level lifetime benefit

will be paid as an annuity for the life of the Member, unless the Member elects an optional form of benefit pursuant to Section 4.06.

(d) **Limitation on Combined VRS and ERFC Benefits.** The sum of the annual benefit resulting from application of Section 4.02(a) or 4.02(b), plus the Member's annual benefit from VRS, shall not exceed 100% of Final Average Compensation. For these purposes, this limitation shall be applied in the sequence specified in each of the preceding subsections and:

- (1) Except as provided in subsection (2), the annual benefit from VRS shall be calculated based on the applicable VRS benefit formula, the Member's Age, and the Member's Creditable Virginia Service, all as of the Effective Retirement Date, regardless of the Member's actual date of retirement from VRS.
- (2) In the case of a Member receiving a VRS disability benefit, the annual benefit from VRS for purposes of this limitation shall be the straight life annual amount (monthly amount multiplied by 12) payable by VRS on account of the disability.
- (3) The maximum benefit payable by ERFC under this subsection shall be re-determined at any time that a Member's VRS disability benefit commences, is altered, or ends. Unless the redetermination occurs before the Member's benefit has been adjusted pursuant to Section 13.01, the Member's Final Average Compensation and VRS Average Final Compensation shall be increased by 3 percent annually, compounded annually, for the number of years, and fraction of a year measured in completed months, from the Member's COLA base date (as defined in Section 13.01(b)) to the January 1 that immediately precedes the redetermination. Any adjustment in the ERFC benefit that results from such a redetermination shall be effective as of the date on which the VRS disability benefit commences, is altered, or ends.

#### 4.03 [Reserved]

**4.04 Cost-of-Living Adjustment.** The monthly Pension benefit determined pursuant to Section 4.02 shall be subject to the annual cost-of-living adjustment as provided under Article XIII.

**4.05 Period of Payment.** Pension benefits shall be payable monthly with respect to the period commencing on the Effective Retirement Date, or on such other date as Section 16.12 may provide, and ending on the Member's date of death, unless the Member elects an optional method of payment under Section 4.06, in which case the monthly Pension benefits shall be payable with respect to the period provided for under the option elected. All monthly Pension benefits shall be disbursed at the end of the month with respect to which benefits are payable.

**4.06 Optional Methods of Payment.**

(a) Before the Effective Retirement Date, a retiring Member may elect in writing to receive a reduced Pension and nominate a beneficiary, pursuant to administrative procedures adopted by the Board of Trustees and in accordance with the provisions of Option A, B, C, D, or E set forth below.

(1) **Option A.** Under Option A, the Member's Pension shall be reduced to a certain percent of the Pension otherwise payable. Such percent shall be 85 percent if the Member's Age and the Nominated Beneficiary's Age are the same on the Effective Retirement Date. If the Ages of the Member and the Nominated Beneficiary are different, the Pension shall be decreased by an additional six-tenths of one percent for each year that the beneficiary's Age is less than the Member's Age, or shall be increased by six-tenths of one percent, up to a maximum of 94 percent, for each year that the beneficiary's Age is greater than the Member's Age. Upon the Member's death, 100 percent of the reduced Pension to which the Member would have been entitled had he or she lived, shall be paid to the surviving beneficiary for life.

(2) **Option B.** Under Option B, the Member's Pension shall be reduced to a certain percent of the Pension otherwise payable. Such

percent shall be 91 percent if the Member's Age and the Nominated Beneficiary's Age are the same on the Effective Retirement Date. If the Ages of the Member and the Nominated Beneficiary are different, the Pension shall be decreased by an additional three-tenths of one percent for each year that the beneficiary's Age is less than the Member's Age, or shall be increased by three-tenths of one percent, up to a maximum of 97 percent, for each year that the beneficiary's Age is more than the Member's Age. Upon the Member's death, 50 percent of the reduced Pension to which the Member would have been entitled had he or she lived, shall be paid to the surviving beneficiary for life.

- (3) **Option C.** Under Option C, the Member's Pension shall be reduced to 96 percent of the Pension otherwise payable. If the Member dies before receiving 120 monthly Pension payments, the reduced payments will be continued for the remainder of the period of 120 months and will be paid in equal shares to the person or persons nominated by the Member. If such Nominated Beneficiary or beneficiaries predecease the Member, the Member may nominate a successor beneficiary or beneficiaries. If no Nominated Beneficiary survives the Member, the Reserve Value of the remainder Pension payments shall be paid to the Member's estate. If the last Nominated Beneficiary receiving Pension payments dies before all such Pension payments are made, the Reserve Value of the remainder Pension payments shall be paid to such beneficiary's estate.
- (4) **Option D.** Under Option D, the retiring Member may elect to receive at retirement a single sum payment in an amount that does not exceed the Member contributions specified in Article III, plus a Pension amount reduced from the Pension amount otherwise payable. Such reduced Pension amount shall be the Actuarial Equivalent of the difference between (A) the Reserve Value at



retirement of the Member's unreduced Pension and (B) the amount of such single sum payment.

- (5) **Option E.** The Board of Trustees may establish other options that are the Actuarial Equivalent of the Pension to which a Member is entitled under *ERFC*; provided that such an option cannot reduce the Member's Pension by more than 50 percent.
  - (6) **Eligibility for Option A Pensions.** The Nominated Beneficiary must be one of the following to receive a Pension under Option A:
    - (A) the Member's Spouse, or
    - (B) the Member's former Spouse, but only if provided by a domestic relations order described in Section 16.04.
  - (7) **Eligibility for Option B Pensions.** The Nominated Beneficiary must be one of the following to receive a Pension under Option B:
    - (A) the Member's Spouse or former Spouse,
    - (B) the Member's dependent child who has been ruled physically or mentally incompetent by a court of competent jurisdiction or by the Board of Trustees, or
    - (C) another person at least 40 years of Age who received more than one-half support from the Member for at least one year immediately preceding the Effective Retirement Date.
- (b) **Changes After Retirement.** The following changes are the only ones that the Member is permitted to make after the Effective Retirement Date:
- (1) After the Effective Retirement Date, if the Nominated Beneficiary dies or the Member's marriage to a Spouse nominated as beneficiary is dissolved, the Member may make a written election to cancel Option A or Option B and return the Member to the unreduced benefit that would have been payable if no option had been elected under this section, to be effective the month following the System's receipt of the written election.
  - (2) A Member who is receiving an unreduced benefit and who marries after retirement may elect Option B for the benefit of the new Spouse, provided such election is received by the System within six

months after the date of such marriage. Such election shall be effective the first day of the month following its receipt by the System.

The elections allowed by this subsection may be made by any Member receiving benefits after July 1, 1988, regardless of the date of termination of employment.

**ARTICLE V**  
**Reduced Service Pension**

**5.01 When Payable.** A reduced service Pension shall be granted to each Member who retires before reaching the Service Retirement Date, but after completion of five or more years of Vesting Service, and who elects a reduced service Pension. A Member with 25 or more years of Credited Service shall be eligible for benefits upon attainment of Age 45. A Member with less than 25 years of Credited Service shall be eligible for benefits upon attainment of Age 55.

**5.02 Amount Payable When Credited Service is 25 Years.** The reduced service Pension for a Member retiring with 25 or more years of Credited Service shall be the amount provided by subsection (a), (b), (c) or (d). All benefits are subject to the limitations of Article XVII.

(a) **Standard Benefit.** The Section 4.02(a) Pension amounts payable as if retirement Age were 55, but based on the Member's service record and Salary record to time of retirement, and reduced for each month that the Member is younger than 55, where such reduction shall be one-half of one percent for each of the first 60 such months and four-tenths of one percent for each month beyond 60, if any. The standard benefit shall be adjusted as described in Section 16.15 and then shall be adjusted, if necessary, pursuant to Section 5.02(e).

(b) **Alternative "Guarantee" Benefit.** A Member who, as of July 1, 1988, had Credited Service for Eligible Employment before that date, and who was Employed by the Employer on July 1, 1988, may make an election before the Effective Retirement Date, to receive, in place of the benefits provided in subsection (a), the following:

(1) For payment periods before the Member's 55th birthday, the benefit shall be 2.85 percent of the Final Average Compensation, multiplied by years of Credited Service at retirement, and reduced for each month that the Member is younger than 55, where such reduction shall be one-half of one percent for each of the first 60 such months, and four-tenths of one percent for each month beyond 60, if any;

- (2) For payment periods beginning after Age 55, the benefit shall be the amount calculated under Section 5.02(b)(1), minus an amount calculated in accordance with the provisions of Section 4.02(a)(2);
- (3) For payment periods on and after Full Social Security Age, the benefit shall be the amount calculated under Section 5.02(a).

The alternative "guarantee" benefit shall be adjusted as described in Section 16.15 and then shall be adjusted, if necessary, pursuant to Section 5.02(e).

(c) **Alternative Level "Guarantee" Benefit for Members Electing VRS "50/10" or VRS "50/30" Retirement.**

A Member who is described in Section 5.02(b) and who elects to receive a "50/10 Retirement" benefit or a "50/30 Retirement" benefit from VRS may make an election to receive in place of the benefits provided by Section 5.02(a) or 5.02(b), a benefit calculated to provide, when combined with the "50/10" or "50/30" benefit from VRS and amounts estimated to be payable from Social Security, a level lifetime benefit that is the Actuarial Equivalent of the benefit described in Section 5.02(b) including the adjustment pursuant to Section 16.15, but not including any adjustment pursuant to Section 5.02(e). The resulting level lifetime benefit then shall be adjusted, if necessary, pursuant to Section 5.02(e).

(d) **Optional Level Lifetime Benefit.** Any Member with an Effective Retirement Date on or after July 1, 2004, may elect to receive a level lifetime benefit that is the Actuarial Equivalent of the following:

- (1) the standard benefit described in Section 5.02(a); or
- (2) if the Member meets the qualifications described in Section 5.02(b), the higher of the standard benefit described in Section 5.02(a) or the alternative "guarantee" benefit described in Section 5.02(b).

The resulting level lifetime benefit shall be increased, if necessary, to make the Reserve Value of the Pension equal to the Member's Accumulated Contributions as of the Effective Retirement Date. The level lifetime benefit will be paid as an annuity for the life of the Member unless the Member elects an optional form of benefit pursuant to Section 4.06.

(e) **Limitation on Combined VRS and ERFC Benefits.** The sum of the annual benefit payable to any Member resulting from application of Section 5.02(a), 5.02(b), or 5.02(c), plus the Member's annual benefit from VRS, shall not exceed 100% of Final Average Compensation. For these purposes, this limitation shall be applied in the sequence specified in each of the preceding subsections, and:

- (1) Except as provided in (2), the annual benefit from VRS shall be calculated based on the applicable VRS benefit formula, the Member's Age, and the Member's Creditable Virginia Service, all as of the Effective Retirement Date, regardless of the Member's actual date of retirement from VRS.
- (2) In the case of a Member receiving a VRS disability benefit, the annual benefit from VRS for purposes of this limitation shall be the straight life annual amount (monthly amount multiplied by 12) payable by VRS on account of the disability. The maximum benefit payable by ERFC shall be re-determined at any time that a Member's VRS disability benefit commences, is altered, or ends, as described in Section 4.02(d)(3).

**5.03 Amount Payable When Credited Service is Less Than 25 Years.** The reduced service Pension for a Member retiring with less than 25 years of Credited Service shall be the amount provided by subsection (a), (b) or (c). All benefits are subject to the limitations of Article XVII.

(a) **Standard Benefit.**

- (1) For payment periods during the Member's lifetime, (C) multiplied by the difference between (A) and (B), where
  - (A) means 1.85 percent of Final Average Compensation multiplied by years of Credited Service at retirement; and
  - (B) means 1.65 percent of the portion of VRS Average Final Compensation in excess of \$1,200, multiplied by years of Creditable Virginia Service, but not to exceed Credited Service; and

(C) means a factor of 1.000 reduced for each month that the Member is younger than 65, where such reduction shall be one-half of one percent for each of the first 60 such months and four-tenths of one percent for each month beyond 60, if any.

(2) For payment periods before Full Social Security Age, an additional temporary benefit equal to the factor described in subsection (a)(1)(C) multiplied by 1.00 percent of Final Average Compensation multiplied by years of Credited Service at retirement.

The standard benefit shall be adjusted as described in Section 16.15 and then shall be adjusted, if necessary, pursuant to Section 5.03(d).

(b) **Alternative “Guarantee” Benefit.** A Member who, as of July 1, 1988, had Credited Service for Eligible Employment before that date, and who was Employed by the Employer on July 1, 1988, shall receive

(1) For payment periods before Full Social Security Age, the benefit described in Section 5.03(a), and

(2) For payment periods on and after Full Social Security Age, a benefit which shall be the greater of (A) the amount calculated under Section 5.03(a)(1), or (B) the amount provided by benefit formulas in effect on June 30, 1987, for payment periods on and after the Member's 65th birthday.

The alternative “guarantee” benefit shall be adjusted as described in Section 16.15 and then shall be adjusted, if necessary, pursuant to Section 5.03(d).

(c) **Optional Level Lifetime Benefit.** Any Member with an Effective Retirement Date on or after July 1, 2004, may elect to receive a level lifetime benefit that is the Actuarial Equivalent of

(1) the standard benefit described in Section 5.03(a), or

(2) if the Member meets the qualifications described in Section 5.03(b), the higher of the standard benefit described in Section 5.03(a) or the alternative “guarantee” benefit described in Section 5.03(b).

The resulting level lifetime benefit in either case shall be increased, if necessary, to make the Reserve Value of the Pension equal to the Member's Accumulated Contributions as of the Effective Retirement Date. The level lifetime benefit will be paid as an annuity for the life of the Member, unless the Member elects an optional form of benefit pursuant to Section 4.06.

(d) **Limitation on Combined VRS and ERFC Benefits.** The sum of the annual benefit payable to any Member under Section 5.03(a) or 5.03(b), plus the Member's annual benefit from VRS, shall not exceed 100% of Final Average Compensation. For these purposes, this limitation shall be applied in the sequence specified in each of the preceding subsections and:

(1) Except as provided in (2), the annual benefit from VRS shall be calculated based on the applicable VRS benefit formula, the Member's Age, and the Member's Creditable Virginia Service, all as of the Effective Retirement Date, regardless of the Member's actual date of retirement from VRS.

(2) In the case of a Member receiving a VRS disability benefit, the annual benefit from VRS for purposes of this limitation shall be the straight life annual amount (monthly amount multiplied by 12) payable by VRS on account of the disability. The maximum benefit payable by ERFC shall be re-determined at any time that a Member's VRS disability benefit commences, is altered, or ends, as described in Section 4.02(d)(3).

#### **5.04 [Reserved]**

**5.05 Cost-of-Living Adjustment.** The monthly Pension benefit determined pursuant to Section 5.02 or 5.03 shall be subject to the annual cost-of-living adjustment as provided under Article XIII.

**5.06 Other Provisions.** The period of payment shall be as provided for in Section 4.05. The Member may elect an optional method of payment in accordance with Section 4.06.

**ARTICLE VI**  
**Disability- Retirement**

**6.01 When Payable.** A disability Pension shall be granted to each Member who terminates Eligible Employment as a result of becoming Disabled after having completed at least five years of Vesting Service, but not after an election described in Section 16.14(e). An application for a disability Pension must be filed within 90 days after termination of the Member's Eligible Employment.

**6.02 Amount.** The amount of the Pension payable upon disability retirement shall be a Pension for the Member's lifetime equal to 0.25 percent of Final Average Compensation multiplied by years of Credited Service at retirement; provided, that for the sole purpose of calculating the amount of such Pension, the Member shall be deemed to have Credited Service from the date of disability retirement to the date the Member would have reached Service Retirement Date if Eligible Employment had not been interrupted, and provided further that the minimum Pension payable upon disability retirement shall be 2.5 percent of Final Average Compensation.

**6.03 Optional Methods of Payment.** The Member may elect an optional method of payment described in Section 4.06, as long as the election is made before the first day of the month in which the first Pension payment is made.

**6.04 Period of Payment and Related Provisions.** Pension benefits shall be payable monthly with respect to the period commencing on the Effective Retirement Date, or on such other date as Section 16.12 may provide, and ending on:

- (a) the Member's date of death, unless an optional method of payment has been elected, in which case the monthly Pension benefits shall be payable with respect to the period provided for under the option elected; or
- (b) the date on which the Member recovers from the disability, if such recovery occurs prior to the Service Retirement Date.

All monthly Pension benefits shall be disbursed at the end of the month with respect to which benefits are payable. Benefits payable under this Article shall be subject to the annual cost-of-living adjustment as provided by Article XIII.



**6.05 Determination of Disability and Recovery.**

- (a) The Retirement Office shall make the initial determination of whether or not the Member is Disabled, and subsequent periodic determinations of whether the Member is still Disabled, taking into account the Member's medical reports, the decision of the VRS as to whether the Member is disabled and the decision of Social Security as to whether the Member is disabled. If the Retirement Office cannot make any such determination, the Retirement Office shall refer the Member to the Medical Examining Board. The Medical Examining Board shall verify whether a Member is or is not Disabled. In determining the necessity for and frequency of medical examinations after the Effective Retirement Date, the Retirement Office may consider the size of the benefit, as well as other appropriate factors.
- (b) If a Member refuses to permit a medical examination, if a Member returns to school system employment, or if a determination is made that the Member is no longer Disabled, the disability retirement Pension shall be terminated.
- (c) A Member may appeal any determination relating to Disability or the termination of a disability retirement Pension to the Board of Trustees pursuant to Section 16.16.
- (d) A Member whose disability retirement Pension is terminated pursuant to subsection (b) will retain all years of Vesting Service and Credited Service that had accrued before the disability retirement. If the Member returns to Eligible Employment at any time after termination of the disability retirement Pension, he or she shall make the Member Contributions provided by Article III and shall earn additional Credited Service pursuant to Section 1.07(a).

**6.06 Benefits Following Termination of Disability Retirement Pension.** After termination of a disability retirement Pension, no benefit payments will resume without a subsequent application pursuant to Section 16.12.

- (a) If the Member applies again for a disability retirement Pension, a determination of Disability shall be made pursuant to Section 6.05(a),

subject to subsection (d). If the Member is found to be Disabled, the Member may elect:

- (1) the amount of the disability retirement Pension that was payable following the previous disability retirement, subject to all applicable cost-of-living adjustments and subject to any other changes called for by the Plan provisions under which those amounts were payable, plus a refund of Accumulated Contributions attributable to any period of reemployment in Eligible Employment after the date of the previous disability retirement; or
  - (2) the benefits for which he or she is eligible under the provisions of Article VI or VII, based upon the Member's entire service and Salary record to the date of the subsequent retirement, payable in accordance with any optional form that the Member elected at the time of the previous disability retirement, subject only to those changes that a retired Member may make pursuant to Section 4.06(b).
- (b) In all other cases, the Member shall be entitled to any benefit payable under the Plan to a Member with the same Age and Credited Service, including, in the case of a member that worked in Eligible Employment after termination of the disability retirement Pension, the Member's entire service and Salary record to the date of the subsequent retirement. Retroactive benefits may be paid as provided in Section 16.12(b).
- (c) In the case of death while in Eligible Employment after the disability retirement Pension was terminated, benefits shall be payable as provided in Article VIII or IX.
- (d) For purposes of subsection (a), a member who has returned to school system employment in a part-time position will be deemed eligible for a disability retirement Pension upon terminating that part-time position, if the member is incapacitated by injury or illness for the performance of duties of the position in Eligible Employment that the Member last held before the previous disability retirement.

**6.07 Benefits Limitation.**

- (a) Annual benefits payable under Articles VI, VII, VIII or IX shall not exceed the amount produced by subtracting (2) from (1), where
- (1) equals the Member's Final Annual Salary; and
  - (2) equals the total of the following:
    - (A) annual amounts of workers' compensation payable on account of the Member's death or disability;
    - (B) annual amounts payable to the Member and his or her family from Social Security on account of the Member's death or disability;
    - (C) annual amounts payable by VRS on account of the Member's death or disability (but not including the proceeds of VRS group life insurance);
    - (D) annual amounts payable to the Member and his or her family from any other employer as a Pension or as continuing survivor benefits on account of the Member's death or disability; and
    - (E) in the case of benefits under Articles VI and VII only, annual income received by the Member as remuneration for personal services rendered in any gainful occupation.
- (b) Each year, the limit produced by subsection (a) shall be re-determined effective March 31, for all Members and beneficiaries who have been receiving benefits subject to this section for at least one full calendar year. For purposes of re-determination:
- (1) the Member's Final Annual Salary under subsection (a)(1) shall be increased by three percent annually, compounded annually, from the June coinciding with or next following the Effective Retirement Date to the December immediately preceding the date of the redetermination under this subsection;
  - (2) the amounts under subsection (a)(2) shall be the total amounts actually received by the Member or beneficiary in the calendar year immediately prior to the redetermination.

- (c) Each Member or beneficiary receiving benefits under Articles VI, VII, VIII, or IX shall be required each year to provide a statement, in the form and at the time prescribed by the Board of Trustees, showing amounts actually received in the preceding calendar year from sources identified in subsection (a)(2)(A) through (D), and Members receiving benefits under Articles VI or VII shall also be required to provide a statement showing the amounts received under subsection (a)(2)(E). The failure of a Member or beneficiary to provide the required statement upon request shall be grounds for the Board of Trustees to suspend payment of benefits until the statement is received.
- (d) For purposes of this section, the term "beneficiary" includes any person who is entitled to receive a Pension from ERFC on the account of the Member.
- (e) A Member or beneficiary may receive a refund of Accumulated Contributions without regard to the limit contained in this section.
- (f) Notwithstanding the foregoing, a Member receiving an ERFC disability benefit that is ten percent or less of Final Annual Salary shall not be subject to the earning limitations of subsection (a) or the filing requirements of subsection (c). In no event shall the operation of this Section 6.07 be used to reduce a Member's ERFC disability benefit below ten percent of the Member's Final Annual Salary.

**6.08 Unused Sick Leave.** For those Members who have Unused Sick Leave that is converted to Credited Service pursuant to Section 1.35, only the Unused Sick Leave that has accrued as of the termination of the Member's employment shall be used in the calculation of the Member's benefit under this Article.

**6.09 Finality of Elections.** A Member who has satisfied the eligibility requirements for a disability Pension and also for some other form of benefit from ERFC, must elect one benefit or the other, and that election shall be final. A Member may not convert his or her Pension to another form of benefit after the Effective Retirement Date, except as specifically provided in this Plan.

**6.10 Members Who Become Disabled in Qualified Military Service.** For all purposes of this Article, a Member who becomes Disabled on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code shall receive both Vesting Service and Credited Service for that period of qualified military service and shall be considered to have terminated Eligible Employment as a result of becoming Disabled.

**ARTICLE VII**  
**Service-Connected Disability Retirement**

- 7.01 When Payable.** A service-connected disability Pension shall be granted to each Member who terminates Eligible Employment as a result of a service-connected disability, but not after an election described in Section 16.14(e). An application for a service-connected disability Pension must be filed within 90 days after termination of the Member's Eligible Employment. A service-connected disability means becoming totally and permanently physically or mentally incapacitated for the Member's duty as an employee, as the natural and proximate result of personal injury or disease which arose out of and in the course of the Member's performance of duty as an employee. Eligibility for service-connected disability retirement under this section shall be determined by the Retirement Office. In making such determination, the Retirement Office may accord such weight as it deems appropriate to a ruling by the Industrial Commission (under the Virginia Workers' Compensation Act) concerning the injury or illness. A Member may appeal any denial of service-connected disability to the Board of Trustees.
- 7.02 Amount.** The amount of the Pension payable upon service-connected disability retirement shall be a Pension payable for the Member's lifetime calculated as provided in Section 6.02.
- 7.03 Other Provisions.** The provisions of Sections 6.03, 6.04, 6.05, 6.06, 6.07, 6.08, and 6.09 shall apply to service-connected disability Pensions.

**ARTICLE VIII**  
**Death Benefit**

**8.01 When Payable.**

- (a) The benefits provided in Section 8.02 will be paid to the Named Beneficiary or Beneficiaries of the following Members:
  - (1) A Member with five or more years of Vesting Service who dies in Eligible Employment and before beginning to receive a Pension; or
  - (2) A Member who was not in Eligible Employment at the time of death, but only in the circumstances described in Section 10.06(a) and (b).
- (b) If no Named Beneficiary survives the Member, benefits shall be paid as provided in Section 8.03.
- (c) Any person who would be entitled to a Pension under this Article may elect to receive a refund of Accumulated Contributions in lieu of that Pension.

**8.02 Amount.**

- (a) **Benefits Payable to a Person Eligible for Benefits Under Option A or Option B.** If the Named Beneficiary is a Spouse, former Spouse, or dependent eligible to receive a Pension under Option A or Option B as described in Section 4.06(a)(6) and (7), benefits shall be paid in the following amounts:
  - (1) If the Member had reached Service Retirement Date, or was eligible for a reduced service Pension, the Named Beneficiary shall receive a Pension calculated as if the Member had:
    - (A) retired on the date of death with a Pension for life calculated as provided for in Section 4.02 or Sections 5.02 or 5.03, whichever is applicable; and
    - (B) elected Option A for the benefit of the Named Beneficiary who is eligible for Option A, or elected Option B for the benefit of the Named Beneficiary who is eligible only for Option B.
  - (2) If the Member had not reached Service Retirement Date and was not eligible for a reduced service Pension, the Pension shall be calculated as if the Member had:

- (A) retired on the date of death with a Pension for life equal to 0.25 percent of Final Average Compensation multiplied by years of Credited Service; and
  - (B) elected Option A for the benefit of the Named Beneficiary who is eligible for Option A, or elected Option B for the benefit of the Named Beneficiary who is eligible only for Option B.
- (b) **Benefits Payable to Other Named Beneficiaries.** A Named Beneficiary who is not eligible to receive a Pension under Option A or Option B as defined in Section 4.06(a)(6) and (7), shall receive the Accumulated Contributions in a lump sum.
- (c) **Multiple and Contingent Beneficiaries.** Members may name more than one beneficiary to share benefits for which they are eligible under this Article and may name contingent beneficiaries to receive benefits in the event that primary beneficiaries do not survive the Member. Only one beneficiary may receive benefits under Section 8.02(a), although a Member may name a contingent beneficiary. If benefits are payable under Section 8.02(a), no benefits will be payable under Section 8.02(b) except as Section 12.04 may provide.
- (d) **Other Types of Beneficiaries.** The Board of Trustees may prescribe uniform and non-discriminatory regulations for the purpose of allowing a charity, company or trust to be named as beneficiary under this Article.

**8.03 If There Is No Named Beneficiary.** If no Named Beneficiary survives the Member, benefits shall be payable as follows:

- (a) to the Member's surviving Spouse, as specified in Section 8.02(a);
- (b) if the Member had no surviving Spouse, a refund of Accumulated Contributions shall be paid to the Member's estate.

**8.04 Other Provisions.** Pensions payable under this Article shall be subject to the limitations of Section 6.07, and shall also be subject to the annual cost-of-living adjustment as provided by Article XIII.



**8.05 Elections.** A beneficiary entitled to receive benefits under Section 8.02(a) may make any election that the Member would have been entitled to make under Sections 4.02, 5.02, or 5.03, and may elect any retroactive benefits that would have been payable to the Member at the time of death pursuant to Section 16.12(c).

**8.06 Members Who Die in Qualified Military Service.** For all purposes of this Article, a Member who dies on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code shall receive both Vesting Service and Credited Service for that period of qualified military service and shall be considered to be in Eligible Employment on the date of death.

**ARTICLE IX**  
**Service-Connected Death Benefits**

**9.01 When Payable.** If a Member's death in service was the natural and proximate result of a personal injury or disease arising out of and in the course of the Member's performance of duty as an employee, benefits shall be payable in the amounts provided in Section 9.02 to the Member's Named Beneficiary or Beneficiaries.

- (a) Eligibility for service-connected death benefits under this section shall be determined by the Retirement Office. In making such determination, the Retirement Office may accord such weight as it deems appropriate to a ruling by the Virginia Workers' Compensation Commission concerning said death. Any denial of a service-connected death benefit may be appealed to the Board of Trustees.
- (b) For purposes of this section, "death in service" shall include:
  - (1) death of a Member in Eligible Employment or on leave from Eligible Employment; and
  - (2) death within one year after termination of employment of a Member receiving service-connected disability retirement benefits under Article VII, unless the Member has elected an optional method of payment pursuant to Section 4.06, in which case benefits following the death shall be payable in accordance with the option elected.
- (c) "Death in service" shall not include the death of a retired Member who has been re-employed as described in Section 16.14; benefits will be payable following such a Member's death only in accordance with any optional form of benefit the Member elected prior to the Effective Retirement Date.
- (d) If no Named Beneficiary survives the Member, benefits shall be paid as provided in Section 9.03.

**9.02 Benefit Amount.** The amount of the benefit payable under this Article shall be:

(a) **Benefits Payable to a Person Eligible for Benefits Under Option A or Option B.** If the Named Beneficiary is a person eligible under Section 4.06(a)(6) or (7) to receive a Pension under Option A or Option B, the Named Beneficiary shall receive an annual Pension in the amount stated in (1) or (2) (if applicable), but reduced in either case under Section 4.06(a)(1) or (2), as applicable, as if the Member had elected Option A for the benefit of a Named Beneficiary who is eligible for Option A, or Option B for the benefit of a Named Beneficiary who is eligible only for Option B:

- (1) The amount shall be a Pension for the Named Beneficiary's lifetime equal to 0.25 percent of Final Average Compensation multiplied by years of Credited Service; provided that, for the sole purpose of calculating the amount of such Pension, the Member shall be deemed to have Credited Service from the date of death to the date the Member would have reached Service Retirement Date if he or she had survived and continued in Eligible Employment, and provided further that the minimum Pension payable shall be 2.5 percent of Final Average Compensation; or
- (2) If the Member had reached Service Retirement Date or was eligible for a reduced service Pension, the amount shall be the greater of the benefit provided in (1) or a benefit calculated as if the Member had retired on the date of death with a Pension calculated as provided in Section 4.02, 5.02, or 5.03, whichever is applicable.

The Named Beneficiary may elect to receive a refund of Accumulated Contributions in lieu of the Pension.

(b) **Benefits Payable to Other Named Beneficiaries.** If the Named Beneficiary is not eligible under Section 4.06(a)(6) or (7) to receive a Pension under Option A or Option B, the Accumulated Contributions shall be paid to the Named Beneficiary in a lump sum.

**9.03 If There Is No Named Beneficiary.** If no Named Beneficiary survives the Member, benefits shall be payable as follows:

- (a) to the Member's surviving Spouse, as specified in Section 9.02(a);
- (b) If the Member had no surviving Spouse, a refund of Accumulated Contributions shall be paid to the Member's estate.

**9.04 Other Provisions.** Pensions payable under this Article are subject to the provisions of Sections 6.07 and 6.08, and shall also be subject to the annual cost-of-living adjustment as provided by Article XIII.

**ARTICLE X**  
**Deferred Vested Retirement Pension**

- 10.01 Eligibility.** Any Member who has completed five or more years of Vesting Service and who terminates employment with the Employer prior to Service Retirement Date, shall be eligible to receive a deferred vested Pension commencing as of Age 55, or later at the Member's election. Effective July 1, 2007, a deferred vested Pension may be paid to any Member who has completed five or more years of Vesting Service, is Age 65 or older, is employed by the Employer in a position that is not Eligible Employment and that is part-time (as defined by the Employer), and who applies for such a benefit.
- 10.02 Amount.** The amount of benefits shall be determined pursuant to Article V, and shall be subject to the annual cost-of-living adjustment, as provided for in Article XIII.
- 10.03 Other Provisions.** The provisions of Section 5.06 shall apply to benefits under this Article.
- 10.04 Return to Eligible Employment After Qualification for a Deferred Vested Retirement Pension.** Any Member who returns to Eligible Employment after having previously terminated with entitlement to a deferred vested Pension and having remained so entitled, shall be reinstated as a contributing Member of *ERFC* as restated in this Plan Document, with full credit for all Vesting Service and Credited Service accrued before the termination of employment.
- 10.05 Inability to Locate Member Entitled to a Deferred Vested Pension.** If, after reasonable effort, the Retirement Office is unable to locate a Member who has terminated employment with the Employer with an entitlement to a deferred vested Pension, and the Member (if still living) would be 70 years of age or older, all of the Member's rights under the Plan shall be forfeited and become the property of the Plan. If the Plan is subsequently contacted by such a Member, the Member may elect to receive either the Accumulated Contributions amount credited to the Member as of the date of the forfeiture (with no interest after that

date) or the monthly benefit amounts payable for months following the date of application, without any payment for prior months. If the Plan is subsequently contacted by the estate of such a Member or a beneficiary with proof of the Member's death, benefits will be payable as provided by Section 10.06 for months following the date of the application. Any refund of Accumulated Contributions will be equal to the amount credited to the Member as of the date of the forfeiture (with no interest after that date).

**10.06 Death While in Deferred Vested Status.** In the event that a Member who has completed five years or more of Vesting Service and terminated Eligible Employment dies before beginning to receive a Pension, benefits shall be payable as follows:

- (a) If the Member died while in employment with the Employer or within 90 days after termination of such employment, benefits shall be payable under Article VIII.
- (b) If the Member died more than 90 days after terminating from employment with the Employer, but had reached Service Retirement Date or was eligible for a reduced service Pension at the time of death, benefits shall be payable pursuant to Section 8.02(a)(1) to a Named Beneficiary who is eligible for benefits under that section, or to a surviving Spouse under the circumstances described in Section 8.03(a). Section 16.12(c) shall also apply.
- (c) In all other cases benefits shall not be payable under Article VIII, but the Named Beneficiary or the estate of the Member (if there is no surviving Named Beneficiary) shall be entitled, upon application, to a refund of the Accumulated Contributions.

**ARTICLE XI**  
**Purchased Service Credit**

**11.01 General.** In order to qualify for certain benefits of *ERFC* earlier than would otherwise be the case and/or in order to supplement benefit income, any Member in Eligible Employment who is certified in a uniform and non-discriminatory manner by the Board of Trustees as being eligible to do so, shall be entitled, subject to the limitations and rules of acquisition in Sections 11.02 through 11.06, to acquire Purchased Service Credit on the basis of employment or leave of absence defined in Section 1.28. Before any Purchased Service Credit may be acquired, the aggregate amount of Purchased Service Credit and such other documentation as the Trustees may require must be filed with the Trustees.

**11.02 Limitation on Other Employment Which May Be the Basis for Purchased Service**

**Credit.** A Member may not acquire Purchased Service Credit on behalf of employment with respect to which the Member will be eligible for benefits from another retirement system, unless the Member:

- (a) withdraws all member contributions from the other system; or
- (b) effectively waives the entitlement to receive benefits from the other system.

This section does not prevent a Member from acquiring Purchased Service Credit for employment with respect to which the Member will be eligible for benefits from VRS, Social Security, or military reserve retired pay pursuant to chapter 1223 of Title 10 of the U.S. Code.

**11.03 Limitations on Amount of Purchased Service Credit.**

- (a) The maximum amount of credit that a Member may purchase is ten years, unless the service being purchased is prior service with the Employer or with Fairfax County, Virginia. Purchases of service with other employers, however, may not be combined with Fairfax County service, or with service for this Employer, to exceed the ten-year limit.
- (b) A Member who first entered Eligible Employment after June 30, 1998, is also subject to the following limits on credit that may be purchased:

- (1) Such a Member may not purchase more than 5 years of aggregate credit for service for employers other than the United States, a state or local government, an institution of elementary or secondary education or an association of government employees, and may not purchase such credit before the Member has worked five years in Eligible Employment.
- (2) Such a Member may not purchase more than five years of aggregate credit for any service (other than military service), for which the Member will receive any benefit from another pension plan, and may not purchase such credit before the Member has worked five years in Eligible Employment. This subsection does not authorize the purchase of any credit that is ineligible for purchase under Section 11.02.

**11.04 Fiscal Year Purchase Amount and Purchase Schedule.** A Member may acquire one or more years and/or fractions of a year of Purchased Service Credit during a Fiscal Year. Fractions shall be in multiples that are based on the length of the Member's contract at the time of purchase.

**11.05 Cost of Purchased Service Credit.**

The cost of one year of Purchased Service Credit shall be a percentage of the Member's highest yearly Salary during Eligible Employment as determined at the time of the Member's first scheduled payment. The applicable percentages shall be set by the Board of Trustees, in a uniform and non-discriminatory manner, after consultation with the actuary. They shall be based on all appropriate factors relevant to the cost to ERFC of providing the additional benefits based upon the Purchased Service Credit, which may include, but will not be limited to, Age, proximity to retirement, and potential benefits available from ERFC.

**11.06 Effect of Purchase on Member's Credited and Creditable Virginia Service.** As provided in Sections 1.07 and 1.36, Purchased Service Credit shall be included in Credited Service, but it shall not be included in Vesting Service. In addition, the



following rules determine whether Purchased Service Credit shall be included as Creditable Virginia Service:

- (a) Service credit purchased at the rate formerly known as "Rate 1" or "out-of-county" before July 1, 1988, shall not be included as Creditable Virginia Service unless that service is described in Section 1.06(a), (b), or (c). This rule shall also apply to service credit purchased during the period July 1, 1988, to January 1, 1989, if the purchase satisfied the requirements in effect at that time for purchase pursuant to a "window" period.
- (b) Service credit purchased at the rate formerly known as "Rate 2" or "out-of-state" shall not be included as Creditable Virginia Service.
- (c) Service credit for periods of part-time employment purchased pursuant to Section 1.28(f) shall not be included as Creditable Virginia Service if the Member completed his or her purchase either:
  - (1) before July 1, 2000; or
  - (2) within 90 days after entering Eligible Employment.
- (d) All other Purchased Service Credit shall be included as Creditable Virginia Service.

**11.07 Refund of Purchased Service Credit Monies.** All purchases of service credit shall be final, unless one of the following exceptions applies:

- (a) A Member retiring on disability pursuant to Articles VI or VII may, on written request, receive a refund of monies paid for Purchased Service Credit pursuant to Article XI. The refund shall include interest at the rates provided by Section 1.01. If a Member's disability Pension is subsequently terminated pursuant to Section 6.05 and the Member returns to Eligible Employment, the refunded Purchased Service Credit may be repurchased. The cost of repurchasing such credit shall be the amount of the refund received by the Member, plus interest on that amount at a rate prescribed by the Board of Trustees from the date of the refund to the date of repurchase. Credit shall be repurchased in the reverse order of prior purchase, beginning with the most recent purchase.
- (b) If, at the time of retirement, any portion of a Member's Purchased Service Credit will not result in increased retirement benefits, upon application by

the Member, that portion of the purchase shall be subtracted from the Member's Credited Service, and the Member shall receive a refund of the purchase amount attributable to that portion, with interest at the rates provided by Section 1.01. This exception shall apply to Members retiring after November 14, 2000 (even if this Plan Document does not otherwise apply to them). This exception shall not apply to, and no refund shall be made for, any amount of Purchase Service Credit that is recalculated because the Member retires less than five years after completion of a purchase.

- (c) A member who purchased service credit on or after January 1, 2001, in an amount that was needed to become eligible for Service Retirement under Article IV between the dates of July 1, 2004 and June 30, 2006, may receive a refund of the amount paid for that purchase of service credit, with interest calculated pursuant to Section 1.01. The Member may apply for the refund at any time between the date on which this amendment is adopted and the effective date of the Member's retirement. Upon refund of the amount paid, the Purchased Service Credit shall be subtracted from the Member's Credited Service.

**11.08 Rollover Contributions.** A Member may purchase service credit pursuant to the terms of this Article XI with distributions from a retirement plan qualified under section 401(a) of the Internal Revenue Code (the "Code"), an eligible rollover distribution from an individual retirement account, or by means of a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Code or an eligible plan under section 457(b) of the Code. The Board may adopt such rules and regulations as are necessary or appropriate to ensure the proper tax treatment of such rollover contributions.

**ARTICLE XII**  
**Other Termination**

**12.01 Refund of Accumulated Contributions.**

- (a) A Member who terminates Eligible Employment at any time and for any reason prior to completion of five years of Vesting Service shall be paid, upon application, the Accumulated Contributions as defined in Section 1.01, subject to subsection (d) and the ten-year limit in Section 12.02. If such a Member dies before applying for a refund, the Member's Named Beneficiary (or if there is no surviving Named Beneficiary, the Member's estate) may apply for the refund and shall be paid in the same manner as the Member.
- (b) A Member who terminates Eligible Employment at any time and for any reason after completion of five or more years of Vesting Service, may elect to receive, upon application, a refund of Accumulated Contributions in lieu of any other benefit payable from the Plan, subject to subsection (d).
- (c) Any refund paid under this section shall be reduced by any disability benefits previously paid pursuant to Articles VI or VII.
- (d) If the Member is no longer Employed by the Employer or is Age 65 or older, the refund provided by this section may be paid to the Member or as a Direct Rollover pursuant to Article XVIII. If the Member is younger than Age 65 and is Employed by the Employer, but not in Eligible Employment, the Accumulated Contributions may only be transferred to another defined-benefit pension plan maintained by the Employer.

**12.02 Right to Leave Accumulated Contributions on Deposit.** A Member who terminates Eligible Employment prior to completion of five years of Vesting Service, may protect his or her Vesting Service and Credited Service by leaving all Accumulated Contributions on deposit. However, if such Member is not Employed by the Employer at any time within a continuous period of ten years and fails to return to Eligible Employment or apply for a refund by the end of that ten-year period, all Accumulated Contributions then on deposit shall become the property of the Plan, subject, however, to refund at the written request of the

Member or the Member's estate, but with no interest after the end of that ten-year period.

**12.03 Return to Eligible Employment without Having Previously Withdrawn Accumulated Contributions.** Any prior Member of *ERFC* who returns to Eligible Employment after having previously terminated employment with rights protected pursuant to Section 12.02 and without having received a refund of Accumulated Contributions, shall be reinstated as a contributing Member of *ERFC* with full credit for all Vesting Service and Credited Service that had accrued before termination of employment, and with full credit for the Accumulated Contributions. In the case of a Member whose Accumulated Contributions had previously become the property of the Plan pursuant to Section 12.02, the amount of those Accumulated Contributions shall be restored to the Member's account, but with interest only until the end of the tenth Fiscal Year following the termination of employment with the Employer.

**12.04 Return of Residual Accumulated Contributions.** If all Pensions payable on account of a Member terminate before payment in total of benefits equal to Accumulated Contributions, any remaining difference shall be paid to the Member's Named Beneficiary. If there is no surviving Named Beneficiary, any remaining difference shall be paid as follows:

- (a) if a beneficiary has been paid monthly benefits following the Member's death, to the last such beneficiary's estate;
- (b) if no beneficiary has been paid monthly benefits, to the Member's estate.

If the Member elected Option C, Section 4.06(a)(3) governs the payment of residual amounts, and this section shall not apply.

**ARTICLE XIII**  
**Cost-of-Living Adjustments**

**13.01 Benefit Increases after Monthly Benefit Payments Begin.**

- (a) **Annual Adjustment of Monthly Benefit.** The amount of the monthly benefit shall be adjusted effective each March 31, beginning with the March 31 which is more than three full months after the Effective Retirement Date. Disregarding any temporary adjustments to a Member's benefit, the adjusted amount shall be the amount of the benefit that would be payable without regard to Article XIII, increased by three percent annually, compounded annually, for the number of years, and fraction of a year measured in completed months, from the Member's COLA base date to the January 1 preceding the adjustment.
- (b) "COLA base date" means July 1 of the calendar year in which the Effective Retirement Date occurred.

**13.02 Potential Increase in Annual Adjustment Formula.**

- (a) The Plan establishes reserves for the payment of future benefits to retirees and their beneficiaries. Should the Board of Trustees determine, after consulting with the actuary, that the established reserves are more than sufficient to provide such benefits, the Board of Trustees may increase the annual adjustment formula provided for in Section 13.01(a), but not beyond an annual rate of four percent; provided, such an action by the Board of Trustees shall not increase an Employer contribution rate then in effect.
- (b) Should the Board of Trustees determine that the operation of subsection (a) is jeopardizing the financial solvency of the Plan, the Board of Trustees shall suspend these provisions increasing the annual adjustment rate for such periods of time as the Board of Trustees deems appropriate. The power to suspend these provisions shall include the power, if the Board of Trustees deems it necessary, to reduce cost-of-living adjustments that were previously granted under the authority of subsection (a), but not below three percent.

## ARTICLE XIV

### Modification, Amendment, and Discontinuance of the System or the Plan

**14.01 Power to Modify, Amend, or Discontinue System and Plan Reserved.** While the System is intended to be permanent, the School Board reserves the right, at any time, and from time to time, to modify, amend or terminate, in whole or in part, any and all provisions of this System, the Plan, or any benefit structure within the Plan, and such modification, amendment or termination shall be binding on the Board of Trustees. This right is subject to the condition that no part of the assets of the Plan shall, by reason of any modification, amendment, or termination, be used for or diverted to purposes other than for the exclusive benefit of Members, retired Members, and their beneficiaries under the Plan.

**14.02 Distribution upon Termination of the Plan.** If the Plan is terminated at any time or there is a complete discontinuance of contributions to the Plan, the rights of all Members to the benefits accrued under *ERFC* and *ERFC 2001* to the date of termination or discontinuance, to the extent then funded, shall be fully vested and non-forfeitable. The funds then held by the Trustees, in excess of the portion of the assets representing the unexpended value of Accumulated Contributions under *ERFC* and *ERFC 2001*, and such portion as is required to meet estimated expenses of liquidation and distribution, shall be allocated and applied by the Trustees in amounts, which, when added to the value of Accumulated Contributions under *ERFC* and *ERFC 2001*, will provide benefits in the following order of priority:

- (a) First, to provide for the continued payment of retirement benefits to all Members or former Members and their beneficiaries who, as of the date of termination or discontinuance, were receiving benefits under the Plan. Any reduction in the retirement benefits within this group necessitated by any insufficiency of assets at or after the date of termination or discontinuance of the Plan shall be shared proportionately on the basis of similar annuity values, taking into consideration the contingent benefits attributable to the benefit being paid.
- (b) Second, if any such assets remain after complete allocation for the purposes of subsection (a), to provide service retirement Pensions to all Members who, at the date of termination or discontinuance of the Plan,

have reached their Service Retirement Date under the Plan and have not as yet begun to receive retirement benefits. The amount, if any, to be allocated for this purpose shall be based on immediate annuity values, and shall be subject to any reduction necessitated by any insufficiency of the assets as in subsection (a).

- (c) Third, if any such assets remain after complete allocation for the purposes of subsections (a) and (b), to provide reduced service Pensions calculated under Article V to all other Members and former Members of *ERFC* who, at the date of termination or discontinuance of the Plan, have completed 25 years of Credited Service under *ERFC*. The amount, if any, to be allocated shall be based on immediate annuity values, as in subsection (b), and shall be subject to reduction for insufficiency of assets as in subsection (a).
- (d) Fourth, if any such assets remain after complete allocation for the purposes of subsections (a), (b), and (c), to provide deferred vested retirement Pensions to all other Members and former Members who are eligible to receive a deferred vested retirement Pension and have not as yet begun to receive retirement benefits. The amounts, if any, to be allocated shall be based on deferred life annuity values and shall be subject to reduction for insufficiency of assets as in subsection (a).
- (e) Fifth, if any such assets remain after complete allocation for the purposes of subsections (a), (b), (c), and (d), to provide deferred vested retirement Pensions for all other Members in the Plan as of the date of termination or discontinuance. The amount, if any, to be allocated for this purpose shall be determined as in subsection (d).
- (f) Sixth, if any such assets remain after complete allocation for the purposes of subsections (a), (b), (c), (d), and (e), to provide for increases in all the above Pensions not in excess of ten percent thereof.

If any funds remain after having provided in full for the benefits of all persons in the groups identified above, the Board of Trustees shall determine the method to be used to distribute such excess funds to Members of the Plan terminating in prior years.

The distribution of benefits, in accordance with this Section 14.02, may be carried out through the continuance of the existing Retirement Fund, the retention and/or

purchase of insurance or annuity contracts, the creation of a new fund or funds, or by the payment of cash, or by any combination of the foregoing as the Board of Trustees shall determine.

**14.03 No Diversion of Assets.** No part of the assets accumulated for this System shall be used directly or indirectly for any purpose other than the exclusive benefit of Members under the System as it is established, or as the System may be changed by modification, amendment, or termination.

**14.04 Terms in this Article Include ERFC 2001.** As used in this Article, the term “Members” includes the Members of *ERFC* as well as the members of *ERFC 2001*. “Accumulated Contributions” and “Service Retirement Date” have the meaning for each such Member that those terms are given in the plan document that governs that Member’s benefit rights.



**ARTICLE XV**  
**Administration of the System and the Plan**

- 15.01 Trustees.** The general administration and proper operation of the System, including the implementation of the provisions of the Plan, as it may be amended (not including, however, the power to revoke or terminate the System or the Plan), is hereby vested in the Board of Trustees, subject to the final approval of the Fairfax County School Board.
- 15.02 Investment of Contributions.** The Trustees shall invest contributions through the Retirement Fund and in accordance with the provisions of the Enabling Ordinance and the Plan.
- 15.03 Trustees' Right to Administer and Interpret the Plan.** The Board of Trustees shall have the discretionary power and authority to administer and to interpret the Plan, including, but not limited to, the power to establish policies, practices, rules and regulations, pay refunds and interest to those who have been underpaid benefits, determine questions of eligibility or entitlement to benefits, recoup benefits from those who have been overpaid, compromise claims regarding payments or assets, employ administrative and clerical staff, expend System funds to administer the Plan, suspend benefit payments to those not complying with regulations or reasonable directives, enter contracts and take such other action as may be necessary to administer the System and the Plan efficiently. The Board may adopt such rules and regulations as, in the discretion of the Board of Trustees, are necessary or advisable to implement, administer, and interpret the Plan, or to transact its business. Such rules and regulations as are adopted by the Board of Trustees shall be binding upon any persons having interest in or under the System.
- 15.04 Immunity of Trustees.** The Trustees shall not be liable for the making, retention, or sale of any investment or reinvestment made by them, as herein provided, nor for any loss to, or diminution of, the Retirement Fund, unless due to their own gross negligence, willful misconduct, or lack of good faith.
- 15.05 Protection of the Trustees.** The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be

signed or presented by the proper person or persons. The Trustees shall be under no duty to investigate any such writing, but may accept it as true and accurate.

**15.06 Indemnification of Trustees.** The School Board agrees to indemnify the Retirement Fund and the Trustees against any liability imposed as a result of a claim asserted by any person where the Trustees have acted in good faith or in reliance on a written direction of the School Board.

**15.07 Trustees Not Under Duty To Investigate Mailing Addresses.** The Trustees shall not be required to make any investigation to determine the addresses of persons entitled to benefits, but shall be entitled to rely upon the addresses provided to them by the School Board, the Member, or the beneficiary. A notice or check shall be deemed to have been sent if enclosed in a securely sealed postpaid envelope and deposited in a United States Post Office or letter box addressed to the person to whom it is to be mailed at such address as was last furnished the Trustees.

**15.08 Trustees' Power to Require Further Evidence.** The Trustees, in their sole and absolute discretion, may require such further or additional evidence of the genuineness, truth, or accuracy of any instrument as to them may seem reasonable.

**15.09 Court Action at Discretion of Trustees.** The Trustees may, if they desire, require any fact or question to be adjudicated in court before taking any action.

**15.10 Successor Trustees Not Responsible for Prior Actions of Trustees.** No successor Trustee shall be in any way liable or responsible for anything done or omitted in the administration of the Retirement Fund prior to the date he or she became a Trustee.

**15.11 Bond.** The Trustees shall not be required to give any bond for the faithful performance of their duties hereunder, unless their duties involve the handling of money or securities. Trustees and all other persons handling money or securities shall be bonded, and the expense of such bond shall be paid from the Retirement Fund.

**15.12 Trustee's Participation.** A Trustee may be a Member of the System, and such participation will not result in any limitation of powers or other disqualification to act in the capacity of Trustee.

**ARTICLE XVI**  
**General Provisions**

- 16.01 Right to Employment.** Nothing contained in the Plan or the establishment of the Retirement Fund hereunder or any modification thereof, or the creation of any fund or account for the payment of any benefit, shall be construed to give any employee, Member, or beneficiary any right to employment or continued employment by the Employer or any legal or equitable rights against the Employer, any agent or employee of the Employer, or against the Board of Trustees or their agents or employees, except as herein provided.
- 16.02 Incapacity.** In the event that any recipient of benefits is unable to care for his or her affairs because of illness or accident, and no duly qualified guardian or other legal representative has been appointed, any payment due may be paid to the recipient's Spouse, parent, brother, sister, or other person deemed by the Board of Trustees to have incurred expenses for the care of such recipient.
- 16.03 General Financial Objective and Employer Contributions.** The funding policy of the Plan shall be to establish and receive contributions which will remain approximately level from generation to generation of citizens and which, when combined with other assets and investment return thereon, will be sufficient to pay benefits when due, while providing a reasonable margin for adverse experience. Such margin shall be measured using assumptions regarding future experiences that the Trustees and the actuary determine to be reasonable. When the Retirement System has unfunded accrued liabilities, the Trustees shall cause them to be amortized over a reasonable period.
- 16.04 Assignment and Loan.** The right of any recipient to any benefit, separate account, or any other right under the provisions of this Plan shall not be subject to alienation or assignment; nor, except as required by federal or state law, shall monies covered by this Plan be subject to attachment, execution, garnishment, sequestration, operation of bankruptcy law or other legal or equitable process. In the event that any such attempt to alienate or attach monies is made, the Trustees may hold the Pension for or apply it to the benefit of the recipient or of the recipient's beneficiaries, or other relatives in such proportions as the Trustees deem

proper. Any appointment made by the Trustees hereunder may be revoked by the Trustees at any time, and a further appointment made by them.

The preceding paragraph shall not preclude the Plan from paying retirement benefits directly to the Member's Spouse or former Spouse (or solely pursuant to orders accepted by the Plan before May 16, 2006, the beneficiary of a Spouse or former Spouse) when such direct payments are required by a domestic relations order that complies with the applicable requirements of the Internal Revenue Code, of the Code of Virginia, and of any uniform and non-discriminatory regulations that the Board of Trustees may adopt. In addition, the preceding paragraph shall not preclude the Plan from complying with administrative actions pursuant to Chapter 19 of Title 63.2 of the Code of Virginia, or with court process to enforce a child or child and spousal support obligation, consistent with uniform and non-discriminatory regulations adopted by the Board of Trustees.

**16.05 Settlement of Small Pensions.** The Board of Trustees may provide by regulation for small pensions to be satisfied by the payment of a Pension of Actuarial Equivalent value in periodic installments or in a lump sum. The amount payable shall be determined pursuant to the Board of Trustees regulations, but for all other purposes specific to the provisions of the Plan a Member receiving a Pension in a lump sum pursuant to this section shall be treated as a Member receiving a refund of Accumulated Contributions.

**16.06 Forfeitures.** Forfeitures, if any, must not be applied to increase Pension benefits any Member would otherwise receive under the System, but shall be used to pay administrative expenses of the Plan.

**16.07 Gender and Pronoun.** The masculine pronoun, wherever used, shall include the feminine pronoun, and the singular number shall include the plural number, unless the context requires otherwise.

**16.08 Permissible Purchase of Annuity Contracts.** The Board of Trustees, in lieu of paying the Pension to which a recipient is entitled directly from the funds of the Plan, may purchase from an insurance company any type of annuity contract which will provide retirement benefits in an amount identical to that to which the recipient

was entitled under this Plan, provided such annuity is not transferable by the recipient. Upon the purchase of an annuity contract for the benefit of a recipient, such contract may either be assigned to the recipient or retained by the Board of Trustees for the benefit of the recipient.

**16.09 Liability.** No liability shall attach to or be incurred by the Board of Trustees or employees of the Employer by reason of the terms or conditions contained in this Plan. The employees of the Employer and the Board of Trustees shall be entitled to rely upon any and all certificates and reports or opinions given by any duly appointed accountant, actuary, investment advisor, or legal counsel (who may be counsel for the Employer), and shall be fully protected against any action taken in good faith in reliance upon such tables, valuations, certificates, reports, or opinions.

**16.10 Governing Law.** The Plan shall be construed, administered and enforced in accordance with the laws of the Commonwealth of Virginia. All references to provisions of the Virginia Code, the Fairfax Code, the U.S. Code, or the Internal Revenue Code, shall be construed to include any subsequently adopted amendments to, or renumbering of, such provisions, unless the Trustees determine that such an interpretation would change the meaning or intent of the Plan.

**16.11 Tax Qualification.** This Plan has been adopted and is based upon the condition precedent that the Plan be initially qualified by the Internal Revenue Service as meeting the requirements of the Internal Revenue Code and regulations issued thereunder with respect to qualified pension plans, so as to exempt the Retirement Fund from tax on its income. Notwithstanding any other provisions of the Plan, if the Commissioner of Internal Revenue or his or her delegate determines that the Plan, or the amended Plan as it may be further amended in an effort to receive such approval, does not initially qualify under the applicable provisions of the Internal Revenue Code, the Plan shall be void and retirement funds shall be returned to the parties in proportion to the amounts contributed.

### **16.12 Application for and Commencement of Benefits.**

- (a) Members and beneficiaries must apply in writing to the System in order to receive benefits to which they are entitled. Members shall be notified that an application is a prerequisite to the receipt of benefits. If a Member or beneficiary does not apply for benefits on the date at which he or she becomes eligible, benefits will not commence until the Retirement Office receives the application.
- (b) Benefits under Articles IV, V, VI, VII, or X will not commence until the Member applies for them, but may be retroactive to the first day of the month following (1) the date the Member was first eligible for such benefits, or (2) the termination of employment with the Employer (in the case of a Member receiving a deferred vested Pension pursuant to Section 16.14(g), the termination of Eligible Employment), whichever is later, provided that the period of retroactivity may not exceed 90 days from the date of application.
- (c) If a Member who would have been eligible for retroactive benefits under subsection (b) dies without having applied for benefits, the Member's Named Beneficiary may apply for any retroactive benefits that the Member could have elected to receive on the date of death. If there is no Named Beneficiary, but a surviving Spouse is eligible for benefits pursuant to Section 8.03(a), the Spouse may elect such retroactive benefits. If a retroactive benefit is elected, any Pension payable pursuant to Article VIII shall be calculated in accordance with that election. If there is no surviving Named Beneficiary and no surviving Spouse entitled to benefits under Section 8.03, the Member's estate may apply for the retroactive benefits provided by subsection (b) through the date of death, in lieu of the Member's Accumulated Contributions.

**16.13 Major Changes in Companion Plans.** Benefits under *ERFC* are designed to supplement and coordinate with the benefits of two other retirement plans: the Federal Social Security Act and VRS. If there are future material changes in the amounts of, or eligibility for, benefits provided under the Federal Social Security Act or by VRS, the Board of Trustees shall examine the combined benefits of the

three plans and recommend changes in *ERFC* benefits to achieve the intent of coordinated benefits without duplication of coverage or inadequate or excessive benefit levels.

**16.14 Active Employment After Retirement.**

- (a) If a retired Member returns to employment with the Employer, the benefits otherwise payable to such Member shall be suspended for the period of such re-employment, unless the Member qualifies for the exception provided in Section 16.14(e), the exception provided in Section 16.14(g), or for another exception to the suspension rule pursuant to regulations of the Employer. If the position to which the Member returns is Eligible Employment, he or she shall make the Member contributions provided by Article III. Section 16.14(e) is an exception that applies only to the Members described therein.
- (b) Upon subsequently retiring, a Member whose benefits were suspended may elect:
  - (1) the benefits that were payable following the previous retirement, subject to all applicable cost-of-living adjustments and subject to any other changes called for by the Plan provisions under which those amounts were payable, plus a refund of Accumulated Contributions attributable to the period of re-employment; or
  - (2) the benefits for which he or she is eligible under the provisions of this Plan Document, based upon the Member's entire service and Salary record to the date of the subsequent retirement; however, the benefit shall be payable in the same form (e.g., full or reduced service, life annuity or optional election) and multiplied by the same age reduction factor as the Member's initial retirement benefit. The Member shall continue to be eligible to make the changes that a retired Member may make pursuant to Section 4.06(b).
- (c) Subsection (b) does not apply to a Member who, after receiving a disability Pension under Article VI or Article VII, recovers from the disability and returns to Eligible Employment. The rights of such a Member following re-employment are governed by Sections 6.05, 6.06, and 12.01(c).



- (d) If, following re-employment, a Member whose benefits were suspended under Section 16.14(a) dies in service, benefits will be payable as follows:
  - (1) Death-in-service benefits will not be payable under Article VIII or Article IX.
  - (2) Benefits will be payable under Article IV or Article V in accordance with any optional form of benefit that the Member elected prior to the Effective Retirement Date. The Nominated Beneficiary who is entitled to a Pension under that optional form of benefit may make the election described in subsection (b). If the Member did not elect an optional form of benefit before the Effective Retirement Date, a refund of Accumulated Contributions will be paid in accordance with Section 12.04.
  - (3) If any benefits are payable under either Article VIII or Article IX, no other benefits shall be payable under the Plan. If no benefits are payable under either Article VIII or Article IX, the Member's survivors or the Member's estate will receive the same benefits that would have been paid if the Member had died without having been re-employed, plus a refund of Accumulated Contributions attributable to the period of re-employment.
- (e) Effective only for the period July 1, 2001, through June 30, 2004, Members receiving benefits under Article IV were permitted to elect to be exempt from Section 16.14(a) through (d).
- (f) The following conditions apply to all Members who made the election described in Section 16.14(e):
  - (1) Following the Member's election, the Member will not make any Member contributions or be credited with additional interest pursuant to Section 1.01, and will not accrue additional benefits under any of the plans that are part of the System.
  - (2) Following the Member's election, the amount of the retirement benefit will not be changed to reflect subsequent Salary, service, Unused Sick Leave or Creditable Virginia Service, and the Member will not be permitted to purchase any additional service credit

pursuant to Article XI or to change the form of benefit except as Section 4.06(b) permits.

- (3) The Member's benefit will be increased annually after the election as provided by Article XIII.
  - (4) If a Member who made this election becomes Disabled or dies in service, no benefits will be payable under Articles VI, VII, VIII or IX. Benefits will be payable solely under Article IV in accordance with any optional form of benefit that the Member elected prior to the Effective Retirement Date.
  - (5) A Member who made this election prior to July 1, 2004, will continue to be exempt from Section 16.14(a) through (d) for as long as he or she continues working in employment for the Employer thereafter.
  - (6) Section 16.14(e) does not guarantee any Member a right to continue in, or return to, employment with the Employer.
  - (7) Each Member who made this election was required to sign an acknowledgment, in a form prescribed by the Trustees, that he or she voluntarily chose to be subject to all of the conditions described in this subsection, in order to receive benefits that otherwise would be suspended.
- (g) A Member who has completed five or more years of Vesting Service and who is Age 65 or older may receive a benefit pursuant to Section 10.01 while employed by the Employer in a position that is not Eligible Employment and that is part-time (as defined by the Employer). If such a Member dies during such part-time employment after the Effective Retirement Date, no benefits will be payable under Article VIII or Article IX; benefits will be payable only if provided under the form of benefit that the Member elected or under Section 12.04. If a Member receiving benefits under this subsection returns to Eligible Employment after the Effective Retirement Date, the provisions of Section 16.14(a) through (d) will apply.

**16.15 Benefit Adjustment of Three Percent.**

- (a) All Pensions payable under this Plan Document shall be increased by three percent at the time the first such Pension payment is made, except alternative level “guarantee” benefits elected pursuant to Section 5.02(c), and level lifetime benefits elected pursuant to Sections 4.02(c), 5.02(d), or 5.03(c) (which are calculated to include the three percent increase).
- (b) In calculating cost-of-living adjustments under Article XIII of the Plan, the “amount of the benefit that would be payable without regard to Article XIII” shall include the three percent increase made pursuant to subsection (a).
- (c) No adjustment shall be made pursuant to subsection (a) if it would violate the provisions of Article XVII of the Plan, regarding the limitations imposed by the Internal Revenue Code.

**16.16 Appeals.** Any Member, beneficiary, or other individual who claims a benefit under the Plan, and is denied that benefit in whole or in part, may appeal to the Board of Trustees by using the procedure described in this section. Appeals shall be submitted in writing, addressed to the Chair, and may be accompanied by any documents relevant to the appeal. An individual who has submitted a written appeal, has the option of making an oral presentation at the meeting in which that appeal is first presented to the Trustees. The filing of an appeal satisfying the requirements of this section shall be a prerequisite to the filing of any further claims or actions in any court or other forum.

**16.17 Time Limits for Legal Action.** Any action at law or in equity relating to the Plan must be commenced within two years after the cause of action accrues. If the challenged decision relates to eligibility for or the amount of pension credit or benefits, the cause of action accrues when the application for benefits is denied or when the first payment of benefits is made. In any case of an overpayment of benefits or payment of benefits to an ineligible recipient, the cause of action accrues when the Trustees determine that an erroneous payment has occurred.

**ARTICLE XVII**  
**Regulatory Provisions**

**17.01 Limitation on Benefits.**

**(a) General Rules**

- (1) Notwithstanding any other provision of this Plan Document, the annual benefit to which any Member may be entitled, without regard to any benefit attributable to Purchased Service Credit, shall not exceed the Section 415(b) Limitations. Under no circumstances shall a Member receive a distribution that is in excess of the Section 415(b) Limitations.
- (2) Benefits that are attributable to Purchased Service Credit shall satisfy the limits set forth in section 415(n) of the Code, except that in the case of Members who first entered Eligible Employment before July 1, 1998, the limitations of section 415(c)(1) of the Code shall not be applied to reduce the amount of service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the Plan in effect on August 5, 1997.
- (3) For purposes of this Section 17.01, the following definitions shall apply:
  - (A) "Section 415(b) Limitations" shall mean the limitations on benefits applicable to *ERFC* under section 415(b) of the Code and applicable Treasury regulations thereunder, as they are in effect for each Limitation Year, in accordance with the Rules of Operation set forth in Section 17.01(b).
  - (B) "Limitation Year" shall mean the calendar year.
  - (C) "Code" shall mean the Internal Revenue Code.

**(b) Rules of Operation**

- (1) Except as otherwise provided in this Section 17.01, and solely for purposes of testing compliance with the Section 415(b) Limitations, benefits payable from *ERFC* shall be adjusted to a straight life (level) annuity as defined in section 415(b)(2) of the Code.

- (2) For purposes of testing compliance with the Section 415(b) Limitations, the dollar limitation described in section 415(b)(1)(A) of the Code shall be automatically adjusted to reflect each annual increase under section 415(d) of the Code. Each such adjustment shall also apply to the remaining payments payable to Members who have already commenced payment of benefits pursuant to § 1.415(d)-1(a)(4) and the safe harbor at § 1.415(d)-1(a)(5) of the Treasury regulations.
- (3) To the extent that benefits under VRS and *ERFC* are required to be aggregated for purposes of applying the Section 415(b) Limitations, and to the extent that annual benefits payable to a Member under VRS and *ERFC*, as aggregated under both plans, exceed the Section 415(b) Limitations, the Section 415(b) Limitations shall operate first on the benefits payable to the Member under *ERFC*.
- (4) With respect to benefits that were accrued or payable as of December 31, 2008, pursuant to plan provisions that were both adopted and in effect before April 5, 2007, the amounts payable in any Limitation Year shall not exceed the limits in effect on April 4, 2007, as provided by section 415, applicable regulations and published guidance, in accordance with § 1.415(a)-1(g)(4) of the Treasury regulations.
- (5) Pursuant to the exception for certain automatic benefit increase features under § 1.415(b)-1(c)(5) of the Treasury regulations, an individual's benefit under the Plan shall not be adjusted to take into account the present value of the expected cost-of-living adjustments under Article XIII to the extent that such benefit is eligible for the exception in § 1.415(b)-1(c)(5). In the event that a benefit is paid in more than one distribution form, the exception in § 1.415(b)-1(c)(5) shall be applied separately to each distribution form.

**17.02 Distribution of Benefits.** Notwithstanding any other provision of this Plan Document, the entire interest of each Member shall be distributed to such Member not later than the required beginning date specified below, or will be distributed, beginning not later than the required beginning date, over the life of such Member or over the lives of such Member and a beneficiary or over a period not extending beyond the life expectancy of such Member or the life expectancy of such Member and a beneficiary. For this purpose, the term "required beginning date" means April 1 of the calendar year following the later of the calendar year in which the Member attains age 70½, or the calendar year in which the Member retires. If a Member dies after distribution of the Member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a Member dies before the distribution of the Member's interest has begun, any death benefit shall be distributed within five years after the death of such Member, unless:

- (a) any portion of the Member's interest is payable to (or for the benefit of) a beneficiary;
- (b) such portion will be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary; and
- (c) unless the beneficiary is the Member's surviving Spouse, such distributions begin not later than one year after the date of the Member's death or such later date as the Secretary of the Treasury may by regulations prescribe.

If the beneficiary is the surviving Spouse of the Member:

- (1) distributions shall begin on or before the latest of one year after the date of the Member's death, such later date as the Secretary of the Treasury may by regulations prescribe, or the date on which the Member would have attained age 70½; and
- (2) if the surviving Spouse dies before the distributions to such Spouse begin, the distribution rules specified in this paragraph shall be applied as if the surviving Spouse were the Member.

**17.03 Limit on Compensation.** Notwithstanding any other provision of the Plan Document, effective July 1, 1996, the annual compensation of each Member taken into account for determining all benefits provided under the Plan for any Plan

Year, and for applying the limitations described in Section 17.01, shall not exceed \$150,000, as adjusted for the cost-of-living adjustment in accordance with section 401(a)(17)(B) of the Code. For Plan Years on and after July 1, 2017, the limit shall be \$270,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code; in determining Final Average Compensation that includes determination periods both before and after July 1, 2002, \$200,000 shall apply for Plan Years beginning before July 1, 2002. With respect, however, to any individual who first became a Member of the System prior to July 1, 1996, this limitation shall not reduce the amount of compensation which was allowed to be taken into account under the Plan as in effect on July 1, 1993. Compensation, for purposes of this Section 17.03 has the same meaning as Salary under Section 1.31.

- 17.04 Provision for Investment in Pooled Trusts.** The Board of Trustees is authorized, in their discretion and to the extent they deem it prudent, to invest in units of any group trust that is created or organized in the United States and is maintained at all times as a domestic trust in the United States, and the Trust Agreement of which:
- (a) is adopted as a part of each adopting benefit plan and by the Board of Trustees as part of the Plan for so long as the assets of the Plan are so invested (such adoption by the Board of Trustees shall take effect automatically – without the need for a formal resolution – when the Plan assets are first invested in the group trust, and shall terminate automatically when the Plan assets are no longer invested in the group trust);
  - (b) expressly limits participation to (i) individual retirement accounts which are exempt under section 408(e) of the Code, (ii) pension, profit-sharing and stock bonus trusts or custodial accounts which are exempt under section 501(a) of the Code by qualifying under section 401(a) of the Code, (iii) eligible governmental plan trusts or custodial accounts under section 457(b) of the Code that are exempt under section 457(g) of the Code, (iv) custodial accounts under section 403(b)(7) of the Code, (v) retirement income accounts under section 403(b)(9) of the Code, and (vi) governmental plans under section 401(a)(24) of the Code;

- (c) expressly prohibits any part of its corpus or income that equitably belongs to any adopting retiree benefit plan from being used for, or diverted to, any purpose other than for the exclusive benefit of the participants and the beneficiaries of that adopting retiree benefit plan;
- (d) provides that each adopting retiree benefit plan entity is itself a trust, custodial account, or similar entity that is tax-exempt under sections 408(e) or 501(a) of the Code (or is treated as tax-exempt under section 501(a) of the Code) (for purposes of this requirement a retirement benefit plan that is a section 401(a)(24) governmental plan is treated as meeting this requirement if it is not subject to federal income taxation);
- (e) requires each adopting retiree benefit plan to expressly provide in its governing document a provision prohibiting any part of the corpus or income of the retiree benefit plan from being used for, or diverted to, any purposes other than for the exclusive benefit of the individual or the employees respectively, or their beneficiaries who are entitled to benefits under such retiree benefit plan;
- (f) expressly limits the assets that may be held by the group trust to assets that are contributed by, or transferred from, an adopting retiree benefit plan to the group trust (and the earnings thereon), and the group trust instrument expressly provides for separate accounts (and appropriate records) to be maintained to reflect the interest which each adopting retiree benefit plan has in the group trust, including separate accounting for contributions to the group trust from the adopting plan, disbursements made from the adopting plan's account in the group trust, and investment experience of the group trust allocable to that account; and
- (g) prohibits assignment by an adopting retiree benefit plan or any part of its equity or interest in the group trust.

**17.05 [Reserved]**

**17.06 Authorization to Establish a Benefit Restoration Plan.**

The Board of Trustees shall have authority to establish and administer a benefit restoration plan to provide benefits to Members whose annual benefit is reduced pursuant to Section 17.01(a). Such plan shall meet the requirements to be treated as a plan established under section 415(m) of the Code. Benefit restoration plan



benefits shall be paid from the contributions required under Section 3.05. If it deems it advisable, the Board may create a trust or other special fund for segregation of the funds or assets relating to the benefit restoration plan.

**ARTICLE XVIII**  
**Direct Rollovers**

**18.01 Effective Date.** This Article applies to distributions from the System made on or after January 1, 1993, and until such time as section 401(a)(31) of the Code or any successor provision thereto no longer applies to the System.

**18.02 Definitions.** When used in this Article, the words and phrases hereinafter shall have the following meaning, unless a different meaning is clearly required by the context of the Plan Document.

(a) "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the balance to the credit of a Member, except that an Eligible Rollover Distribution does not include:

- (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;
- (2) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and
- (3) the portion of any distribution that is not includible in gross income; except that portion of a distribution that consists of after-tax employee contributions shall qualify as an eligible rollover distribution, solely for purposes of a trustee-to-trustee transfer to a plan described in Sections 18.02(b)(1) and (b)(2), or to a defined contribution plan described in Sections 18.02(b)(3) or (b)(4) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(b) "Eligible Retirement Plan" shall mean:

- (1) an individual retirement account described in section 408(a) of the Code;

- (2) an individual retirement annuity described in section 408(b) of the Code;
  - (3) a Roth IRA described in section 408A of the Code;
  - (4) an annuity plan described in section 403(a) of the Code;
  - (5) a qualified trust described in section 401(a) of the Code.
  - (6) an annuity contract described in section 403(b) of the Code; or
  - (7) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state, and which agrees to separately account for amounts transferred into such plan from this Plan.
- (c) "Distributee" shall mean only:
- (1) a Member;
  - (2) a Member's surviving Spouse;
  - (3) a Member's Spouse or former Spouse who is the alternate payee with respect to a Member's benefit under a domestic relations order which meets the requirements of section 414(p)(1)(A)(i) of the Code and ERFC regulations; or
  - (4) a trust for the benefit of a person described in Section 18.02(c)(2) or (c)(3).
- (d) "Direct Rollover" shall mean a payment by the System to the Eligible Retirement Plan specified by the Distributee.
- (e) "Code" shall mean the Internal Revenue Code.

**18.03 Election of Direct Rollover by a Distributee.** Notwithstanding any provision of this Plan Document, a Distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified in writing by the Distributee in a Direct Rollover.

**18.04 Election of Direct Rollover by Other Beneficiaries.** Notwithstanding any provision of this Plan Document, if amounts due on account of a Member's death are payable to a beneficiary who is not a Distributee or an estate, that beneficiary may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an Eligible Rollover Distribution paid directly to an account or annuity that is described in Section 18.02(b)(1), (b)(2), or (b)(3) and that was established for the purpose of receiving such a distribution. This section applies to distributions made on or after January 1, 2007, and until such time as section 402(c)(11) of the Code or any successor provision thereto no longer applies to the System.