

# **COMMONWEALTH OF VIRGINIA**

Flexible Benefits Program

Plan Document

# ARTICLE I

## PURPOSE OF PLAN

- 1.01 **Name and Purpose of Plan:** The Department of Human Resource Management hereby restates the Commonwealth of Virginia Flexible Benefits Plan (hereinafter referred to as the “Plan”).

The purpose of the Plan is to provide a means whereby Employees can direct the Employer to purchase coverage for themselves and their Dependents under various Component Plans and provide the Employee portion of any contribution or premium through an equivalent reduction in the amount of Covered Compensation that would otherwise be payable to such Employees.

The Plan is intended to comply with the requirement of Section 105, 106, 125 and 129 of the Internal Revenue Code of 1986, as amended (the “Code”). Additionally, it is intended that this Plan together with the applicable insurance and health maintenance organization contracts meet all other requirements of the Code, and the Plan shall be interpreted where possible to comply with the terms of the Code and all regulations and rulings issued under the Code and amendments thereto.

This document restates the plan to incorporate all amendments and changes in regulations subsequent to its adoption January 1, 1990.

- 1.02 **Effective Date:** The Effective date of the Plan is January 1, 2004. Revised July 1, 2015

## ARTICLE II

### DEFINITIONS

Where the following words and phrases appear in this Plan, they shall have the meaning set forth below unless a different meaning is plainly required by the context.

- 2.01 Code:** The Internal Revenue Code of 1986, as amended from time to time. Any reference to any section of the Code shall be deemed to include any applicable regulations and rulings pertaining to such section and shall also be deemed a reference to comparable provisions of future laws.
- 2.02 Component Plan:** Any one of the plans listed in Schedule, A which is attached hereto and incorporated by reference into this Plan. Each Component Plan listed on Schedule A shall be incorporated by reference into this Plan. It is intended that each of the Component Plans shall constitute a “qualified benefit” within the meaning of Section 125 of the Code.
- 2.03 Coverage Expenses:** The insurance premiums or other contributions attributable to an Employee for the benefit coverage elected pursuant to Section 3.02, and which is required under a Component Plan.
- Prior to the beginning of each Plan Year, the Plan Administrator for each Component Plan shall specify the premium or other contribution required for benefit coverage attributable to a Participant which is applicable to said Component Plan.
- 2.04 Coverage Period:** The Coverage Period hereunder shall be the Plan Year; however, for an Employee who first becomes eligible to participate in Component Plan after the start of a Plan Year, the initial Coverage Period shall mean the period commencing on the effective date of such Participant’s eligibility date and extending through the remainder of the Plan Year. If coverage ends prior to the end of the plan year, the Coverage Period shall mean the period during the plan year that coverage was active.
- 2.05 Covered Compensation:** For each Plan Year, a Participant’s Covered Compensation shall mean total compensation (including bonuses and overtime) accrued or paid by the Employer to the Employee for the period during which the Employee was a Participant in the Plan.
- 2.06 Date of Reemployment:** means the date an Employee as defined in this section has returned to service after a termination of eligible employment in excess of 30 calendar days.
- 2.07 Dependent:** Unless otherwise defined in a Component Plan, a Spouse, child or other Dependent of an Employee as described by the Commonwealth of Virginia Benefits Program, subject to further limitations provided by each Component Plan.
- 2.08 Effective Date:** The date upon which this Plan is effective: July 1, 1990, or such later date as of which an Employer shall adopt the Plan for its Employees.
- 2.09 Employee:** An employee as defined in §§51.1-124.3 and 51.1-201 of the Code of Virginia, the Governor, Lieutenant Governor and Attorney General, judge as defined in §51.1-301 of the Code of Virginia and judges, clerks and deputy clerks of regional juvenile and domestic relations,

county juvenile and domestic relations, and district courts of the Commonwealth. The Athletic Department of Virginia Polytechnic Institute and State University is a local auxiliary whose members are considered state employees for purposes of eligibility for the program.

- 2.10 Employer:** The Commonwealth of Virginia.
- 2.11 Family Medical Leave:** means any leave, paid or unpaid, that has been approved under the Family Medical Leave Act (FMLA) of 1993, as amended.
- 2.12 Flexible Pay:** The amount of Covered Compensation that, pursuant to Section 4.01, is applied on behalf of a Participant to pay his or her Covered Expenses.
- 2.13 Highly Compensated Employee:** means an Employee described in Internal Revenue Code Section 414 (q) and regulations thereunder.
- 2.14 Key Employees:** means an Employee described in Internal Revenue Code Section 416 (i) (1) and regulations thereunder.
- 2.15 Participant:** Any Employee who is eligible and has not elected to opt out under the terms of the Plan for participation herein and who remains so qualified.
- 2.16 Plan:** The Commonwealth of Virginia Flexible Benefits Plan, the Plan set forth herein, as amended from time to time.
- 2.17 Plan Administrator:** The Department of Human Resource Management, or its successor of successors, which shall have authority to administer the Plan as provided in Article V.
- 2.18 Plan Year:** The Plan Year shall be the period commencing January 1, 2004 and ending on June 30, 2004. All subsequent Plan Years shall be the 12-month period commencing on July 1 and ending on June 30.
- 2.19 Qualifying Change in Status:** any event described in schedule B, as well as any other events included under subsequent changes to Code §125 or regulations issued thereunder, which the Employer or designee, in its discretion as Plan Administrator and on a uniform and consistent basis, determines are permitted under IRS regulations and under this Plan.
- 2.20 Salary Reduction Agreement or Election Plan:** An agreement between the Participant and the Employer under which the Participant agrees to reduce this Covered Compensation or to forego increases in such Covered Compensation and to have an equivalent amount contributed by the Employer to a Component Plan on the Participant's behalf. The Salary Reduction Agreement shall apply only to Covered Compensation that has not been actually or constructively received by the Participant as of the date of the Salary Reduction Agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant. The Salary Reduction Agreement shall be deemed to be in force with respect to any Participant electing coverage under any Component Plan, which requires as Employee's participation in the cost of such coverage.
- 2.21 Salary Reduction:** The amount by which a Participant's Covered Compensation shall be reduced to provide the Coverage Expenses attributable to Component Plans elected pursuant to Section 3.02.

2.12 **Spouse:** The legally married spouse of a Participant. The marriage must be recognized as legal in the Commonwealth of Virginia.

2.22 **State Employee Health Program:** means the health benefits program for eligible state employees administered by the Department of Human Resource Management.

## ARTICLE III

### ELIGIBILITY AND PARTICIPATION

#### 3.01 **Eligibility and Participation:**

Each Employee who meets the definition of Employee as defined in Section 2.08 and is eligible to participate under the terms of the Commonwealth of Virginia Flexible Benefits Program or other applicable Component Plan shall be eligible to participate in this Plan.

i. **Commencement of Participation:**

An eligible Employee shall commence participation in this Plan on the latest of the following dates: (a) the Effective Date of the Plan; (b) the commencement of the Employee's eligibility for the State Employees Flexible Benefits Program or other Component Plan.

ii. **Termination of Participation:**

A Participant shall continue to participate in this Plan until the earlier of the following dates: (a) the end of the month in which the Participant terminates employment for any reason, (b) the end of the month in which the Participant is no longer eligible to elect benefits hereunder, or (c) the termination of this Plan.

iii. **Reinstatement of Former Participants:**

A former Participant who is rehired or regains eligibility for benefits within 30 calendar days or less of a termination of employment or loss of eligibility will be reinstated with the same elections that such individual had before termination. If a former Participant is rehired or regains eligibility for benefits more than 30 calendar days following termination of employment or loss of eligibility, and is otherwise eligible to participate in the Plan, then the individual may make new elections as a new hire.

iv. **Special Rules for Family Medical Leave:**

A Participant taking Family Medical Leave may revoke an existing election; and upon return from Family Medical Leave, may make such other election for the remaining period of coverage as may be provided for under the Family Medical Leave. If the Family Medical Leave is paid, pre-tax contributions may continue to be made under the Plan as elected under Article III, Participation 3.02.

#### 3.02 **Enrollment:**

An Employee who has met the requirements of Section 3.01 may enroll in the Plan during an enrollment period, as defined in subsection (i) herein, by submitting an Election Form or by the enrollment process through the Employee Self-Service system provided by the Plan Administrator, which specifies the Component Plans to be applicable to said Employee. A Participant's Election Form shall not be effective prior to the date such form is submitted to the Plan Administrator except for those enrollments submitted subject to IRS section 9801 (f) which require enrollment to be effective on the date of the event (HIPAA special enrollment for birth/adoption or placement for adoption). Any Election Form submitted by a Participant in accordance with this Section 3.02 shall remain in effect until the earlier of the following dates: Participant's termination of participation in this Plan or the effective date (as determined by the Plan Administrator) of a subsequent Election Form submitted pursuant to subsection (i)(b) and (c) below once enrolled, if an Employee fails to take the necessary steps to make any available election on a timely basis, he will retain his current elections for the following Plan Year.

(i) **Enrollment Periods:**

- a) Each Employee who meets the requirements of Section 3.01 shall have Initial Enrollment Period which shall begin on the first day the Employee has met the requirement for participation hereunder and shall terminate 30 calendar days thereafter.
- b) Each Participant shall have a Regular Enrollment Period during which to make elections for the next Plan Year. The Regular Enrollment Period for such Plan Year shall be determined by the Plan Administrator, and shall terminate no later than 15 days prior to the commencement of the next Plan Year.
- c) A Participant who incurs a qualifying mid-year event, as provided in paragraph (ii) below, shall have a Special Enrollment period which shall begin on the date of his or her qualifying event and shall terminate 60 calendar days thereafter or such other reasonable period of time as may be determined by the Plan Administrator.

(ii) **Limitation on Enrollment Elections:**

The Plan Administrator shall subject to said Component Plan or in such other administrative rules adopt a Participant's election of a Component Plan. Furthermore, a Participant shall not be entitled to revoke or modify an election after a period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage unless it is a clear and convincing error by the enrollee, the Plan Administrator or unless both the revocation or modification and the new election are on account of and consistent with a qualifying mid-year events as defined by applicable federal law. Qualifying mid-year events are listed in Schedule B. A Participant's Election Form shall not be effective prior to the date such form is submitted to the Plan Administrator except for those enrollments submitted subject to IRS section 9801 (f) which require enrollment to be effective on the date of the event (HIPAA special enrollment for birth/adoption or placement for adoption).

# ARTICLE IV

## CONTRIBUTIONS

### 4.01 **Salary Reduction:**

#### (i) Flexible Pay Contributions:

Each Participant shall authorize the Plan Administrator to withhold from his or her Covered Compensation for the Plan Year an amount of Flexible Pay equal to his or her Coverage Expenses. Any Flexible Pay, which is withheld from a Participant's Covered Compensation pursuant to this Section 4.01, shall be withheld in approximately equal installments from the amounts payable to the Participant for each pay period during the Plan Year. For Employees whose salary during the year is paid to them over a period of time less than a year, Flexible Pay amounts will be withheld in installments, as determined by the Plan Administrator, that approximate the period over which said Participant is paid. If an Employee becomes a Participant after the beginning of the first pay period of the Plan Year, the amount withheld from his or her Covered Compensation during such year shall be a pro rata-share of the amount that would have been withheld had he or she been a Participant in the Plan as of the beginning of the Plan Year.

#### (ii) Election

An election under subsection (i) to authorize withholding of Flexible Pay shall be made on an Election Form or through the Employee Self-Service System in accordance with Section 3.02. An election to have withheld an amount of Flexible Pay, which, in the determination of the Plan Administrator, exceeds the limitation of Flexible Pay as, set forth in this or any Component Plan may, in the discretion of the Plan Administrator, be treated as an election to have withheld the maximum amount permissible under such limitation.

#### (iii) Covered Compensation

In the event that a Participant's Covered Compensation is less than his Coverage Expenses, the Participant may be allowed to pay the balance of the Coverage Expenses with after-tax funds.

### 4.02 **Effect of Qualifying Mid-Year Events:**

If a Participant's elections change during the Plan Year, then, in accordance with rules adopted by the Plan Administrator, appropriate adjustments shall be made in the amount withheld from, or added to, the Participant's pay for the balance of the year to reflect any changes in the Participant's election of Component Plans.

# ARTICLE V

## ADMINISTRATION

### 5.01 Allocation of Responsibility

- (i) The Employer shall have the sole authority:
  - a. To make the Employer contributions under the plan as specified in Article IV, and
  - b. To appoint and remove the Plan Administrator, and to amend or terminate this Plan in whole or in part.
  
- (ii) The Plan Administrator shall have the sole authority:
  - a. to administer the plan in accordance with its terms as construed by the Plan Administrator,
  - b. to comply with the requirements of law for disclosure of plan provisions and other information relating to the plan to Participants and other interested parties, and
  - c. to have the maximum authority permitted by law to construe and apply the provisions of the Plan.
  
- (iii) **Fiduciary Discretion.** Plan fiduciaries are empowered to exercise exclusive and absolute discretion with respect to matters for which they are responsible, including the interpretation of the terms of the Plan and related factual matters. Such discretionary determinations, including those regarding Plan terms and eligibility, shall be final and conclusive and shall bind all Employees and beneficiaries and the Employer.

### 5.02 Administration

The Plan shall be administered by the Plan Administrator, which may appoint or employ persons to assist in the administration of the Plan and may appoint or employ any other agents it deems advisable, including legal counsel, actuaries, auditors, bookkeepers and record keepers to serve at the Plan Administrator's direction. The Employer shall pay all usual and reasonable expenses of the Plan and the Plan Administrator.

### 5.03 Rules and Decisions

The Plan Administrator may adopt such rules and procedures, as it deems necessary, desirable or appropriate for the administration of this Plan. All rules, procedures and decisions of the Plan Administrator shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished by a Participant, a Dependent, the duly authorized representative of a Participant or Dependent, or the legal counsel of the Plan Administrator.



**5.04 Forms and Requests for Information**

The Plan Administrator may require a Participant to complete and file such forms as are provided for herein and all other forms prescribed by the Plan Administrator. The Plan Administrator may rely upon all such information, including the Participant's current mailing address.

**5.05 Responsibility for Plan**

The complete authority to control and manage the operation and administration of the Plan shall be in the Plan Administrator, who shall be solely responsible for the operation of the Plan in accordance with its terms. The Employer shall have no responsibility for, nor liability toward, the operation and administration of this Plan.

# ARTICLE VI

## AMENDMENT OR TERMINATION OF PLAN

### 6.01 Amendment

The Employer by action of the Director of the Department of Human Resource Management shall have the right at any time by instrument in writing, duly executed and acknowledged, alter, or amend this Plan in whole or in part, provided, however, that no such amendment shall diminish or eliminate any claim for any benefit to which a Participant shall have become entitled to prior to such amendment. Notwithstanding the foregoing, the Director of the Department of Human Resource Management shall have the right to amend the Plan at any time, retroactively or otherwise, in such respects and to such extent as may be otherwise necessary to fully qualify it as a “cafeteria plan” under existing and applicable laws and regulations, including Section 125 of the Code, and if and to the extent necessary to accomplish such purpose, any by such amendment decrease or otherwise affect benefits to which Participants may have already become entitled.

### 6.02 Termination

The Employer expects to continue the Commonwealth of Virginia Flexible Benefits Plan, but has the right by action of the Director of the Department of Human Resource Management, to terminate the Plan, in whole or in part, at any time.

## **ARTICLE VII**

### **NONDISCRIMINATION**

In accordance with Sections 125 (b) (1) and (2) of the Code, the Plan is intended not to discriminate in favor of Highly Compensated and Key Employees, as defined in Section 125 of the Code. If, in the operation of the Plan, it is discovered that the Plan discriminates in favor of such Highly Compensated and Key Employees (or in the opinion of the Plan Administrator, is in danger of discrimination), then notwithstanding any other provision contained herein, the Plan Administrator shall reduce or adjust such contributions and/or benefits under the Plan as shall be necessary to assure that, in the judgment of the Plan Administrator, the Plan thereafter will not discriminate. Such reductions or adjustments in contributions and/or benefits will be made in a uniform and nondiscriminatory manner. All rules, procedures, and decisions of the Plan Administrator shall be adopted, made and/or applied in such fashion that they do not discriminate in favor of Highly Compensated and Key Employees.

# ARTICLE VIII

## MISCELLANEOUS

### **8.01 Plan Interpretation**

This Plan document sets forth the provisions of this Plan. This Plan shall be read in its entirety and not severed except as provided in Section 8.04

These plans are administered through the Department of Human Resource Management of the Commonwealth of Virginia. Final determination of all benefits (subject to the Administrative Process Act) will be made in accordance with the Plan. The Department of Human Resource Management is empowered to exercise discretion in the interpretation of the terms of the Plan and such discretionary determinations regarding Plan terms and eligibility shall be binding upon participants.

### **8.02 Limitation on Participant Rights**

Nothing appearing in or done pursuant to the Plan shall be held or construed:

- (i) To give any person any legal or equitable right against the Employer or the Plan Administrator, except as expressly provided herein or provided by law; or
- (ii) To create a contract of employment with any Participant, to obligate the Employer to continue the service of any Participant or to affect or modify his or her terms of employment in any way.

### **8.03 Governing Law**

The Internal Revenue Code governs this Plan and the regulations issued thereunder. In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the Commonwealth of Virginia.

### **8.04 Severability**

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

### **8.05 Captions**

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope of intent of the Plan nor in any way shall affect the Plan or the construction of any provision thereof.

**8.06 Construction**

Whenever used in this Plan, the masculine pronoun shall be deemed to include the masculine and feminine gender; a singular word shall be deemed to include the singular and plural and a plural word shall be deemed to include the plural and singular in all cases where the context requires; and the term form with respect to enrollment processes shall refer to a paper document or Employee Self-Service transaction, whichever is applicable.

**ARTICLE IX**

**ADOPTION OF THE PLAN**

IN WITNESS WHEREOF, the Commonwealth of Virginia has restated this Plan document this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST: (SEAL)

Commonwealth of Virginia

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

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

Director  
Office of Health Benefits Programs  
Department of Human Resource Management

## **SCHEDULE A – Component Plans**

For purposes of Section 2.03, benefits as of July 1, 2006 are as follows  
(Applicable employee contributions are listed separately):

### **Benefits**

Self-insured medical, behavioral health, dental, and prescription drug benefits covering the Employee and Dependents, or any combination thereof as determined pursuant to the Commonwealth of Virginia Health Benefits Enrollment Form, with coverage provided by COVA Care, with or without the following benefit options: Expanded Dental, Out-of-Network Benefits, and Vision and Hearing Benefits administered by Anthem Blue Cross Blue Shield of Virginia; COVA HealthAware, with or without the following benefit options: Expanded Dental and Vision Benefits administered by Aetna; and COVA HDHP, with or without the following benefit option: Expanded Dental administered by Anthem Blue Cross Blue Shield of Virginia.

Fully-insured medical, behavioral health, dental, and prescription drug benefits covering the Employee and Dependents, or any combination thereof as determined pursuant to the Commonwealth of Virginia Health Benefits Enrollment Form, with coverage provided by Kaiser Permanente.

Dependent care assistance and applicable fees under the Commonwealth of Virginia Dependent Care Flexible Spending Account III, established pursuant to code Section 129.

Self-insured medical benefits with coverage, benefits and applicable fees determined under the Commonwealth of Virginia Health Flexible Spending Account III, established pursuant to code Section 106.

Benefits as of July 1, 2006 are as follows  
(Applicable employee contributions are listed separately):

The above Component Plans shall be incorporated by reference hereunder. The rights and conditions with respect to the benefits payable from such Component Plan shall be determined therefrom.

## Schedule B - Qualifying Mid-Year Events

### 1. Change In Status

An Employee may change a benefit election when a valid change in status event occurs. However, the change must be made **on account of, and correspond with**, a change in status that affects the eligibility for coverage of the Employee, the spouse or the dependent of the Employee. Assuming that these general consistency requirements are satisfied, if the change in status event affects eligibility for a particular coverage, a corresponding change can be made to the same type of coverage.

The following events constitute valid Changes In Status:

- a. Legal Marital Status: A change in legal marital status, including marriage, death of spouse or divorce
- b. Number of Dependents: A change in the number of dependents, including birth, adoption, placement for adoption or death of a dependent. *Existing* dependents can also be added whenever a dependent gains eligibility as a result of a valid Change In Status event.
- c. Change in Employment Status: Any change in employment status of the employee, the spouse or the dependent of the employee, including: termination or commencement of employment; a strike or lockout; commencement of or return from an unpaid leave of absence; change in work schedule, including an increase or decrease in the number of hours of employment; a switch between full-time and part-time status, or a change in worksite or any other similar change which results in a **change in benefits eligibility**
- d. Dependent Eligibility Requirement: An event that causes a dependent to satisfy or cease to satisfy the eligibility requirements for coverage due to attainment of age, student status or any similar circumstances as provided under the accident or health plan under which the employee receives coverage, and
- e. Change in Residence: A change in the place of residence of the employee, spouse or dependent.

The IRS further clarifies that the Change In Status must result in the employee, spouse or dependent gaining or losing eligibility for coverage or for a particular coverage option such as managed care or indemnity.

### 2. Coverage Costs and Changes

- a. Annual Enrollment Under Other Employer's Plan. For a change in coverage of the Employee's Spouse or Dependent under their employer's plan (except for a Medical Expense FRA), the Employee is permitted an election change when a family member makes an Annual Enrollment change under his or her employer's plan if that plan has a different plan year from the cafeteria plan of the Employee's employer.
- b. **Termination Followed By Re-hire within 30 calendar days.** If an employee terminate employment and is re-hired by the Commonwealth of Virginia 30 calendar days or less after termination of employment, the employee resumes the benefits in place prior to termination (including the Medical Expense FRA account balance, up to the full annual limit (reduced by prior reimbursement), for expenses incurred after the employee's return.



- c. **Termination Followed By Re-hire after 30 calendar days.** If an employee terminates employment and is re-hired by the Commonwealth of Virginia 30 calendar days or more after termination of employment, the Employee is prohibited from participating in any prior plan component for the remainder of that Plan Year.

### 3. Health Insurance Portability and Accountability Act (HIPAA)

HIPAA provides an *exception* to the general rule that election changes can only take effect prospectively. IRS regulations regarding HIPAA's special enrollment rights provide that the plan sponsor may permit an employee to change his/her health coverage to include his/her newborn or newly adopted dependent. If elected, the coverage must be effective retroactive to the date of birth or adoption (provided the dependent is enrolled within 60 days of birth, adoption or placement for adoption).

### 4. Medical Child Support Order

If a judgment, decree or order requires that the Employee provide accident or health coverage for a dependent child (including a foster child who is a dependent), The Employee may change his election to provide coverage for the dependent child. If the Order requires that another individual (including the spouse or former spouse) cover the dependent child and provide coverage under that individual's plan, the Employee may change his election to revoke coverage for the dependent child.

5. **Medicare and Medicaid** If a Employee, spouse or dependent who is enrolled in a health or accident benefit under this plan becomes entitled to Medicare or Medicaid, (other than coverage consisting solely of benefits under Section 1928 of the Social Security Act providing for pediatric vaccines), the Employee may prospectively reduce or cancel the coverage of the person becoming entitled to Medicare or Medicaid. Further if an Employee, spouse or dependent who had been entitled to Medicare or Medicaid loses eligibility for such coverage, then the Employee may prospectively elect to commence or increase the coverage of the person losing coverage.

6. **Loss of Eligibility under other government sponsored health coverage** An employee may make an election on a prospective basis if the employee, spouse or dependent loses coverage under any group health coverage sponsored by a governmental or educational institution, including the following:
  - a. A State's children's health insurance program (SCHIP) under Title XXI of the Social Security Act.
  - b. A medical care program of an Indian Tribal government or tribal organization
  - c. A State health benefits risk pool; or
  - d. Foreign government group health plan.